

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 66/09; Petition 920-03
Session:	Hundred Thirty-Fifth Regular Session (3 – 8 August 2009)
Title/Style of Cause:	Marcos Gilberto Chaves and Sandra Beatriz Chaves 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 G. Carozza. Commissioner Victor E. Abramovich, a national from Argentina, did not participate in the deliberations nor the decision of this case, according to the provisions of article 17(2) (a) of the Rules of the Commission.
Dated:	4 August 2009
Citation:	Gilberto Chaves v. Argentina, Petition 920-03, Inter-Am. C.H.R., Report No. 66/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
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I. SUMMARY

1. This report relates to the admissibility of petition 920-03, initiated by the Inter American Commission on Human Rights (herein after "Inter American Commission, "Commission" or "IACHR") in virtue of the filing of a petition received on November 4, 2003 at the Secretariat of the Commission, from Ms. María Josefina Chaves, Ms. Rosa Guantay de Chaves, Ms. Luz María González Chaves and Mr. Marcos Nicolás González Chaves (herein after the petitioners) on behalf of their relatives: Mr. Marcos Gilberto Chaves and his daughter Sandra Beatriz Chaves against the Republic of Argentina (herein after "Argentina" or "State"). The petitioners claim that the State has incurred liability in the context of the American Convention on Human Rights (herein after "American Convention" or "the Convention"), specifically, for the alleged violation of the right to judicial guarantees and judicial protection set forth in articles 8.2 and 25 of the Convention, to the detriment of Mr. Marcos Gilberto Chaves and his daughter, Ms. Sandra Beatriz Chaves. The co-petitioner, Stella Maris Martínez, National Advocate General, also claims the alleged violation of articles 5, 11, 19 and 24 of the American Convention, as well as 1 and 2 of the Convention on Elimination of All Forms of Discrimination Against Women; 12.2, 16 and 19 of the Convention on Children's Rights; 1, 7, 8 and 9 of the Inter American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention de Belém do Pará) and 16.1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. The petition states that Mr. Marcos Gilberto Chaves and his daughter, Ms. Sandra Beatriz Chaves were sentenced to life imprisonment, and thus today they are deprived of their freedom.

The claim is that their right to have their conviction reviewed by a higher Court was violated, since judicial authorities have rejected the appeals filed on their behalf, purely due to formal issues. The petition also alleges that the judges would have violated due process and presumption of innocence of the alleged victims, by delivering a conviction based on circumstantial evidence, without having any hard evidence in the case; having breached the privacy of Ms. Sandra Beatriz Chaves and disregarding the testimony of Ms. Chaves and her late husband's children, who witnessed the murder of their father.

3. The State alleges that the criminal proceedings against Mr. Marcos Gilberto Chaves and his daughter, Ms. Sandra Beatriz Chaves adhered properly to legal due process guarantees. The State notes that the Court of Justice of the Salta Province rejected the cassation recourse on grounds of " formal inadmissibility" and adds, that the claim of the petitioners would only be that the IACHR act as a fourth instance and reviews the factual and legal assessments that led to the judicial decisions in the domestic sphere, due to simple disagreement with the judge's discretion. Therefore, for the State the claim should be declared inadmissible.

4. The Inter American Commission concludes that it is competent to decide on the claim filed by the petitioners, which is admissible in light of the provisions of article 46 of the American Convention. Accordingly, the Commission decides to notify the parties, continues the substantive discussion regarding the alleged violations to the American Convention, publishes this Admissibility Report and includes it in its Annual Report for the OAS General Assembly.

II. PROCEDURE BEFORE THE COMMISSION

5. The complaint was filed by the petitioners on November 4, 2003 before the Executive Secretariat of the Commission. The IACHR notified the pertinent parties of the petition to the State of Argentina on July 11, 2006 and requested that it submits a response within a period of 3 months. The State requested an extension for its response, through communication received on September 19, 2006, which was granted. The State submitted its observations in communications dated April 10, 2007 and October 25, 2007. The Commission issued the corresponding notice of these responses to the petitioners through communications dated April 23, 2007 and October 25, 2007. On the other hand, the petitioners sent their observations through communications received on May 2 and June 14, 2007. The Commission notified the State of the petitioners' responses through communication of July 12, 2007.

