

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 68/08; Petition 231-98
Session: Hundred Thirty-Third Regular Session (15 – 31 October 2008)
Title/Style of Cause: Ernesto Trevisi v. Argentina
Doc. Type: Decision
Decided by: Chairman: Paolo Carozza;
First Vice-Chairwoman: Luz Patricia Mejia Guerrero;
Second Vice-Chairman: Felipe Gonzalez;
Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melende.
Commission member Victor E. Abramovich, an Argentine national, did not participate in either the deliberations or the decision in this case, in keeping with the provisions of Article 17(2)(a) of the Rules of Procedure of the Commission.

Dated: 16 October 2008
Citation: Trevisi v. Argentina, Petition 231-98, Inter-Am. C.H.R., Report No. 68/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)

Terms of Use: Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. SUMMARY

1. This report addresses the admissibility of petition 231-98. The proceedings were initiated by the Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission,” “Commission,” or “IACHR”) upon receipt of a petition on May 26, 1998 submitted by Mr. Ernesto Trevisi (hereinafter “the petitioner”) against the Republic of Argentina (hereinafter “Argentina” or “the State”), regarding his alleged arbitrary arrest, the mistreatment to which he was subjected during his detention, and the failure of the judicial authorities to investigate these events.

2. The petitioner maintains that on May 12, 1997 he was arrested but not informed of the reason for his arrest, and that during the 13 ½ hours that he was detained he was kept incommunicado. He alleges that the police agents transferred him to an isolated cell, insulted and beat him, breaking one of his ribs. The petitioner reported these events to the judicial authorities, submitting medical reports to document his injuries. On October 28 of that year a writ of lack of merits in the case was issued and on November 28, 1997, the charges against the accused police officers were dismissed with prejudice. The petitioner alleges that there was no proper investigation of his allegations and that the appropriate evidence-gathering steps were never taken. He asserts that since the laws in force in Santa Fe do not allow him to be a party in the trial, he lacked legal standing to appeal these decisions and that his injuries at the hands of the police officers have gone unpunished.

3. The State, for its part, maintains that the case opened pursuant to the criminal complaint of threats and “illegal pressures” (apremios ilegales) against Mr. Trevisi was duly processed through the courts and that the obligation to investigate the facts was fulfilled out of respect for the right to a fair trial for both the petitioner and the police officers. The State adds that the petitioner did not fully exhaust domestic remedies, that the charges were not proven, and that therefore, the petitioner is seeking to have the Commission act as a court of fourth instance.

4. Without prejudging the merits of the complaint, the Commission concludes that it has competence to analyze the petition regarding the alleged arrest and mistreatment of Mr. Ernesto Trevisi, as they may constitute violations of his rights to humane treatment, personal liberty, a fair trial, and judicial protection, as has been established by Articles 5, 7, 8(1), and 25 of the American Convention on Human Rights (hereinafter the “American Convention” or “Convention”), in relation to Article 1(1) of that instrument. The Commission further decides to notify the parties of this decision, to publish it, and to include it in its Annual Report to the General Assembly of the OAS.

II. PROCESSING BY THE IACHR

5. The petition is dated May 17, 1998 and was received in the Commission on May 26, 1998. The petitioner submitted additional information on October 25, 1999 and on November 30, 1999. The relevant parts of the petition were transmitted to the State on January 4, 2002, with a deadline of two months for the submission of observations.

6. After having requested a one-month extension, which was granted, the State sent its observations to the Commission on April 9, 2002. The observations of the State were duly forwarded to the petitioner on June 27, 2002.

7. The petitioner sent his additional observations on August 24 and 25, 2002. These were duly transmitted to the State on December 16, 2002.

III. POSITIONS OF THE PARTIES ON ADMISSIBILITY

A. The Petitioner

8. The petitioner maintains that on May 12, 1997 at approximately 1:30 a.m. he went by bicycle to pick up his son at a friend’s house. As he could not find the address, he knocked on the door of a house to ask for directions. He asserts that the owner of the house accused him of trying to enter his home with ill-intent, and the police took both of them to Santo Tomé Police Station 12. The petitioner maintains that he was never informed of the reason for his arrest and that he was kept incommunicado. He specifies that he was not allowed to place calls or to receive the calls his attorney and family were making to the police station.

9. The petitioner alleges that he was then transferred to an isolated cell and was later insulted and threatened while he was accused of having insulted a police officer. He affirms that police officers placed him against a wall and while they insulted and threatened him, they beat

him on his flanks and in the hemithorax. They then left him in an isolation cell. Later he was removed from the isolation cell to be interrogated and for his fingerprints to be taken, after which he was returned to the isolation cell. At approximately 13:30 hours he was returned to the headquarters and at 15:00 hours he was released.

