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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 79/08; Petition 95-01
Session: Hundred Thirty-Third Regular Session (15 – 31 October 2008)
Title/Style of Cause: Marcos Alejandro Martin 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, and Florentin Melendez.
Commissioner Victor E. Abramovich, an Argentine citizen, did not participate in the discussion or decision of this case, as prescribed in Article 17.2.a of the Commission's Rules of Procedure.

Dated: 17 October 2008
Citation: Alejandro Martin v. Argentina, Petition 95-01, Inter-Am. C.H.R., Report No. 79/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)
Represented by: APPLICANT: Eleonora Devoto

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I. SUMMARY

1. This report addresses the admissibility of petition 95-01. Processing by the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) began upon receipt of a petition on February 15, 2001, submitted by Eleonora Devoto, in her capacity as coordinator of the Human Rights Treaties Application Program of the Public Defender’s Office [Defensoría General de la Nación][FN2] (hereinafter “the petitioner”), against the Argentine Republic (hereinafter “Argentina” or “the State”), concerning alleged violations of the right to personal liberty and the right to a fair trial established in Articles 7.2, 8.1, 8.2.d, and 8.2.f of the American Convention on Human Rights (hereinafter the “American Convention” or “Convention”), to the detriment of Marcos Alejandro Martín (hereinafter the “alleged victim”).

[FN2] Subsequently, Stella Maris Martínez, Chief National Public Defender, in the framework of “Human Rights Treaties Application Program of the Public Defender’s Office”, continued as the petitioner in the case before the Commission.

2. The petitioner alleges that Articles 8.2.d and 8.2.f of the American Convention were violated in the proceeding that sentenced Marcos Alejandro Martín to five years in prison as co-

author of the crime of armed robbery, infringing on his right to personal liberty as guaranteed by Article 7 of the Convention. The petitioner says the alleged victim's rights were violated because the principal witness of the alleged fact was not present during the trial, and to correct this omission a written deposition from the investigative phase of the proceeding was submitted without prior examination by the defense.

3. The State, for its part, argues that the facts alleged by the petitioners do not constitute any violation whatsoever of the right to due process and the other rights set forth in the Convention, so the petition should be ruled inadmissible. According to the State, the Commission cannot review alleged errors of fact or law committed by a court that has acted within its competence pursuant to the rules of due process, and in the present case there is an attempt to have the Commission act as a fourth instance.

4. Without prejudging the merits of the complaint, the Commission concludes that it is competent to consider the petition regarding the trial and sentencing of Marcos Alejandro Martín, as regards the alleged violations of the right to personal liberty and the right to a fair trial, established in Articles 7 and 8 of the American Convention, in connection with the general obligations set forth in Articles 1.2 and 2 of that treaty. Applying the *iura novit curia* principle, the Commission also decides to declare the petition admissible as regards the right to judicial protection established in Article 25 of the American Convention, in connection with Articles 1.1 and 2 of that instrument. The Commission decides to transmit this decision to the parties, to publish it, and to include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

5. The IACHR received the petition on February 15, 2001, and transmitted the relevant parts to the State on January 30, 2006. After the State requested an extension on April 11, 2006, it submitted its observations on the petition on October 10, 2006, and they were duly transmitted to the petitioner on October 24, 2006.

6. The petitioner submitted additional observations on December 11, 2006, and August 30, 2007. These comments were duly transmitted to the State on December 14, 2006, and October 27, 2007, respectively.

7. The State submitted additional observations on April 19, 2007, after requesting an extension on January 10, 2007. The observations were forwarded to the petitioner on April 24, 2007.

III. POSITIONS OF THE PARTIES

A. The petitioner

8. The facts alleged by the petitioner refer to the proceeding in the federal oral trial court [Tribunal Oral en lo Criminal] in Buenos Aires, which on February 25, 1999, sentenced Marcos Alejandro Martín to five years in prison as co-author of the crime of armed robbery. The petitioner affirms that on August 30, 1998, Alberto Martín Cugat said when getting off a bus on

a public street in Buenos Aires that he had been robbed on the bus. Later, together with Federal Police Inspector Daniel Priolo, Mr. Cugat allegedly began looking for his assailants on several buses on the same route. On one of them he said he recognized Marcos Alejandro Martín as one of the perpetrators. Mr. Martín was therefore arrested and prosecuted for armed robbery.

