

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 66/07; Petition 4481-02
Session:	Hundred Twenty-Eighth Session (16 – 27 July 2007)
Title/Style of Cause:	Silvia Graciela Sanchez Silva v. Paraguay
Doc. Type:	Decision
Decided by:	President: Florentin Melendez; First Vice-President: Paolo Carozza; Second Vice-President: Victor Abramovich; Commissioners: Clare K. Roberts, Freddy Gutierrez. Commissioner Evelio Fernandez Arevalos, a Paraguayan national, did not participate in the discussion and decision of this report, in accordance with Article 17(2)(a) of the IACHR's Rules of Procedure.
Dated:	27 July 2007
Citation:	Sanchez Silva v. Paraguay, Petition 4481-02, Inter-Am. C.H.R., Report No. 66/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
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## I. SUMMARY

1. On November 13, 2002, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a complaint lodged by Silvia Graciela Sánchez (hereinafter “the petitioner” or “the alleged victim”) in which she alleged the international responsibility of the Republic of Paraguay (hereinafter “Paraguay,” “the Paraguayan State,” or “the State”). The petition claims violations of the right to personal liberty, to a fair trial, to freedom of movement and residence, and to judicial protection as enshrined in Articles 7, 8, 22, and 25 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), all in conjunction with the obligation to respect rights set out in Article 1(1) of the American Convention, with respect to Mrs. Silvia Graciela Sánchez.

2. The petitioner reports that she granted a power of attorney to Mrs. Ana Bertalais and Mr. Alberto Héctor Biesa for them to manage a property belonging to her in Paraguay. In 1990, after the power of attorney was granted, Mr. Biesa allegedly sold the property, through an intermediary, to Mrs. Bertalais who, acting without permission, recorded the bill of sale by means of a judicial action. With respect to the admissibility of her claim, the petitioner holds that the case described in this report should be exempted from the exhaustion of domestic remedies requirement on account of an unwarranted delay in the resolution of the matter and since it has been impossible to exhaust domestic remedies.

3. With reference to the admissibility of the case, the State maintains that the petitioners have not exhausted domestic remedies, since the criminal proceedings brought “have not reached the Supreme Court of Justice.” The State also maintains that exemption from the exhaustion of domestic remedies on the grounds of an unwarranted delay is not applicable in this case, on the grounds that “the competent court cannot be blamed for the judicial delay, since the problem between the parties has led to a series of court cases in Argentina,” which has slowed down the proceedings.

4. After analyzing the positions of the parties, the Inter-American Commission concludes that it is not competent to reach a decision on the petitioner’s claims because domestic remedies have not been exhausted. Consequently, the IACHR declares this petition inadmissible for failing to meet the requirements set forth in Articles 46 and 47 of the American Convention. The Commission therefore decides to notify the parties of that determination, to publish this Report on Inadmissibility, and to include it in its Annual Report to the OAS General Assembly.

## II. PROCESSING BY THE COMMISSION

### A. Petition

5. On November 13, 2002, the Inter-American Commission received a complaint lodged by Silvia Graciela Sánchez and recorded it as No. 4481/02. On February 21, 2003, the Inter-American Commission forwarded the complaint to the State for it to submit its comments. On April 16, 2003, the Paraguayan State requested a 15-day extension for submitting its observations. On May 9, 2003, the State presented the IACHR with its comments. On May 21, 2003, the Inter-American Commission conveyed those remarks to the petitioners. On July 30, 2003, the petitioner asked the IACHR for a 30-day extension. On July 7, 2003, the IACHR granted the extension requested by the petitioner. On August 5, 2003, the petitioner presented the Inter-American Commission with her comments. On July 22, 2003, the State sent the IACHR its observations. On August 26, 2003, the IACHR forwarded the State’s comments to the petitioners, for information purposes.

## III. POSITIONS OF THE PARTIES

### A. Petitioners

6. The petitioner, Silvia Graciela Sánchez Silva, an Argentine national, files a complaint against the State of Paraguay for the alleged violation of her right to personal liberty, to a fair trial, to freedom of movement and residence, and to judicial protection. In her filing the petitioner states that in 1988 she bought a piece of real estate in Asunción, Paraguay, and gave power of attorney over it to Mrs. Ana Bertalais (also an Argentine national) and to Mr. Alberto Héctor Biesa, intending for them to manage it with a view to their jointly establishing a commercial enterprise. The petitioner says that in 1990, after the power of attorney was granted, Mr. Biesa sold the property, through an intermediary, to Mrs. Bertalais who, without her permission, recorded the bill of sale by means of a judicial action.[FN2]

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[FN2] Complaint lodged with the IACHR by Mrs. Silvia Graciela Sánchez Silva on November 13, 2002; p. 3.