10. The petitioner asserts that he had no bruises or marks but that he felt pain. For this reason, his friends took him to a doctor, who examined him and ordered x-rays. The following day, with the x-rays at hand, the physician referred him to a traumatologist from J.M. Cullen Hospital who detected a costal fracture in the left hemithorax. The petitioner submitted the respective medical reports to the Commission and these can be found in the file.

11. The petitioner reports that on the day he was informed of the fractured ribs, May 21, 1997, he appeared to file a criminal complaint. In his complaint he explained that fear of reprisals by the police was the reason he had not lodged his complaint earlier. His complaints led to the opening of the case “Trevisi Eduardo Complaint of Illegal Pressures, Threats” (File No. 729 of 1997). That same day the judge asked a forensic doctor to examine the petitioner in order to report whether he had any injuries, and if so, where they were located, the date, and probable means by which they were inflicted, and likely time to heal and length of work disability. The forensic doctor limited himself to certifying what was referred to by the petitioner and is set forth in the medical reports in the file before the Commission. He added that injuries such as those described usually heal within one month of rest from work.

12. Within the framework of the investigation of the case, witnesses who had been detained at the police station on May 12, 1997 appeared to give testimony, as did staff of the police station that had been on duty on that date. On September 12, 1997, one of the witnesses testified that during the early morning hours of one of the days he was detained at that police station “someone was being beaten. They pulled him by his hair and dragged him through the hallway leading to the isolation cells, they kicked and punched him and placed him in a cell next to mine. I cannot specify the date, but believe that it was that person who had recently come in and who left after noon on that same day [...]” The witness added that “at that police station it was commonplace for people who came in on weekend arrests to be punished.”

13. On September 20, 1997 the petitioner expanded his complaint by explaining that the police authorities of Santo Tomé had falsely charged him with unlawful entry of the home of another, including a falsified medical report alleging that he was intoxicated at the time of his arrest. The petitioner alleges that he was not intoxicated at the time of his arrest, nor was he ever examined by a doctor. The petitioner reports that in September of 1997 the Second Nomination Magistrate’s Court dismissed with prejudice for lack of merits the charges of unlawful entry in case 178-97. He also reports that on October 2, 1997 the Santo Tomé Circuit 28 Trial Court issued a decision in which he was fully acquitted of any wrongdoing in case 146/97, in which he faced charges of disturbance of the peace and public drunkenness. According to the petitioner, this demonstrates that the police had acted with duplicity by accusing him of aggressive behavior and drunkenness.

14. The petitioner alleges that both the investigating judge [juez de instrucción] and the prosecutor designated to investigate his complaints of torture had demonstrated a lack of will and

appeared to take the investigation of the case lightly. He asserts that based on testimony and the confrontation of witnesses during the investigation, police Sergeant Sergio Dante Acevedo and Lieutenant Captain of Police Augusto Alberto Sanchetti were accused of the crime of illegal pressures. However, on October 28, 1997, the Criminal Investigation Court issued a writ of lack of merits regarding Mr. Trevisi's complaint of illegal pressures, indicating that without prejudice to the continuation of the investigation, the evidentiary material gathered in the preliminary investigation did not make it possible to order that the accused stand trial nor that the charges be dismissed. The petitioner adds that without any judicial intervention to continue the investigation, on November 28, 1997 the Criminal Investigation Court decided to dismiss the charges with prejudice, because nothing had changed in the proceedings since the writ of lack of merits was issued.

15. The petitioner reports that the laws of Santa Fe province do not allow private complainants in offenses subject to public prosecution and for that reason he could not intervene as such in the case nor appeal the decision to dismiss. The petitioner explains that the Code of Criminal Procedure for Santa Fe Province does not allow for joint complainants or affected individuals; therefore, victims may only become civil parties. The petitioner reports that the prosecutor's office did not appeal the dismissal, either. He adds that he requested copies of the court file, but that they were denied to him because he was not a party to the case. He attached the court notice of May 4, 1998 in which the Court denied his request to be issued copies of the file. The petitioner indicates that he even took steps to request the copies through the provincial Chamber of Deputies.

