Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 35/09; Petition 466-99
Session:	Hundred Thirty-Fourth Regular Session (16 – 27 March 2009)
Title/Style of Cause:	Ramon Nicolas Guarino v. Argentina
Doc. Type:	Decision
Decided by:	President: Luz Patricia Mejia Guerrero; Second Vice President: Felipe Gonzalez; Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Paolo Carozza. Commissioner Victor E. Abramovich, a national from Argentina, did not participate in the deliberations or voting on the instant case, in accordance with the provisions of Article 17.2.a of the Rules of Procedure of the Commission.
Dated:	19 March 2009
Citation:	Guarino v. Argentina, Petition 466-99, Inter-Am. C.H.R., Report No. 35/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by:	APPLICANT: Eleonora Devoto
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I. SUMMARY

1. This report concerns the admissibility of petition 466-99, opened by the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission", "Commission", or the "IACHR") on the basis of a petition lodged on October 8, 1999, with the then existing headquarters of the Organization of American States (OAS) in Argentina by the lawyer Eleonora Devoto, defense counsel for the Oral Courts of the Federal Criminal system and Coordinator of the Program for the Application of Human Rights Treaties, on behalf of Mr. Ramón Nicolás Guarino, who at that time was in prison, against the Argentina Republic (hereinafter "Argentina" or "the State"). The petitioner alleges that the State is responsible under the terms of the American Convention on Human Rights (hereinafter the "American Convention" or the "Convention") specifically for the alleged violation of guarantees and judicial protection to the detriment of Mr. Ramón Nicolás Guarino, who as a result suffered a violation of his right to personal freedom.

2. The petition states that Ramón Nicolás Guarino was sentenced on November 30, 1995 to four years and six months in prison including the time that he had been in preventive custody on the same charge. This sentence was declared fully served on October 1, 1996. Furthermore, it is stated that Mr. Guarino was tried for other crimes and sentenced on April 25, 1996 to a term of five year's prison including the time that he had been in preventive custody on the same charge. On July 30, 1997, at the request of the government prosecutor's office (fiscalía), the Superior

Court of Justice of Córdoba decided to unify the two prison sentences referred to above and sentenced Mr. Guarino to seven and a half years in prison, without taking into account that the first sentence had already been served and therefore the unification of the prison sentences was not in accordance with the law. Mr. Guarino lodged an extraordinary remedy "in pauperis" against this decision, which was rejected on formal grounds, and subsequently appealed to the Supreme Court of Justice which set aside his appeal based on Article 280 of the Civil Procedure Code.[FN2]

[FN2] Article 280: SUMMONING OF RECORDS, REJECTION OF EXTRAORDINARY APPEALS. When an extraordinary appeal is brought before the Supreme Court, the admission of the case implies the summoning of records. The Court may, at its own discretion and by merely invoking this law, reject an extraordinary appeal, on the grounds that there is insufficient federal aggravation, or when the issues described are insubstantial or non-transcendental …"

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3. The State, for its part, alleges that Mr. Ramón Nicolás Guarino had not pursued in a timely and appropriate manner the remedies available to him under domestic law to remedy the alleged violation to which he had been subjected by the unification of the sentences. The State therefore alleges that the particular plea lodged by Mr. Guarino should have consisted of an appeal (recurso de casación) against the judgment in which the sentences were unified whereas he only lodged a deed in which he rectified a previous submission by his lawyer concerning the lengths of time to be taken into account for his sentence, which, according to the State, does not constitute an objection to the decision in question. Furthermore, the State indicates that Mr. Guarino subsequently lodged an appeal (recurso de casación) but only against the interlocutory order which resolved the date on which his sentence was to be completed, and even if he had tried to reintroduce the issue of the unification of the sentences, this had become final because the period during which it could be contested had expired. The State therefore considers that the case should be declared inadmissible.

4. In accordance with the provisions of Articles 46 and 47 of the American Convention, as well as Articles 30 and 37 of its Rules of Procedure, and having analyzed the positions of the parties, the Commission decided to declare the petition admissible. Therefore, the IACHR decided to notify the parties of its decision and to continue with an examination of the merits of the case in relation to the alleged violations of Articles 7 (Personal Liberty), 8 (Right to a Fair Trial), and 25 (Judicial Protection), in relation to 1.1 of the American Convention (Obligation to Respect Rights). The Commission also decided to notify the parties of its decision, to publish the present report, and to include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BY THE COMMISSION

5. The petition was lodged by the petitioner on October 8, 1999, with the then existing headquarters of the OAS in Argentina, and was received at the Executive Secretariat of the Commission on October 18, 1999. The IACHR began processing the petition on April 2, 2004 when it transmitted to the State the relevant parts of the petition and requested it to lodge a

response within the period of two months. By means of a communication dated May 24, 2004, the State requested an extension of one month which it was granted on June 8 of the same year. By means of note SG 271 dated August 30, 2005, the State remitted the requested report, which the Commission duly transmitted to the petitioner on October 20, 2005, and the petitioner communicated her observations which were conveyed to the State on September 16, 2008.

