

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 87/09; Petition 204-01
Session: Hundred Thirty-Fifth Regular Session (3 – 8 August 2009)
Title/Style of Cause: Angel Pedro Falanga v. Argentina
Doc. Type: Decision
Decided by: Second Vice President: Felipe Gonzalez;
Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Paolo Carozza.
Pursuant to Article 17(2)(a) of the Rules of Procedure of the IACHR,
Commissioner Victor E. Abramovich, an Argentine National, did not
participate in the discussion or decision in the present case.
Dated: 7 August 2009
Citation: Falanga v. Argentina, Petition 204-01, Inter-Am. C.H.R., Report No. 87/09,
OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by: APPLICANTS: Diego Jorge Lavado, Carlos Eduardo Varela Alvarez, and
Alejandro Gimenez Puga
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. The instant report concerns the admissibility of petition 204/01, opened by the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission", the "Commission," or the "IACHR") in response to a complaint received by the Executive Secretariat of the Commission on April 2, 2001, lodged by Mr. Ángel Pedro Falanga and attorneys Diego Jorge Lavado, Carlos Eduardo Varela Álvarez, and Alejandro Giménez Puga (hereinafter the petitioners), on behalf of Mr. Ángel Pedro Falanga (hereinafter the alleged victim), against the Argentine Republic (hereinafter "Argentina" or "the State"). The petitioners claim that the State has incurred in responsibility under the American Convention on Human Rights (hereinafter the "American Convention" or "the Convention"), specifically for the alleged violation of Articles 1, 5, and 8 of said Convention, to the detriment of Mr. Falanga.

2. The petition says that in April 1980 an enquiry was opened in the province of Mendoza against members of the so-called "Greco Business Group" suspected of the offenses of economic subversion and monopoly, based on two laws adopted under the last de facto government of Argentina. By reason of the foregoing, Mr. Ángel Pedro Falanga, as a member of the aforesaid group, was deprived of his liberty on two occasions and handed a consolidated sentence of four years and six months of imprisonment, a special ban of five years from engaging in trade, and a fine. The petitioners add that upon his release from prison, restrictions were imposed on his freedom of movement in the form of a ban from leaving the country. The petitioners also say that the proceeding against Mr. Falanga lasted almost 21 years before a final decision was reached in 2001, which meant that the State also breached the guarantee of celerity of proceedings.

3. As a result of a special working meeting held at the 129th extraordinary session of the Commission, the parties signed a memorandum in which they agreed to begin a dialogue with a view to reaching a friendly settlement of the matter. However, in communications dated October 9, 2008, and February 13, 2009, the petitioners informed the Commission of their desire to withdraw from the aforesaid dialogue owing to a lack of progress, and requested the Commission to continue to process the petition as provided in its Rules of Procedure.

4. While the State has submitted communications reaffirming its will to reach a friendly settlement with the petitioners, it has not responded to their allegations of fact with regard to the alleged violations of Mr. Ángel Pedro Falanga's human rights, or disputed the admissibility of the petition examined herein.

5. The Inter-American Commission concludes that it is competent to decide the complaint lodged by the petitioners, which is admissible under Article 46 of the American Convention. Therefore, the Commission has decided to notify the parties, continue with its analysis of merits with regard to the alleged violations of the American Convention, publish the instant report on admissibility, and include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

6. The petitioners lodged the complaint with the Executive Secretariat of the Commission on April 2, 2001. The IACHR sent the pertinent portions of the petition to the Argentine state on August 10, 2004, and gave it three months to reply. In a communication received on September 22, 2004, the State requested additional time to submit its reply. On February 9, 2007, the petitioners presented additional information, which was forwarded to the State for its attention on the 22nd of that month.