9. The petitioner argues that Alberto Martín Cugat, the victim in the criminal proceeding against Marcos Alejandro Martín, testified only once during the written phase of the proceeding, with a deposition before police officials, which the defense did not have an opportunity to monitor.

10. According to information provided by the petitioner, Oral Trial Court N° 15 concluded that Marcos Alejandro Martín was guilty as co-author of the crime of armed robbery, taking into account, among other elements, the statement with the accusation by Alberto Martín Cugat. From that complaint it is clear that Mr. Cugat was the only witness to the alleged robbery and he was the one who identified the supposed assailant and seized the stiletto that was allegedly used, which was said to be found under an empty seat after Marcos Alejandro Martín was forced to get off the bus. Federal Police Inspector Daniel Priolo, in his testimony, only related what Mr. Cugat told him and could not recall exactly who seized the stiletto and how much money was taken. Thus, the weapon was not seized in the power of the alleged victim. Other witnesses who testified refer only to the moment when Marcos Alejandro Martín was identified and arrested on a bus, but did not witness the alleged robbery, because it allegedly happened on a different bus. Therefore, according to the petitioner, if the declaration with the complaint is set aside there is no independent evidence to positively link Marcos Alejandro Martín with participation in the alleged robbery.

11. The petitioner states that in the alleged victim's declaration he categorically denied the offense with which he was charged, but had no opportunity to confront the testimony of Alberto Martín Cugat, which he only had access to in the deposition, which was made in a part of the proceeding in which the defense was not permitted to participate in the production of the evidence. Hence, the petitioner says that the purpose of the present petition is to note irregularity in the production of evidence, which resulted in an arbitrary sentence without a fair trial.

12. Based on Mr. Cugat's testimony, and in accordance with Articles 388, 391, and 392 of the Penal Procedure Code [Código Procesal Penal de la Nación], Oral Trial Court N° 15 sentenced the alleged victim to five years in prison. The petitioner says that during the oral phase of the trial that ended in the sentence the defense opposed the reading of the incriminating document into the record, but was overruled by the court.

13. According to the petitioner, the domestic courts violated the right to question witnesses, a fundamental guarantee of the right to defense, because in view of the failure of the sole eyewitness to the fact to testify in the oral trial, his statement from the investigative phase was ordered read into the record without affording the defense an opportunity to challenge it. She says that the other witnesses present at the trial could only testify as to observing the arrest, and that evidence was not different or independent from Mr. Cugat's testimony.

14. The petitioner adds that according to the sentence, the rest of the evidence was “a corroborating framework that supplemented the injured party’s complaint.” According to the petitioner, the rest of the evidence was insufficient to demonstrate independently the degree of certainty needed for a conviction.

15. She says that by reading Alfredo Martín Cugat’s statement into the record and then using it as evidence of the crime to reach a conviction, the State violated the defense’s right to question witnesses, and therefore the guarantee set forth in Article 8.2.f of the American Convention, to the detriment of Marcos Alejandro Martín. The petitioner affirms that reading the statement into the record prevented the defense from challenging the truth and consistency of Mr. Cugat’s assertions and thereby controlling their validity as evidence, especially since the defense wanted to point out contradictions in the statement.

16. Specifically, the petitioner notes contradictions in Mr. Cugat’s statement, which says that when the incident occurred he was seated in the last individual seat of the bus, when he felt “someone holding a sharp object to the left side of his neck, evidently borne by somebody sitting on the last individual seat.”

17. The petitioner argues that reading the statement into the record violated the right to a public hearing as well as the right of the accused to confront the witness. According to the petitioner, these are principles that should govern criminal proceedings, and she is concerned that the reading of statements represents a consistent practice in Argentine courts because of the provisions of Article 391 of the Penal Procedure Code.

18. The petitioner asserts that the primary reason for oral public trials is to control the evidence that a court should consider in the verdict, so the prior investigation and evidence that it produces should only serve to determine whether a suspect should be tried but never as a basis for a verdict. She adds that the complainant’s absence from the debate and the incorporation of his statement without control by the defense violate the guarantees of due process for criminal proceedings, especially when the statement is contradictory.