III. POSITIONS OF THE PARTIES

A. Petitioners

6. According to the details of the petition, Mr. Ramón Nicolás Guarino was sentenced on July 30, 1997 to a term of seven years and six months imprisonment as a result of the unification of two convictions:

a. On November 30, 1995, sentenced to four years and six months' imprisonment, and,
b. On April 25, 1996, sentenced to five years' imprisonment.

7. The petitioner points out that on August 5, 1997, Mr. Guarino lodged an extraordinary remedy "in pauperis" against the decision to unify the sentences which was rejected by the Superior Court of Justice of the City of Córdoba because it had not been signed by a lawyer.[FN3] Mr. Guarino appealed this finding to the national Supreme Court of Justice, which on March 9, 1999, rejected the remedy and declared inadmissible the extraordinary remedy which had been lodged. The last resolution was notified to Mr. Guarino's public defender on March 12, 1999, and on April 9, 1999 he was indirectly notified of the resolution.[FN4]

[FN3] The petitioner refers to findings 255:91, 310:1934, and 5:349 of the Supreme Court which establish the validity of presentations made in remedies "in pauperis" even when these have not been signed by a lawyer.

[FN4] The petition contains an appendix from the Penal Secretariat of the Superior Court of Córdoba which states…"a personal notification from the national Supreme Court of Justice to Guarino does not exist, however, it is known that the writs were returned because his signature and finger prints are to be found on sheets 2845 dated 9/4/99 when the relevant resolutions were notified…"

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8. The petitioner states that the unification of the convictions included one that had already been served by Mr. Guarino, who on October 1, 1996 had been declared freed from prison having taken into account the time he spent in preventive custody, and that therefore that sentence had been fully served. She states that at the time when the sentences were unified by the Second Criminal Court of Córdoba on July 30, 1997, Mr. Guarino was in preventive custody in relation to the second conviction which at that time had still not been confirmed by the court.

9. In her presentations, the petitioner considers that the guarantees protected by Article 8 (4) of the Convention should be broadly interpreted, as they are in the Argentine legal system. In this regard she states that Article 1 "Constitutional guarantees" of the Criminal Procedure Code in

Córdoba establishes clearly, that "…[no person may be] tried in the criminal system more than once for the same event, even if its legal definition is changed or new circumstances are alleged."

10. Furthermore, she alleges that Mr. Guarino never achieved a substantive review of the resolution of unification in view of the fact that the higher courts stated that the decision could not be challenged because the correct forms had not been observed when the legal remedies were lodged.

11. With regard to the allegations made by the State that Mr. Guarino should have lodged an appeal (recurso de casación) against the decision to unify the convictions, the petitioner alleges that by bringing different proceedings, Mr. Guarino always demonstrated his disagreement with a resolution he considered unjust and arbitrary. Therefore, she states that when he was notified of the decision to unify the sentences, he voiced his unequivocal desire to contest the decision, subscribing that "he was appealing" the findings of said resolution. She states that such a statement should be interpreted as having brought an "in pauperis" remedy for which the intervention of a lawyer was necessary in order to establish the legal foundations. However, given the inaction of his private defense attorney in this respect, on August 5, 1997, Mr. Guarino on his own account filed a deed in which he specifically stated that he considered it inappropriate that the court decided to unify a sentence which he had already served. On this occasion, Mr. Guarino also requested that his sentence should be calculated in accordance with Law 24,390.[FN5] She adds that the presentation of this document restated the defendant's desire to challenge the resolution, taking into account that he lacked the necessary technical, legal knowledge and was at that time in prison.

[FN5] The Commission observes that the aforementioned law states the following:
Article 1. Preventive custody may last no longer than two years. However, when the number of crimes attributed to the defendant, or the evident complexity of the cases has prevented the completion of proceedings within the indicated period, this can be extended for up to one additional year by means of a justifying resolution which must be immediately notified to the appropriate appeal court for supervision.
Article 2. Once the two years envisaged in Article 1 have passed, each day of preventive custody will count as two in prison or one in reclusion.