16. The petitioner argues that as a result of his "actions before the courts, the government, the senate and chamber of deputies, and the press, a campaign of harassment, defamation, and persecution was unleashed on his children." He notes that his children, 14, 15, and 16 years of age, were detained several times by the police at the aforementioned police station and accused of false crimes that were all later dismissed in juvenile court. The petitioner asserts that he reported this harassment to the Judicial and Administrative Investigation Division of the Special Internal Affairs Unit of the provincial Ministry of Government, whose purpose is to investigate and correct police behavior. Additionally, on May 11, 1999 he filed a preventive writ of habeas corpus to order the provincial police to refrain from detaining the petitioner or his children without a judicial order. This remedy was denied on May 27 of that year on the grounds that there was no reason to presume an arbitrary restriction of the liberty of the complainant or his children. However, the petitioner was not notified of the decision to deny the writ until September 13.

17. In addition to the judicial remedies, the petitioner indicates that he also reported these facts to the Ministry of Government, Justice, and Worship of his province so that it could take the appropriate administrative steps, and he reported it to the provincial senate and chamber of deputies. According to the petitioner, the Ministry of Government simply informed him that the system of justice had dismissed the case with prejudice, but did not conduct any administrative measures to investigate the matter or punish those found to be responsible.

B. The State

18. The State affirms that the case was duly handled in the judicial system. The State reports that with all due expediency witnesses were summoned, the police officers on duty at the station the day of the alleged events were identified, a line-up of suspects was conducted, investigatory statements were taken, and there was a confrontation of testimony from the accused and the petitioner. The State reports that the decision was handed down approximately six months after the complaint was made, whereby the State had fulfilled its obligation to investigate the facts in order to honor the petitioner and the accused police officers' right to a fair trial.

19. The State alleges that the investigation revealed contradictions between the petitioner and the accused police officers. The testimony of the witnesses was inconsistent with the assertions by the petitioner and that his statements "were unsuitable for consideration to impose criminal sanctions on the accused." The State affirmed that the statements by the police officers were consistent and mutually confirming, and that no elements or contradictions emerged from them to sustain a conviction in court.

20. The State adds that the kind of crime reported by Mr. Trevisi is very difficult to prove, considering that the evidence which the judge has to review in order to determine the facts are extremely limited. According to the State, the file shows no violations of the Convention, as the facts that were reported were all duly investigated and the court arrived at a verdict of acquittal which reflects the "application of a system of procedural guarantees whereby everyone is presumed innocent until his guilt is proven in a trial." In this regard, the State observes that it has a duty to ensure the right to a fair trial for all persons under its jurisdiction, including individuals in the ranks of the security forces.

21. According to the State, the petitioner did not fully exhaust the domestic remedies available to him because Mr. Trevisi was only a complainant in the criminal case against the police officers of the Santo Tomé police station, but did not become a civil party or affected individual, which would have allowed him to appeal the dismissal of the charges by the court. According to the State, in light of Article 94[FN2] and subsequent Articles of the Code of Criminal Procedure for Santa Fe Province, Mr. Trevisi could have been a civil party or an affected individual, which would have allowed him to appeal the dismissal by the court. The State alleges that "the petitioner's lack of expertise in procedural matters evidenced in the record shows that there was no exhaustion of domestic remedies. Since he did not become a civil party, the procedural possibilities available were extinguished, thereby missing the opportunity to fulfill the requirement for exhaustion of domestic remedies out of his own negligence, and consequently impeding the subsidiary competence of the Commission."

[FN2] Article 94 of the Code of Criminal Procedure for Santa Fe Province, Law 6.740 (T.O. 1981) provides that "only those who claim to have been injured by the alleged act or their heirs, within the limits of the inheritance allotment, may pursue a civil action for damages before the same judge or court and within the same trial in which the criminal charges are decided. One's status as a defendant does not impede this exercise within the same trial." (Code Repealed August 31, 2007).

22. The State considers that this petition rests on a mere disagreement with the decision handed down by the internal court, and that to admit it would be to follow the “fourth instance formula.” The State affirms that the petitioner did not adequately exhaust domestic remedies, and that the facts he reports have not been proven, such that he is seeking to use the Commission as a court of appeals for the local jurisdiction.

23. As for the processing of the petition, the State observes that the Commission’s delay in forwarding the complaint once it was submitted by the petitioner threatens the legal certainty and stability of the matter, depriving the State of the possibility of presenting an adequate defense. Therefore, the State believes that the Commission should refrain from further analysis of the petition and archive the case.