III. POSITION OF THE PARTIES

A. Position of the petitioners

6. According to the story of the petition, Mr. Marcos Gilberto Chaves (sixty years old at the time of filing the petition) and his daughter, Sandra Beatriz Chaves, were sentenced to life imprisonment by the Third Chamber of Penal Matters of the City of Salta, as author and participant, respectively, of the murder of Jose Antonio Gonzalez, who was the husband of Ms. Sandra Beatriz Chaves. Mr. José Antonio was killed on August 19, 1995, while he was sleeping in the room he shared with Ms. Chaves.

7. They add that the attorneys of the alleged victims had filed a cassation recourse in connection to the verdict of 8 June 2001, which would have been denied on September 11, 2001 "for purely formal reasons" by the Court of Justice of Salta. Subsequently, they filed an extraordinary federal appeal before the National Supreme Court of Justice, which was granted by the Supreme Provincial Tribunal, on the grounds that the convicts had not been personally notified of the rejection of the cassation recourse, so is considered filed on time. The petitioners explain that notwithstanding the foregoing, the National Supreme Court of Justice ruled that the appeal had been filed late, thus declaring it wrongfully granted. The defense of the alleged victims filed an action for annulment against this ruling, which was rejected by the National Supreme Court of Justice on September 23, 2003. The petitioners argued that none of the higher Courts were interested in verifying whether the conclusions of the first instance Court were a reasonable derivation of the evidence accumulated.

8. The petitioners contend that, at the time of filing the petition, the alleged victims had been unjustly in jail for 3 years and 8 months. The petitioners reiterate that the Argentine State violated the right of the alleged victims to have their conviction reviewed by a higher judge since – they explain - the cassation recourse was rejected due to matters of form and then on April 29, 2003 the National Supreme Court of Justice declared the extraordinary appeal ill granted due to tardiness. They explain that they went over by ten minutes in the presentation of the extraordinary appeal, so the authorities were excessively formal in the proceeding, by considering that the action was filed late. The petitioners also clarified that the alleged victims were not notified personally regarding the denial of the cassation recourse, only their attorneys were notified.

9. The National Public Defender's Office, which appeared as co-petitioner, stated that the conviction[FN2] of the alleged victims would have been based on "indirect evidence or indices", which would have violated their right to presumption of innocence. Also, the National General Public Defender's Office alleges that the State would have subjugated the privacy of Ms. Sandra Beatriz Chaves "by inquiring about the color and shape of her underwear, her sexual preferences and habits, stereotypical physical ailments and her alleged "coldness" at the loss of her spouse, the judges themselves referring to her as "merry widow". It also adds that the absence of any evidence found against her and her father led to a verdict based on these inquiries that violate the privacy and human dignity of the alleged victims.

[FN2] The petitioners provided to the Commission a copy of the conviction verdict of June 8, 2001, which appears in the petition file.

10. On the other hand, argues that the versions given by the children, regarding what happened on the day of the death of their father, was disqualified by the Court with the argument that "children live in a fantasy world and see a reality different from that of adults....". Thus, the National Public Defender's Office notes that the treatment given to Ms. Sandra Beatriz Chaves, her father and children was incompatible with the State's duty to protect human rights.

11. The petitioners allege that Mr. Marcos Gilberto Chaves and his daughter Sandra Beatriz Chaves used the legal means at their disposal and that the State would have incurred violations of articles 5, 8(2), 11, 19, 24 and 25, in relation to article 1(1) of the American Convention, as well as 1 and 2 of the Convention on Elimination of All Forms of Discrimination Against Women; 12(2), 16 and 19 of the Convention on Children's Rights; 1, 7, 8 and 9 of the Inter American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention de Belém do Pará) and 16(1) of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

B. Position of the State

12. In its first presentation, the State confirmed the judicial actions filed by the defense of the alleged victims within the criminal proceedings against them which resulted in a verdict of life imprisonment for both.