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12. The petitioner alleges that it is not sufficient for a defendant to have access to formal legal assistance so as to protect his innocence in court but this must also be effective. Therefore, she adds that even though the private defense attorney was aware of Mr. Guarino's desire to contest the finding, he decided not to lodge appropriate proceedings. The petitioner points out that the Argentine Supreme Court has stated that the will of the accused is supreme in the sense that it must prevail over the will of his defense attorney and that therefore it is necessary that resolutions are notified in person to the accused because if this does not happen, the findings do not acquire the authority of res judicata.[FN6]

[FN6] The petitioner refers to findings 217:1022 and 310:1797.

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13. The petitioner states that inefficiency or the lack of appropriate technical assistance prevented Mr. Guarino from adequately contesting the findings and resulted in the judicial refusal of the appeal. The petitioner in this regard refers to findings of the Argentine Superior Court where it is stated that "it is a matter of equity and even of justice to diverge from the rigor of the law in order to compensate for the effects of the accused's ignorance of the law or the negligence of his defense attorney."[FN7]

[FN7] Findings 5:459 and 310:492 of the Argentine National Supreme Court of Justice.

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14. The petitioner points out that it was the duty of the justice system to reverse the state of defenselessness of Mr.Guarino and to provide him with legal assistance to give effect to his desire to invoke remedies. However, the Second Chamber of the Córdoba Criminal Court confined its resolution to the days he had been in prison, as described in Law 24.390, and made no reference to the claim lodged regarding the unification of the sentence that had already been served. She adds that when Mr. Guarino was notified of this decision he requested to be represented by a public attorney who then challenged the sentence by means of a recurso de casación and once more presented the error committed by the lower court with regard to the unification of the sentences. The decision was that the resolution was already res judicata because no proceedings had been brought against it.

15. On the basis of the foregoing, the petitioner states that Mr. Guarino used the legal means at his disposal and that the State allegedly incurred in violations of Articles 7, 8, and 25, in relation to 1(1) of the American Convention.

B. State

16. In its statements the State confirms that on July 30, 1997, the Second Chamber of the Criminal Court of Córdoba imposed a combined sentence on Mr. Ramón Nicolás Guarino of seven years and six months in prison as a result of the amalgamation of two prison sentences:

a. Sentence dated November 30, 1995, pronounced by Federal Court No. 2 of the City of Córdoba, in which Mr. Guarino was sentenced to four years and six months in prison.
b. Five years prison sentence dated April 25, 1996. This sentence resulted from the amalgamation of four previous sentences, also pronounced by the Second Chamber of the Criminal Court of the Province of Córdoba.

17. The State alleges that the decision regarding the unification of sentences on July 30, 1997 was notified to Ramón Nicolás Guarino and his private defense attorney on August 1 and 6, 1997 respectively, and that on August 5, 1997, Mr. Guarino lodged a document in which he attempted to rectify a submission from his own private defense attorney in which it was alleged that a sentence pronounced by the federal justice court was being taken into account even though it had been fully served and he therefore requested that he should be released from prison. On August

22, 1997, the Second Criminal Chamber decided that taking into account the time that Mr. Guarino had been in preventive custody, the whole of the unified sentence would be completed by May 31, 2001. The State adds that this decision was communicated to Mr. Guarino on September 16, 1997 and at that time he stated that he was revoking the appointment of his previous defense attorney and on October 6, 1997, an official defense attorney took over the case.

18. The State adds that on September 22, 1997, Mr. Guarino lodged a document in which he requested a rectification of the interlocutory order dated August 22 of the same year adducing that when the sentences were unified, a sentence imposed by a federal court that had already been served was taken into account. On October 7 of the same year, Mr. Guarino lodged a recurso de casación against the order dated August 22 and claimed that the sentence amalgamation had been based on error. On June 5, 1998, the Supreme Court of the Province of Córdoba ratified the order dated August 22, 1997 and considered that the law had been applied correctly. With regard to the amalgamation of sentences, the court claimed that the order dated July 30, 1997 had been notified to Ramón Nicolás Guarino and his private defense attorney on August 1 and 6, 1997 and had become final.

19. The State goes on to say that on June 24, 1998, Mr. Guarino lodged an extraordinary appeal before the Supreme Court which was declared inadmissible on March 9, 1999.

20. The State alleges that the alleged victim did not use either in time or in appropriate manner the remedies available to him under domestic law because in order to contest the decision to unify the sentences, dated July 30, 1997, he or his private defense attorney should have lodged a recurso de casación and instead, Mr. Guarino had only lodged a document correcting a submission made by his private defense attorney, which does not constitute a challenge to the aforementioned resolution. In addition, this document only requested the application of Law 24.390 which states the length of preventive custody. The State argues that the recurso de casación lodged by Mr. Guarino was against the resolution dated August 22, 1997, and in this document he attempted to reintroduce the issue of the unification of sentences even though this had become res judicata. The State therefore says that the Superior Court stated that, "the convict's desire to have excluded from the count one of the unified sentences constitutes an obvious way to discuss a question which had been examined in the resolution which considered the infraction and which has become res judicata."