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7. Following the sale of the property, Mrs. Sánchez Silva filed suit with the Eleventh Turn First-Instance Civil Court in the city of Asunción, Paraguay, in December 1990, seeking the annulment of the operation. In those proceedings the petitioner argued that “the bill of sale signed by her two agents was null and void”;<sup>[FN3]</sup> she also argued that they had acted illegally, maliciously, fraudulently, and deceitfully, and she asserted her rights to the property.

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[FN3] Complaint lodged with the IACHR by Mrs. Silvia Graciela Sánchez Silva on November 13, 2002; p. 3.

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8. According to the petition, on November 29, 1991, Mrs. Bertalais and Mr. Biesa filed suit against the petitioner for fraud and criminal deception. The petitioner claims that Bertalais and Biesa maliciously cited, as the petitioner’s registered address, the hotel where she was staying when she bought and processed the deeds for the property, suppressing all references to her real home in Argentina. Because notice was served on her at that address in Paraguay, claims the petitioner, she was unable to appear at her trial. The petitioner states that counsel for Mrs. Bertalais and Mr. Biesa requested that Argentina be asked to place her in preventive custody and extradite her. According to the petitioner, the trial judge ruled her in contempt, ordered her put in preventive custody, and requested that Argentina order her extradition.

9. On account of this, the petitioner claims that she “asked the Paraguayan trial judge to overturn the preventive custody warrant and annul the extradition request.”<sup>[FN4]</sup> According to the petitioner’s narrative, the judge accepted her claim, granting her request and overturning the decision. The petitioner reports that Mrs. Bertalais and Mr. Biesa, through their attorney, asked the Appeals Chamber to uphold her preventive custody and arrest warrant. The Appeals Chamber issued a resolution upholding the preventive custody and extradition request.

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[FN4] Complaint lodged with the IACHR by Mrs. Silvia Graciela Sánchez Silva on November 13, 2002; p. 5.

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10. The petitioner claims that she then filed an unconstitutionality remedy against the decision of the Appeals Chamber with the Supreme Court of the Republic of Paraguay, which resolved the matter in the following terms: “no constitutional rights and guarantees have been violated in this case; although the accused did not appear personally before the trial judge, she did do so through her attorneys.”<sup>[FN5]</sup> This judgment was handed down on March 29, 1999.<sup>[FN6]</sup>

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[FN5] Complaint lodged with the IACHR by Mrs. Silvia Graciela Sánchez Silva on November 13, 2002; p. 5.

[FN6] Supreme Court of Justice of Paraguay, unconstitutionality action in proceedings “Silvia Graciela Sánchez v. Ana Bartalais and other re: ordinary trial on the merits,” judgment 67, March 29, 1999.

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11. Following the rejection of the unconstitutionality suit, the petitioner claims that proceedings for her extradition began, as a result of which she applied for habeas corpus relief in order to prevent her arrest. The Federal Criminal and Correctional Chamber of Mar del Plata, Argentina, resolved to reject the extradition request on May 9, 2002. The petitioner reports that while the habeas corpus was being processed, the judge asked the judge hearing the case in Paraguay to submit copies of the criminal proceedings on several occasions, without ever receiving a reply.

12. The petitioner argues that the extradition request was rejected by the Argentine Republic, but that the refusal is valid only in Argentina: so, were she to leave that country, she could be arrested. She adds that on account of this arrest warrant issued for her, she was unable to appear at the Eleventh Shift Court in Asunción to assert her claims in the trial for the annulment of the bill of sale. She also notes that Paraguayan law does not allow the stating of positions via letters rogatory.[FN7]

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[FN7] Art 294. Litigants domiciled away from the seat of the court. Parties domiciled away from the seat of the court but within the corresponding judicial district shall appear before the trial judge to state their positions.

If a party is domiciled in another jurisdiction, the position shall be set out before the equivalent judge or court in the district where the domicile is located.