13. The State adds that the criminal proceedings against Mr. Marcos Gilberto Chaves and his daughter, Ms. Sandra Beatriz Chaves adhered appropriately to legal due process guarantees and that the file does not include evidence to sustain the lack of independence and impartiality of the judges involved and the violation of minimum guarantees to be observed in such processes.

14. As to the alleged violation of their right to appeal before a higher judge or Court, the State indicates that the Court of Justice of the Salta Province rejected the cassation recourse on grounds of "formal inadmissibility". The State insists that in this ruling, the supreme Court of the province would have expressly recognized that the right to a dual judicial instance "... should be evaluated as a pattern that contributes to the expansion of the criteria that must be weighed in claims of arbitrariness, in matter of fact and evidence, in order for the formal admissibility of the appeal, but in no way can it allow filings consisting of simple disagreement with the method of assessment of such issues, employed by the judge".

15. Therefore, the Court of Justice of Salta Province, after having analyzed in detail the recourse basis would come to the conclusion that the appeal was inadmissible "because of the lack of grievances". According to the State, it is evident that this conclusion emerges from a review of the facts and evidence produced in connection with the case.

16. The State argues that the petition does not state facts that resemble violations to the human rights of Mr. Marcos Gilberto Chaves or of his daughter, Ms. Sandra Beatriz Chaves, since the claim of the petitioners would only be that the IACHR act as a fourth instance and review the factual and legal assessments that resulted in the verdicts of April 29 and September 23, 2003 issued by the National Supreme Court of Justice. Thus, the State requested the Commission to declare the petition inadmissible.

IV. ADMISSIBILITY ANALYSIS

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

17. The petitioners are entitled to file a petition before the Commission pursuant to the provisions of article 44 of the American Convention. In the petition the alleged victims are those individuals to whom the State is committed to respect and guarantee the rights recognized by the American Convention. As for the State, the Commission notes that Argentina is a party to the Convention since September 5, 1984, when it was ratified. Therefore, the Commission has *ratione personae* competency to review the petition.

18. The Commission has *ratione loci* competency to consider the petition because it contains the allegation of violations of rights protected by the American Convention occurring within the territory of a member State. The IACHR has *ratione temporis* competency since the obligation to respect and guarantee the rights protected under the American Convention were in effect for the State on the date in which the supposed rights violations alleged in the petition occurred. Finally, the Commission has *ratione materiae* competency because the petition includes allegations violations of human rights protected by the American Convention.

B. Other admissibility requirements of the petition

1. Exhaustion of remedies

19. Article 46(1)(a) of the American Convention provides that, for a complaint filed before the Inter American Commission to be admissible, it is necessary to have tried and exhausted the domestic remedies in accordance with the generally recognized principles of international law. This requirement is intended to enable the national authorities to become aware of the alleged violation of a protected right and, if appropriate, to have the opportunity to settle the matter before it is known by an international body.

20. In this case, the petitioners claim having filed before the judicial authorities the cassation recourse against the conviction of June 8, 2001, which was denied on September 11, 2001, and later an extraordinary federal appeal, which was dismissed on April 29, 2003. In light of said unfavorable resolution, they claim to have filed a revocation appeal that, similarly, was dismissed on September 23, 2003. The State, for its part, acknowledges with the petitioners on the remedy requests identified as filed at the national level and has not made any allegation regarding its suitability, nor has it identified any other appeal that the alleged victims had to exhaust prior to reaching out to the Commission.

21. Indeed, the Commission notes that the remedies noted by the petitioners were filed before the competent judicial authorities. It should be noted that the lateness in submitting the extraordinary appeal was a national issue; however, the State did not present any argument on the matter before the Commission and, since the petitioners have alleged that its rejection due to "excessive formality" would have violated the fair trial rights of the alleged victims, the Commission will proceed with that analysis at the merits stage. Therefore, the IACHR considers that domestic remedies have been exhausted by the petitioners, thus complying with the provisions of article 46(1) (a) of the Convention.

2. Deadline to file the petition

22. Under the provisions of article 46(1) of the Convention, to be admitted a petition must be filed within the stipulated time, which is six months from the date when the victim of the alleged violation of his rights has been notified of the decision rendered at the national level.