21. The State, therefore, reiterated that Mr. Guarino did not in time or appropriate manner exhaust the remedies available under domestic law that would have provided him with the opportunity to show the alleged erroneous basis of the unification of sentences carried out by the Second Criminal Chamber and therefore requested the Commission to declare the petition inadmissible.

IV. ANALYSIS OF ADMISSIBILITY

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

22. The petitioner may legitimately lodge a petition before the Commission in accordance with the terms of Article 44 of the American Convention. The petition names an individual as the alleged victim whose rights as defined by the American Convention the State is obliged to protect and respect. With regard to the State, the Commission notes that Argentina has been a State party to the Convention since September 5, 1984, the date on which it deposited its instrument of ratification. Therefore, the Commission considers that it has competence ratione personae to examine the petition.

23. The Commission has competence ratione loci to examine the petition because the petition alleges violations of rights protected under the American Convention which took place within the national territory of a state party to the Convention. The IACHR has competence ratione temporis because the obligation to protect and respect the rights enshrined in the American Convention was already in force for the State on the date on which the alleged violations of the rights took place. Finally, the Commission has competence ratione materiae because the petition alleges violations of rights that are protected under the American Convention.

B. Other requirements

1. Exhaustion of remedies under domestic law

24. Article 46(1)(a) of the American Convention states that for a petition lodged before the Inter-American Commission to be admissible according to Article 44 of the Convention, it is necessary that all remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to ensure that the State in question has the opportunity to resolve controversies within its own legal framework.

25. In the present case, the petitioner argues that when he signed the notification of the decision which unified the sentences, Mr. Ramón Nicolás Guarino wrote “I appeal this decision” so that the State was aware of his desire to challenge it. Furthermore, the petitioner indicates that even though he conveyed this desire to his private defense attorney, the attorney did not lodge the corresponding remedy so that Mr. Guarino himself lodged an extraordinary remedy “in pauperis” before the authorities.

26. The petitioner alleges that with the aforementioned remedy, with the recurso de casación against the resolution of August 22, 1997, and with the remedies lodged later with the Argentina Supreme Court of Justice, Mr. Guarino exhausted the remedies available under domestic law given that in each of these remedies he was notifying the State of his disagreement with the decision to unify the sentences which he considered a violation of his rights.

27. Likewise, the State alleges that Mr. Guarino had a private attorney at the time when he was notified of the finding which ruled on the unification of sentences. It also states that the remedy which Mr. Guarino, through his attorney, should have brought against the resolution which was to his detriment, was the recurso de casación, and this was not done, but instead he only lodged the extraordinary remedy “in pauperis”.

28. The Commission observes that Mr. Guarino wrote "I appeal the decision in it" on the notice that he received on August 1, 1997 concerning the decision on the unification of judgments. Mr. Guarino thereby entered his dissent from the ruling that would have been detrimental to him, and the judicial authorities also took note accordingly. It must be stated, however, that the Criminal Court, which took cognizance of the matter, issued no judicial order on procedure with respect to that statement.

29. It is worth noting that 4 days after the notice, that is, on August 5, 1997, Mr. Guarino filed a petition on his own behalf, setting out in his own words his dissent from the unification of judgments and stressing the fact that the penalty imposed by the Federal Court would have been discharged through compliance and that unification was not applicable[FN8]. Furthermore, Mr. Guarino informed the judicial authorities in said petition that the defense provided by his attorney was inadequate and he asked to be released immediately, under the provisions of Law 24,390. The Court did not take into account the petition presented and took no steps to address the allegation that Mr. Ramón Nicolás Guarino lacked adequate defense.

[FN8] The Commission notes that there is, in fact, extensive Argentine jurisprudence on appeals filed "in pauperis," showing that it is standard practice to consider as well-founded those informal petitions filed as in pauperis extraordinary appeals by individuals who are arrested. The court hearing the case handles these, with due legal representation provided. Argentine jurisprudence also shows that it is a matter of equity, and even a matter of justice, to depart from the letter of the law to redress the effects of ignorance of the law by the accused or the effects of carelessness by his defense. Judgments 310:1934, 5:549, and 310:492 of the Supreme Court of Justice of Argentina.