19. For this reason, the Public Defender’s Office filed an appeal in cassation. On April 23, 1999, the National Cassation Court ruled the appeal inadmissible because it had not demonstrated that the challenged verdict was arbitrary or violated the plaintiff’s rights. Then a special federal appeal was filed, which the Supreme Court rejected on August 2, 2000, finding no presumption of arbitrariness or violated constitutional principles, and because the federal issue to be tried was not specifically defined.

20. In the petitioner’s view, the judgments of the Oral Court and the Cassation Court are arbitrary, because they violated the principle of contradiction and the guarantees established in Article 8.2 of the Convention. The petitioner adds that when the Court ruled against the right to question witnesses, to challenge their contradictions, and to control the presentation of evidence, there was a violation of Article 7.2 of the Convention, which stipulates that no one shall be deprived of physical liberty except for reasons provided by law.

21. The petitioner says that in 2006, in an unrelated case,[FN3] the Supreme Court had ruled that reading of witness testimony into the record was a clear violation of the right to defense. According to the petitioner, “the fact that this issue has reached the Supreme Court demonstrates that courts are interpreting the norms in a way that is prejudicial for the rights of those being tried.”

[FN3] Supreme Court: Benítez, Aníbal León on serious damage, case 1524, judgment of September 12, 2006, preamble para. 16.

B. The State

22. The State argues that the present petition is inadmissible because it does not specify facts that would be a violation of human rights. According to the State, the petitioner is trying to have the Inter-American Commission act as a fourth instance to review findings of fact and law by the judges and courts involved in processing the case. The State emphasizes that the Inter-American system for international protection is a subsidiary system for remedies provided by domestic law.

23. The State asserts that the legal proceeding against Alejandro Marcos Martín was conducted pursuant to Argentine procedural standards, under which failure to know the residence of a witness who made a statement is an exception to the rule that prohibits reading into the record of statements taken during the investigation. In this regard, Article 391 of the Penal Procedure Code, paragraph 3, provides that witness testimony “...will be null and void if replaced by reading of statements taken during the investigation, except in the following cases, provided that the requirements for investigations have been followed: ... 3) When the witness has died, is out of the country, or his residence is not known, or he is barred by any criminal case.”

24. According to the State, when the National Cassation Court considered the facts subject of the present petition it concluded that “it has not been demonstrated that, except for the victim’s statement, the rest of the evidence collected (seizure of a stiletto belonging to the convicted party, the jacket that was taken from the injured party, the detailed statement of Inspector Daniel Priolo and witness Bernal), makes it impossible to say with certainty how the fact occurred and who was criminally responsible for it so the judges could arrive at the belief that the conviction is merited.”[FN4]

[FN4] National Criminal Cassation Chamber, Court I, Case N° 2315 “Martín, Marcos Alejandro on motion for abrogation.

25. The State adds that the Cassation Court found “no evidence that the challenged verdict was arbitrary or violated human rights invoked by the plaintiff, since it is based on evidence whose incorporation in the process has not be questioned, different and independent from the victim’s testimony, the elimination of which (...) would not apparently (...) affect the

incriminating element that contributed to the judges' certainty regarding the factual and subjective aspects of the charge.”

26. The State therefore concludes that since there was no violation of due process in the case, the petitioner's arguments cannot be reviewed by the IACHR. The State emphasizes that the Commission cannot review alleged errors of fact or law committed by a court that has acted within its sphere of competence under due process rules.

27. As regards the processing of the petition, the State notes that the Commission's delay in transmitting the petitioner's complaint was an obstacle to legal certainty and stability, preventing the State from conducting a proper defense, so the Commission should cease analyzing the petition and file it. It adds that it is not legally valid to transmit a petition more than two years after the international processing began, because that delay is patently unreasonable.