IV. ANALYSIS

A. Competence of the Commission

24. According to Article 44 of the American Convention, the petitioner is authorized to lodge a petition before the Commission. The petition under study indicates that the alleged victim was subject to the jurisdiction of the State of Argentina at the time that the alleged facts occurred. As for the State, Argentina is a State Party to the American Convention, having duly deposited its instrument of ratification on September 5, 1984. Therefore, the Commission has competence *ratione personae* to review the petition. Furthermore, it has competence *ratione materiae* because the petitioner alleges violations of rights protected by the American Convention.

25. The Commission has jurisdiction *ratione temporis* to review the petition because it is based on allegations of facts that occurred starting on May 12, 1997, the day that Mr. Trevisi was arrested. Thus the alleged facts occurred after the State’s obligations as a party to the American Convention went into effect. Furthermore, since the petition alleges violations of rights protected by the American Convention that took place within the territory of a State party, the Commission concludes that it has competence *ratione loci* to study the matter.

26. The Commission wishes to clarify that according to the rules of the Inter-American system of human rights, the time lapsed between the Commission’s receipt of a petition and its transmission to the State does not, in and of itself, constitute grounds for the archiving of a case. As this Commission has stated, “in the processing of individual cases before this Commission, there is no concept of a level of jurisdiction expiring as an *ipso jure* measure simply based on the lapse of time.”[FN3]

[FN3] IACHR Report No. 33/98, Admissibility – Case 10.545, Clemente Ayala Torres et al. (Mexico). May 15, 1998, para. 28.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

27. Article 46 of the American Convention establishes that in order for a case to be admissible “the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law.” The purpose of this requirement is to allow the national authorities to become aware of the alleged violation of a protected right and, if appropriate, resolve the matter before it is taken up in international jurisdiction.

28. In the instant case, the petitioner sustains that according to applicable legislation of Santa Fe Province, he had no legal standing to file ordinary appeals to the decision of November 28, 1997 in which the charges against the police officers were dismissed with prejudice, because the procedural situation had not changed since the writ of lack of merit was issued. The petitioner specifically indicates that the laws of Santa Fe province do not allow private citizens to be the complainant in offenses subject to public prosecution, and for that reason he could not intervene as such in the case nor appeal the decision to dismiss. The State, for its part, indicates that if the petitioner had become a civil party or an affected individual, he could have appealed the dismissal of the charges by the court

29. In this vein, the Commission notes that the Code of Criminal Procedure of Santa Fe Province[FN4] that was in force when the proceedings took place, provided that criminal charges can only be put forth by the Public Prosecution Service, with the exception of cases of private action (Article 8). According to the Code, the complainant is not a party in the trial (Article 182) and only the Prosecutor may appeal a writ of lack of merit (Article 328). While the aforementioned Code provides for civil action in the criminal court, the purpose of such action is restitution of the object of the incriminating act or indemnification or reparations for the harm caused by same (Article 16); whereas a criminal investigation has as its purpose, among others, an historic reconstruction of the facts and the identification of the individual perpetrators and aiders and abettors. When a case is dismissed, only the Public Prosecution Service is empowered to appeal it; a civil actor simply has the power to express his disagreement, an expression which by its nature is not binding on the Public Prosecution Service, whose representatives are fully empowered to not appeal (Article 358).[FN5]

[FN4] Code of Criminal Procedure Santa Fe Province. Law 6.740 (T.O. 1981) published in the Boletín Oficial on April 20, 1981 (Repealed August 31, 2007).

[FN5] The Supreme Court of Santa Fe Province itself has interpreted it this way: CS Santa Fe, December 21, 2005: Pereira, Estrella Virgen – attempted fraud—re appeal based on unconstitutionality.

30. As the Inter-American Court has pointed out, domestic remedies need only be exhausted when they are adequate to correct the violations that are alleged to have been committed. “Adequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be

exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable.”[FN6]

[FN6] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988, paragraph 64.

31. The Commission, for its part, has indicated that when under domestic law the crime is subject to public prosecution, “it is this process, initiated and pursued by the State, that should be considered for the purposes of determining the admissibility of the claim, as opposed to, for example, civil remedies for monetary and other damages.”[FN7] As the Commission has noted in other cases, “the State’s claim that the petitioners did not bring a civil suit for damages and injuries carries no weight since a civil suit cannot remedy the irregularities in the criminal investigation and cannot guarantee that the facts of the case will be solved and criminal responsibilities assigned.”[FN8]

[FN7] IACHR, Admissibility Report 08/03 of February 20, 2003. Petition 191/02 Michael Gayle (Jamaica), paragraph 41.