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30. Subsequently, Mr. Guarino presented a petition on his own behalf against the ruling of August 22, 1997 that determined the final penalty to be served—taking into account the unification—on September 22, 1997. In that opportunity, Mr. Guarino reiterated his dissent from the unification of judgments and asked for it to be rectified, so that it would be without effect as it was not applicable. In that same petition, Mr. Guarino also asked to be provided with adequate legal aid. On October 6, 1997 a court-appointed defense lawyer took the case, filed a recurso de casación the next day and, on August 24, 1998 filed an extraordinary appeal to the Supreme Court of Justice. These appeals were ruled inadmissible.

31. It is the Commission's observation that from the moment Mr. Guarino learned of the unification of judgments ruling that he considered a violation of his rights, he applied the little formalities he knew to file petitions with the judicial authorities, expressing his dissent from the unification judgment, and did so subsequently through his court-appointed lawyer by way of the recurso de casación and the extraordinary appeal. The State has not indicated whether there were other appeals that should have been invoked.

32. The Commission therefore considers that in this case the remedies under domestic law have been exhausted in accordance with the provisions of Article 46.1.a of the American

Convention on Human Rights. The Commission further believes that it needs to analyze, during the merits stage, whether Mr. Guarino had effective access to judicial remedies.

2. Deadline for presentation of petitions

33. In accordance with Article 46(1) of the Convention, for a petition to be admissible it must be lodged within the period stipulated, that is, six months from the date on which the party alleging violation of his rights was notified of the final judgment.

34. In the present case, it must be noted that according to the document lodged by the petitioner, the resolution of March 9, 1999, rejecting the appeal brought by Mr. Ramón Nicolás Guarino's defense attorney before the Argentine Supreme Court of Justice was notified to his attorney on March 12, 1999, and Mr. Guarino was notified indirectly of the resolution on April 9, 1999.[FN9] On the basis of the date on which Mr. Guarino was notified of the resolution, the Commission observes that since the petition was received at the then headquarters of the OAS in Argentina on October 8, 1999 it complies with the requirement stipulated in Article 46(1)(b) of the American Convention.

[FN9] The petition includes a document sent from the Criminal Secretariat of the Superior Court of Córdoba which states "…there is definitely no official personal notification from the Argentina Supreme Court to Guarino, however, it is known that the writs were returned because they appear with his signature and finger print on sheets 2845 dated 9/4/99… "

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3. Duplication of procedures and res judicata

35. Article 46(1)(c) states that admission of a petition shall be subject to the requirement that the subject of the petition "is not pending in another international proceeding 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 this case, neither the records show, nor do the parties allege, any of the aforementioned conditions for inadmissibility.

4. Description of the alleged facts

36. Article 47(b) of the American Convention declares inadmissible any petition that does not state facts that tend to establish a violation of the rights guaranteed by the Convention.

37. In the present case, it is not for the Commission at this stage of proceedings to decide whether or not the alleged violations of the American Convention took place. The IACHR has conducted a prima facie evaluation and determined that the petition raises allegations which, if proven, may tend to characterize possible violations of the rights guaranteed by the Convention.

38. On the basis of the information and arguments presented by the petitioner, it appears that the main complaint concerns the service of a sentence which, it is alleged, has been imposed

twice on Mr. Guarino in respect of a crime of which he was found guilty. The Commission therefore observes that by means of communication on August 7, 1997, the Federal Appeal Judge of the Province of Córdoba informed the President of the Second Criminal Court in that province that the convict Guarino had served the sentence imposed of four years and six months in prison and the decision had been taken for his release, although this had not actually taken place because he was remanded at the disposition of the aforementioned Court and he said, "the sentence imposed in the latter case has been served in its totality." The Commission observes that with this information, the Second Criminal Court decided to unify the sentences into one of seven years and six months in prison. The Commission at the merits stage will examine the compatibility of this proceeding with the principles of the American Convention.

39. Therefore, on the basis of the information provided by the parties, and without prejudging the merits of the case, the IACHR concludes that the petition contains allegations which, if proven at the merits stage, and if they are found to be compatible with other requirements, could amount to violations of Articles 7, 8, and 25 in accordance with Article 1(1) of the American Convention.

V. CONCLUSIONS

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

41. 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 the present petition is admissible in relation to the alleged violations of rights protected by Articles 7, 8, and 25 of the American Convention.
2. To give notice of this decision to the parties.
3. To continue the analysis of 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 in the city of Washington, D.C., on March 19, 2009. (Signed): Luz Patricia Mejía Guerrero, President; Felipe González, Second Vice-President; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Paolo Carozza, members of the Commission.