23. In this case, the decision of the National Supreme Court of Justice in respect of the revocation appeal dates to September 23, 2003, and the petition was filed before the Secretariat of the Commission on November 4, 2003, which met the requirement under article 46(1) (b) of the American Convention.

3. Duplication of Procedures and res judicata

24. Article 46(1) (c) states that the admission of a petition is 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 accept a petition that "essentially duplicates a petition or communication previously examined by the Commission or another international body". In this case, the parties have not alleged, nor the proceedings produce, any of said inadmissibility circumstances.

4. Characterization of facts alleged

25. Article 47(b) of the American Convention declares inadmissible any petitions that do not state facts that establish a violation of the rights guaranteed by the Convention. In this case, it is not within the purview of the Commission - at this stage of procedure - to decide whether or not the alleged violations of the American Convention took place. The IACHR held a prima facie assessment and determined that the petition raises allegations that, if proven, may characterize violations of the rights guaranteed by the Convention.

26. From the petitioners' information and allegations, it is clear that in the cassation recourse as well as in those filed after by the defense of the alleged victims, it was repeatedly argued that the judges reached a conviction verdict against Mr. Chaves and his daughter based on suspicions and circumstantial evidence that raised doubts. Therefore, they urged a review of the process against them. The petitioners allege that the conviction was not reviewed by a higher Court.

27. The State has indicated that there were no irregularities in the criminal process that was followed against Mr. Marcos Gilberto Chaves and his daughter Sandra Beatriz Chaves and that the purpose of the petitioners is that the Commission reviews a ruling that was unfavorable to the alleged victims; therefore it requested that the petition be declared inadmissible.

28. The Commission notes that in the decision of the cassation recourse, the Court noted that the defense sought to bring issues of evidential matter that falls outside the control of the appeal, like the invocation of the principle in dubio pro reo; thus, a formal review of the facts by the higher Court was not conducted. The Commission notes that during the review of the merits of the case the scope of the rights enshrined in articles 8 and 25 of the Convention will be defined, as well as its application to the specific circumstances of the case.

29. Also, with regard to the allegations of the petitioners related to interference by the authorities in the privacy of Ms. Sandra Beatriz Chaves and the alleged discrimination she was subjected to, the Commission considers that if the issues presented are proven, it could characterize violations of articles 11 and 24 of the American Convention against the alleged victim.

30. Accordingly, in this case, the Commission concludes that the petitioners have filed complaints that, if consistent with other requirements and are verified to be true, could characterize a violation of rights protected under the American Convention; more specifically, those referred to in articles 8(2) (due process), 25 (judicial protection), 11 (protection of honor and dignity) and 24 (equality before the law) with respect to article 1(1) (obligation to respect and guarantee rights).

31. With regard to other allegations of the National General Public Defender's Office, not enough elements were introduced to meet the requirement of article 47(b) of the Convention, thus the Commission decides that the violation allegations of articles 5 and 19 of the American Convention, as well as 1, 7, 8 and 9 of the Inter American Convention on the Prevention, Punishment and Eradication of Violence Against Women (Convention de Belém do Pará) are inadmissible.

V. CONCLUSIONS

32. The Commission concludes that it is competent to hear the case and that the petition is admissible pursuant to articles 46 and 47 of the American Convention.

33. Under the factual and legal arguments above, and without prejudging the merits,

THE INTER AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. Declare the case admissible in relation to the alleged violations of the rights protected under articles 8(2), 25, 11 and 24 in regards to article 1(1) of the American Convention.
2. Declare the petition as inadmissible regarding to the alleged violations of articles 5 and 19, in regards to article 1(1) of the American Convention, as well as 1, 7, 8 and 9 of the Inter American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention de Belém do Pará).
3. Notify this decision to the parties.
4. Continue further analysis of the merits.
5. Make this report public and publish it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 4th day of the month of August 2009.
(Signed): Luz Patricia Mejía Guerrero, President; Felipe González, Second Vice-president; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Paolo G. Carozza, members of the Commission.