[FN8] IACHR, Admissibility Report 14/06 of March 2, 2006. Petition 617-01 Raquel Natalia Lagunas and Sergio Antonio Sorbellini (Argentina), paragraph 46.

32. The jurisprudence of the IACHR has been consistent in establishing that when a crime is committed that must be prosecuted by the State at its own initiative, the State has the obligation to promote and pursue criminal proceedings through the final consequences. In cases such as the instant one, involving offenses subject to public prosecution, that is those which can be prosecuted by the State at its own initiative, particularly when agents of the State are implicated in said crimes, the State has a legal obligation—which it cannot delegate or waive—to investigate them. Therefore, the Argentine State is the holder of the punitive action and of the obligation to promote and pursue the various procedural stages, in fulfillment of its obligation to guarantee the right to justice. “This burden must be borne by the State as its own legal duty, not as an instrument of the interests of private individuals, and it may not be contingent upon the initiative of those individuals or the evidence they provide.”[FN9]

[FN9] IACHR, Admissibility Report 24/06 of March 2, 2006. Petición 10.720, El Mozote Massacre (El Salvador), paragraph 37.

33. In the present case, the Commission observes that the petitioner made use of the remedies provided by law when he filed a complaint of illegal pressures and threats based on the events which happened to him. According to the applicable legislation in his province, filing a complaint did not make him a party to the trial nor allow him to appeal a writ of lack of merit. Civil action in the criminal court cannot be considered a suitable recourse for offenses subject to public prosecution. Upon analyzing the foregoing, the Commission concludes that Mr. Ernesto

Trevisi invoked the ordinary remedies provided for in the State's legal system, and that therefore, the requirement set forth in Article 46(1) of the Convention has been met.

2. Time period for lodging a petition

34. According to Article 46(1)(b) of the Convention, in order to be admissible a petition must be submitted on time, specifically within six months of the date on which the complainant was notified of the final decision in the national courts.

35. In the instant case, the final decision from the national courts was dated November 28, 1997, when the Criminal Court dismissed the charges against the defendants with prejudice, based on the fact that the procedural situation had not changed since the writ of lack of merit had been issued. The petition, dated May 17, 1998, was received in the Commission on May 26, 1998.

36. In light of the foregoing, the IACHR finds that this petition was submitted in timely fashion.

3. Duplication of proceedings

37. Article 46(1)(c) of the Convention establishes that in order to be admissible, the subject of the petition "must not be pending in another international proceeding for settlement," and Article 47(d) stipulates that it must not be "substantially the same as one previously studied by the Commission or by another international organization." In the instant case, the parties do not allege, nor does it appear in the record, that either of these conditions of inadmissibility is present.

4. Characterization of the alleged facts

38. For the purposes of admissibility, the Commission must decide whether the facts alleged may characterize a violation of rights, as is stipulated in Article 47(b) of the American Convention, or whether the petition is "manifestly groundless or obviously out of order," according to subparagraph (c) of that Article. The criterion for evaluating these requirements is different from that which is used to decide on the merits of a petition. At this stage, the Commission must conduct a *prima facie* evaluation to determine whether the petition establishes a basis for a possible or potential violation of any right protected by the Convention, but not to establish whether or not any such violation actually occurred. This is a preliminary analysis and does not imply prejudice as to the merits of the case.

39. While the petitioner has not explicitly referred to Articles of the American Convention on Human Rights, the IACHR finds that his allegations regarding possible violations of Mr. Ernesto Trevisi's rights to humane treatment, personal liberty, a fair trial, and judicial protection, if proven, would constitute violations of rights protected by Articles 5, 7, 8(1), and 25 of the American Convention, in relation to Article 1(1) of that instrument.

40. In light of the facts set forth, the IACHR does not find the petition to be “manifestly groundless or obviously out of order.” Rather, it considers prima facie that the petitioner has met the admissibility requirements of Articles 47(b) and 47(c) of the American Convention on Human Rights.

V. CONCLUSIONS

41. The Commission concludes that it has competence to analyze the present case and that the petition is admissible under Articles 46 and 47 of the American Convention.

42. Based on the arguments of fact and law presented above, and with no prejudgment as to the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible with respect to the alleged violations of the rights established in Articles 5, 7, 8(1), and 25 of the American Convention, in relation to Article 1(1) of that instrument.
2. To notify the parties of this decision.
3. To proceed to review the merits of the case.
4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 16th day of the month of October 2008. (Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice Chairwoman; Felipe González, Second Vice Chairman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, members of the Commission.