7. On September 6, 2007, in the framework of a working meeting convened by the IACHR at its 129th extraordinary session, the State and the petitioners formally expressed their decision to initiate a dialogue to explore the possibility of a friendly settlement. In a communication of June 19, 2008, the petitioners reported that no progress had been achieved. That communication was transmitted to the State on September 8, 2008. On October 9, 2008, the petitioners informed the Commission of their decision to withdraw from the friendly settlement procedure. The State reaffirmed its will to reach a friendly settlement in a communication of January 15, 2009, which was transmitted to the petitioners in a letter dated February 2, 2009. In a communication of February 13, Mr. Falanga, through his lawyer, Carlos Varela, confirmed his decision to withdraw from the friendly settlement procedure. In view of the decision of the petitioners, the Commission requested the State on March 25, 2009, to submit its observations on admissibility within two months. By note OEA 166 of April 22, 2009, the State again reaffirmed its desire to reach a friendly settlement.

III. POSITIONS OF THE PARTIES

A. The petitioners

8. The petitioners say that in June 1980, the de facto government passed Laws 22.229 and 23.334, which dispossessed the owners of the so-called “Greco Business Group” of control of the corporations that comprised the group.[FN2]

[FN2] The petitioners informed the Commission that while Mr. Falanga’s trial was proceeding, the constitutional government, through Decrees PEN 1444/87 and 865/98, ordered the return of many of the assets confiscated from the “Greco Group.”

9. The petitioners say that Mr. Falanga had an interest in those companies as co-owner of the stock and director of a number of them, and therefore he was dispossessed of much of his property and pursued by the security forces at the time.

10. They say that in April 1980 an investigation was opened against the members of the group and all of the executives were arrested. The petitioners explained that on December 11, 1985, Mr. Falanga, after being out of the country for five years, presented himself before the Federal Court of Mendoza, whereupon he was placed in preventive custody on the charge of monopoly until April 7, 1986, when he was released on bail.

11. The petitioners say that on May 17, 1993, the Federal Court of First Instance imposed on him a suspended sentence of three years of imprisonment, as well as a ban from engaging in trade, and a fine, for the offence of monopoly. The judgment was partially amended on appeal and he was sentenced on November 7, 1995, to one year and six months of imprisonment, a ban from engaging in trade, and a fine.

12. The petitioners further note that on February 17, 1997, he was also sentenced to three years of imprisonment, a ban from engaging in trade, and a fine, for the offence of “economic subversion”, which verdict was appealed by the Office of the Attorney General (Ministerio Público) and increased to four years of imprisonment by the Federal Chamber of Appeals of Mendoza. Said appellate court consolidated the two sentences [for monopoly and economic subversion] into a single penalty of four years and six months of imprisonment, a special ban of five years from engaging in trade, and a fine. The foregoing led Mr. Ángel Pedro Falanga again to be taken into custody from March 17 to November 5, 1999, when, the petitioners say, he was again released under strict conditions that curtailed his freedom of movement: a ban from leaving the country, monthly appearance before the Parole Board, and the obligation to appear every Wednesday before the Federal Chamber of Appeals of Mendoza.

13. The petitioners mention that on February 20, 2001, the Argentine Supreme Court, purely on formal grounds and without a review of merits, refused a special motion for reconsideration of dismissal of appeal filed against the decision on consolidation of sentences. At the time the petition was lodged, Mr. Ángel Pedro Falanga was waiting for the execution to be ordered of the sentence imposed on him and, on March 27, 2001, filed for a writ of habeas corpus in order to prevent the sentence being served, which remedy had not been decided at the time the petition was filed but which, according to information provided later by the petitioners, was granted by the First Federal Court of First Instance and confirmed in September 2002 by the Federal

Chamber of Appeals of Mendoza, which suspended execution of the aforesaid sentence and declared “unconstitutional any provision that violated the right to liberty of Ángel Pedro Falanga”.^[FN3]

[FN3] The petitioners attached a copy of the decisions on the habeas corpus petition, which have been annexed to the file of the instant case.

14. The petitioners also hold that the case took more than 21 years to process and point out that, while it is true that for the first five years Mr. Falanga failed to appear before the judicial authorities, there being a warrant outstanding for his arrest, it is also a fact that on September 11, 1985, he appeared of his own volition, and it was not until February 20, 2001, that a final judgment was adopted in the proceeding. Thus, they hold that his trial was unreasonably protracted and that the State breached the guarantee of celerity of proceedings. In this connection, they mention that in its ruling on the propriety of Mr. Falanga’s release in November 1999, the Federal Chamber of Appeals of Mendoza, noted the following:

The argument charging violation of the Pact of San Jose, Costa Rica, with respect to the inordinate length of the judicial proceeding from initiation to conviction, is found to be formally acceptable.