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13. With regard to admissibility arguments in the instant case, the petitioner states that this complaint is covered by the exception to the exhaustion of domestic remedies requirement set out in Article 46(2)(b) of the American Convention. The petitioner claims she was ordered into preventive custody without her having given a statement to the investigation or having refused to do so,[FN8] as required by the Code of Criminal Procedure in force in Paraguay at the time,[FN9] and because of the warrant for her arrest she had been unable to take any action to rectify the situation and so had not been permitted to exhaust domestic remedies.

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[FN8] Article 337 of the 1890 Code of Criminal Procedure, in force at the time of dispute: Arrest shall be transformed into preventive custody when the following requirements are met in concert:

1. There shall be at least partial proof of the existence of an offense punishable by imprisonment.

2. The detainee shall have given his statement to the investigation or shall have refused to do so, and he shall also have been informed of the reason for his arrest.

3. There shall be, in the judge's opinion, sufficient evidence to believe him responsible for the offense.

[FN9] Article 3, "Full Enforcement," of Law 1444/99, regulating the transition period to the new criminal justice system: On March 1, 2000, Law No. 1286/98, "Code of Criminal Procedure," shall enter into full effect and shall apply to all proceedings commencing as of that date, even those involving offenses committed prior to that date. Proceedings already commenced as of that date under the Code of Criminal Procedure of 1890 shall continue to be processed to their conclusion under that Code and this Law.

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14. The petitioner also argues that there has been an unwarranted delay in reaching a decision, and so the instant case is also covered by the provisions of Article 46.2.c. The petitioner holds that an unwarranted delay has occurred because the proceedings begun to carry out the arrest warrant had been ongoing for ten years at the time the complaint was lodged.

B. State

15. The State maintains that the complaint lodged with the IACHR by Mrs. Sánchez Silva contains no violations of rights enshrined in the American Convention. It also maintains that neither have the remedies offered by domestic jurisdiction been exhausted. In the State's view, the case at hand involves two Argentine nationals who both assert ownership of a piece of real estate and have therefore taken recourse to Paraguay's civil and criminal courts.[FN10] In other words, it is a case that is still pending before the domestic courts and not a matter of human rights violations.

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[FN10] Comments submitted by the State of Paraguay to the IACHR in case P-4481/02 "Silvia Graciela Sánchez" on May 9, 2003.

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16. The State believes that the petitioner has not met the terms of Articles 31 and 32 of the Commission's Rules of Procedure: she has not previously exhausted all available domestic remedies since the domestic proceedings have not been taken to the Supreme Court of Justice. So, for the State, the unconstitutionality alleged by the petitioner in the civil case was an objection on the grounds of unconstitutionality in which the denial of non-action and bailment in the proceedings were argued,[FN11] and not a remedy lodged to seek redress of the possible violation of human rights. The State also disputes the petitioner's claim that there has been an unwarranted delay in reaching a decision since "the parties in the dispute have filed a series of suits in Argentina that have hindered both the extradition and the prosecution and conclusion of the criminal proceedings." [FN12]

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[FN11] Comments submitted by the State of Paraguay to the IACHR in case P-4481/02 "Silvia Graciela Sánchez" on July 22, 2003, p. 4.

[FN12] Comments submitted by the State of Paraguay to the IACHR in case P-4481/02 "Silvia Graciela Sánchez" on May 9, 2003.

17. With reference to the civil trial, which the petitioner argues has been ongoing for many years, the State holds that this is because of the motions filed during the proceedings by both the petitioner and Mrs. Bertalais; in the State's opinion, the case brought by the petitioner before the civil courts is complex and replete with motions. The State further believes that the complaint lodged with the IACHR by the petitioner does not describe human rights violations, as required by Article 27 of the Commission's Rules of Procedure.

18. With regard to the request for the lifting of the preventive custody order, the State reports that the request was annulled at the request of the petitioner's attorney on November 9, 1992; an appeal against that decision was, however, filed with the Appeals Court by Mrs. Bertalais's counsel, in which it was decided to uphold the preventive custody on the grounds that "if the procedural rules have been met, the same judge who issued that grounded resolution may not repeal it on his own initiative, ignoring the intervention of the other parties involved in the case. It is inadmissible for the defendant to attempt to present her case through an agency when she has not previously submitted herself IN PERSON[FN13] to the authority of the court."[FN14]

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[FN13] Highlighted in the original version.