IV. ANALYSIS OF ADMISSIBILITY

A. The Commission's competence

28. Under the provisions of Article 44 of the American Convention, the petitioner is authorized to submit a petition to the Commission. The petition under study states that the alleged victim was under the jurisdiction of the Argentine State at the time of the facts presented. As for the State, the Commission notes that Argentina is a State party to the American Convention, having duly deposited its instrument of ratification on September 5, 1984. The Commission therefore has *ratione personae* competence to examine the petition.

29. The petition is based on allegations of facts that occurred since February 25, 1999, the date on which Marcos Alejandro Martín was sentenced on the basis of a witness statement that he had no opportunity to challenge. The facts therefore occurred after the entry into force of the State's obligations as a party to the American Convention. The Commission thus has *ratione temporis* to examine the petition.

30. The petition alleges violations of rights protected in the framework of the American Convention that took place in the territory of a State party, so the Commission has *ratione loci* competence to consider it.

31. Finally, the Commission has *ratione materiae* competence because the petition alleges violations of rights protected in the framework of the American Convention.

32. The Commission wishes to clarify that according to the norms of the Inter-American human rights system the time elapsed between the Commission's receipt of a petition and its transmittal to the State is not, *ipso facto*, grounds for archiving a petition. As the Commission has noted, “in the processing of individual cases before the Commission, there is no concept of expiry of jurisdiction as an *ipso jure* measure merely because of the passage of time.”[FN5]

[FN5] IACHR, Report N° 33/98, Case 10.545 Clemente Ayala Torres et al. (Mexico), May 15, 1998, para. 28.

B. Other requirements for admissibility of the petition

1. Exhaustion of domestic remedies

33. Article 46 of the American Convention stipulates as a requirement for a case to be admitted “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.”

34. In the present petition, the petitioner asserts that all domestic law remedies have been exhausted. She reports that an appeal in cassation was filed against the February 25, 1999, judgment of the Oral Trial Court in Buenos Aires that sentenced the alleged victim. On April 23 the National Cassation Court ruled that appeal inadmissible. A special federal appeal filed against that decision was declared inadmissible by the Supreme Court on August 2, 2000.

35. For its part, the State has not alleged lack of exhaustion of domestic remedies, so it has waived its opportunity to allege a failure to exhaust domestic remedies. On this point, the Inter-American Court has ruled that “the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed.”[FN6] The Commission notes that the regular and special appeals filed in this case would in principle be the appropriate remedies for resolving issues concerning due process.

[FN6] See I/A Court H.R., Godínez Cruz Case. Preliminary Objections. Judgment of June 26, 1987. Series D No. 3, para. 90; Fairén Garbí and Solís Corrales Case. Preliminary Objections. Judgment of June 26, 1987. Series C No. 2, para. 87; Gangaram Panday Case. Preliminary Objections. Judgment of December 4, 1991. Series C No. 12, para. 38; and Loayza Tamayo Case. Preliminary Objections. Judgment of January 31, 1996, Series C, N° 25, para. 40.

36. In light of the foregoing, the Commission concludes that remedies available in the Argentine State’s legal system were applied in connection with the facts presented in this petition, so the State was fully seized of the complaints that gave rise to the petition. The requirements established in Article 46 of Convention were satisfied.

2. Time period for submission

37. Article 46.1.b of the Convention stipulates that in order to be admitted a petition must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.

38. In the present case, it is alleged that there was not timely notification of the final judgment at the domestic level, in which the Supreme Court rejected the special appeal. That ruling dates from August 2, 2000, while the petition is dated February 1, 2001, and was received by the Commission on February 15, 2001.

39. Presuming the days that elapsed while the petition was in the postal service, the Commission considers that the petition was filed in a timely manner.

3. Duplication of proceedings

40. Article 46.1.c establishes that admission of a petition shall be subject to the requirement that the matter "is not pending in another international proceeding for settlement," and Article 47.d of the Convention provides that the Commission shall not admit a petition that "is substantially the same as one previously studied by the Commission or by another international organization." In the instant case the parties have not alleged the existence of either of these two circumstances for inadmissibility, and they are not apparent from the processing.