[FN14] Comments submitted by the State of Paraguay to the IACHR in case P-4481/02 "Silvia Graciela Sánchez" on July 22, 2003, p. 3.

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#### IV. ANALYSIS OF ADMISSIBILITY

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

19. Article 44 of the American Convention provides that: "Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party." The petitioner is therefore entitled to lodge petitions with the Inter-American Commission. Consequently, the IACHR has competence *ratione personae* for this case.

20. The State of Paraguay has been a party to the American Convention since August 24, 1989, the date on which it deposited its corresponding instrument of ratification. Similarly, the petitioner alleges violations of rights enshrined in the American Convention which, if proven true, could constitute violations of rights protected by Articles 7, 8, 22, and 25 of the American Convention, in conjunction with the general obligation of respecting and ensuring rights set out in Article 1(1) thereof. Thus, in the case at hand, the IACHR has competence *ratione materiae*.

21. The Inter-American Commission has competence *ratione loci*, in that the alleged human rights violations took place within the territory of a state party to the American Convention.

Likewise, the Commission has competence *ratione temporis*, because on the date the alleged incidents took place, the American Convention was already in force for the Paraguayan State.

B. Other requirements for admissibility

1. Exhaustion of domestic remedies

22. Article 46(1)(a) of the American Convention states that for a complaint to be admissible under the terms of its Article 44, the petitioners must have exhausted domestic remedies in accordance with generally recognized principles of international law. This prerequisite is seen by the Commission as a procedural requirement to allow states to deal with alleged violations of rights protected under the American Convention and, if possible, to give them an opportunity to right the wrong within their own jurisdiction prior to involving the subsidiary competence of an international venue.

23. With regard to the admissibility of the case at hand, the petitioner argues that the terms of 46(2)(b) and 46(2)(c) of the American Convention should apply.

24. Regarding the denial of access to the remedies offered by domestic jurisdiction and the impossibility of exhausting them, the petitioner claims that a preventive custody order was issued without her having given a statement to the investigation or having refused to do so,[FN15] as required by the Code of Criminal Procedure in force in Paraguay at the time,[FN16] and that because of the warrant for her arrest she had been unable to take any action to rectify the situation and so had not been permitted to exhaust domestic remedies. As regards the alleged unwarranted delay, the petitioner claims that the proceedings for executing the detention order had been ongoing for ten years at the time she lodged the complaint.

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[FN15] Article 337 of the 1890 Code of Criminal Procedure, in force at the time of dispute, provides that:

Arrest shall be transformed into preventive custody when the following requirements are met in concert:

4. There is at least partial proof of the existence of an offense punishable by imprisonment.

5. The detainee shall have given his statement to the investigation or shall have refused to do so, and he shall also have been informed of the reason for his arrest.

6. There shall be, in the judge's opinion, sufficient evidence to believe him responsible for the offense.

[FN16] Article 3, "Full Enforcement," of Law 1444/99, regulating the transition period to the new criminal justice system: On March 1, 2000, Law No. 1286/98, "Code of Criminal Procedure," shall enter into full effect and shall apply to all proceedings commencing as of that date, even those involving offenses committed prior to that date. Proceedings already commenced as of that date under the Code of Criminal Procedure of 1890 shall continue to be processed to their conclusion under that Code and this Law.

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25. The IACHR believes that in this case, the alleged violation arises from the alleged victim's claimed inability to exercise her right of defense because she was not notified of the suit for charges of fraud and criminal deception filed against her by Mrs. Bertalais. In the arguments presented by the petitioner, the IACHR finds no evidence to indicate that she took any action to challenge that failure to serve notice on her. In other words, although the petitioner filed a series of motions and suits within the proceedings to avoid her extradition to Paraguay, there is no indication of steps taken to challenge the failure to serve notice on her. In the Commission's view, therefore, there has been an undue exhaustion of domestic remedies, failing to meet the requirements established for the Commission to admit this claim under Article 46(1)(a) of the American Convention.

#### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

#### DECIDES:

1. To declare the instant case inadmissible on the grounds of nonexhaustion of domestic legal remedies.
2. To give notice of this decision to the parties.
3. To publish this decision and to 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 27th day of the month of July, 2007.  
(Signed): Florentín Meléndez, President; Paolo G. Carozza, First Vice-President; Víctor E. Abramovich, Second Vice-President; Clare K. Roberts and Freddy Gutiérrez, Commissioners.