4. Characterization of the facts alleged

41. To determine admissibility, the Commission must decide whether the facts stated tend to characterize a violation of rights, as required by Article 47.b of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order," as specified in paragraph "c" of said article. The criteria for evaluation of these requirements differ from those used to decide on the merits of a petition; the Commission must make a prima facie evaluation to determine if the petition states facts that tend to characterize a violation of the rights guaranteed by the Convention, not establish the existence of a violation of rights. This determination is a preliminary analysis, without prejudging the merits of the case.

42. In the framework of its competence, the Inter-American Commission has the authority to examine domestic proceedings to determine whether decisions were not made in accordance with due process or were violations of any other right guaranteed by the provisions of the American Convention. In the same vein, the Inter-American Court has declared that "in order to clarify whether the State has violated its international obligations owing to the acts of its judicial organs, the Court may have to examine the respective domestic proceedings." [FN7]

[FN7] I/A Court H.R., Mapiripán Massacre Case. Judgment of September 15, 2005. Series C No. 134, para. 198; Moiwana Community Case. Judgment of June 15, 2005. Series C No. 124, para. 143; and Serrano Cruz Sisters Case. Judgment of March 1, 2005. Series C No. 120, para. 57.

43. In the instant case, the petitioner alleges violations of due process because the trial and conviction of the alleged victim were based on a deposition that the defense had no opportunity to challenge, thus arbitrarily depriving Marcos Alejandro Martín of his personal liberty. The State argues that domestic legislation (Article 391 paragraph 3 of the Penal Procedure Code) provides that when the residence of witnesses is not known their testimony can be read into the

record on the basis of statements made in the investigative phase. The State therefore considers there were no violations of due process or any arbitrary action in the domestic legal judgments.

44. On this matter, the Commission and the Inter-American Court have stressed the importance of guaranteeing the right to question witnesses in support of charges against alleged victims and the right to challenge the evidence, considering that domestic norms that prevent the questioning of witnesses to substantiate a criminal charge are incompatible with the American Convention.[FN8] Moreover, the Inter-American Court has stressed that the oral nature of proceedings is an essential element in the procedural systems of democratic states. The European Court has declared that the rights of the accused for carrying out their defense include that of examining supporting and opposing witnesses in equal conditions.[FN9]

[FN8] I/A Court H.R., Castillo Petruzzi et al Case. Judgment of May 30, 1999. Series C No. 52, para. 153; Palamara Iribarne Case. Judgment of November 22, 2005. Series C No. 135, paras. 177 and 178.

[FN9] Eur. Court H. R., case of Barberà, Messegué and Jabardo, decision of December 6, 1998, Series A no. 146, para. 78; Eur. Court H. R., case of Bönishc, judgment of May 6th. 1985, Series A No. 92, para. 32; Eur. Court H. R., case of Kostovski, judgment of November 20 1989, para. 41-42; Eur. Court H. R., case of Unterpentinger, judgment of November 24 1986, paras. 42-43.

45. In the light of these observations, the Commission notes that there is no evidence that the allegations in this petition are groundless or out of order, and they could establish violations of the rights to personal liberty and a fair trial protected in Articles 7 and 8 of the American Convention, in connection with the general obligations set forth in Articles 1.1 and 2 of the same international instrument. In the merits phase the Commission will analyze, where appropriate, possible violations of the right to judicial protection established in Article 25 of the Convention, in connection with Articles 1.1 and 2 of the same international instrument.

V. CONCLUSIONS

46. The Commission concludes that it is competent to consider the present case and the petition is admissible in accordance with Articles 46 and 47 of the American Convention.

47. By virtue of the foregoing arguments of fact and law, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present petition admissible as regards alleged violations of the rights to personal liberty and a fair trial recognized in Articles 7 and 8 of the American Convention on Human Rights, in connection with the general obligations established in Articles 1.1 and 2 of that treaty.

2. To declare the petition admissible, in application of the iura novit curia principle, with respect to possible violations of the right to judicial protection guaranteed in Article 25 of the American Convention, in connection with Articles 1.1 and 2 of the same international treaty.
3. To notify the parties of this decision.
4. To continue analyzing the merits of the case.
5. To publish this decision and include it in the Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 17th day of the month of October, 2008.
(Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice Chairwoman; Felipe González, Second Vice Chaiman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, and Florentín Meléndez, members of the Commission.