15. Based on the foregoing, the petitioners assert that the State has violated Articles 5, and 8 of the American Convention, in connection with Article 1(1) thereof, to the detriment of Mr. Ángel Pedro Falanga and that the latter made use of the legal remedies available to him.

B. The State

16. The State has not responded directly to the allegations of facts presented by the petitioners, nor disputed the admissibility of the petition examined in the instant report. Thus far, the communications of the State reflect its willingness to continue the dialogue with the petitioners with a view to reaching a friendly settlement, a possibility which the latter have discarded.

IV. ANALYSIS

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

17. The petitioners have standing under Article 44 of the American Convention to lodge petitions with the Commission. The petition names as alleged victim an individual in respect of whom the State undertook to observe and ensure the rights recognized in the American Convention. As to the State, the Commission notes that Argentina has been a state party to the Convention since September 5, 1984, when it deposited its instrument of ratification. Thus, the Commission has *ratione personae* competence to examine the petition.

18. The Commission has competence *ratione loci* to examine the petition since the latter alleges violations of rights protected under the American Convention which took place within the territory of a State party thereto. The IACHR has competence *ratione temporis* because, even though Mr. Falanga's trial began in 1980, before the obligation to respect and protect the rights enshrined in the American Convention was in force for the Argentine State, the Commission had competence to examine facts under the American Declaration of the Rights and Duties of Man. Furthermore, the aforesaid trial continued in time after the ratification of the Convention. Finally, the Commission has competence *ratione materiae* because the petition alleges violations of human rights enshrined in the American Convention.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

19. Article 46(1)(a) of the American Convention provides that admission of petitions lodged with the Inter-American Commission shall be subject to the requirement that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. This rule is designed to allow national authorities to examine alleged violations of protected rights and, as appropriate, to resolve them before they are taken up in an international proceeding.

20. In the instant case, the petitioners claim that all the regular remedies under Argentine jurisdiction have been exhausted and that there are no further effective remedies possible against the conviction that became final on February 20, 2001, with the decision of the Argentine Supreme Court to reject the special motion for reconsideration of dismissal of appeal. The State, for its part, has offered no pleadings with respect to other remedies that Mr. Falanga might be required to exhaust.

21. Furthermore, the Commission notes that in order to avoid Mr. Ángel Pedro Falanga having to serve the prison sentence, the petitioners filed for a writ of habeas corpus, which was granted by the First Federal Court of First Instance, a decision which was reaffirmed in September 2002 by the Federal Chamber of Appeals of Mendoza.

22. Thus, the Commission has corroborated that Mr. Ángel Pedro Falanga did indeed appear before the Argentine courts and exhausted all the suitable remedies provided by the country's laws in order to remedy the human rights violations that he claims to have suffered at the hands of the State, as a result of the trial to which he was submitted.

2. Deadline for lodging a petition

23. Under Article 46(1) of the Convention, for a petition to be admitted it must be filed within the stipulated period, that is, six months from the date on which the party alleging violation of their rights was notified of the final judgment adopted at the national level.

24. In the instant case, the judgment of the Argentine Supreme Court on the special appeal was returned on February 20, 2001, and the petition was lodged with the Secretariat of the

Commission on April 2, 2001. Accordingly, the requirement contained in Article 46(1)(b) of the American Convention was met.

3. Duplication of proceedings and res judicata

25. Article 46(1)(c) of the Convention provides that 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) stipulates that the Commission shall not admit a petition which “is substantially the same as one previously studied by” it “or by another international organization.” In the present case, the parties have not claimed and the proceedings do not indicate the existence of either of these circumstances of inadmissibility.

4. Characterization of the Alleged Facts

26. Article 47(b) of the American Convention declares inadmissible those petitions that do not state facts that tend to establish a violation of the rights guaranteed in the Convention. In the instant case, it is not for the Commission to determine at this stage of the proceedings whether or not the alleged violations of the American Convention occurred. The IACHR made a prima facie evaluation and determined that the petition sets forth allegations which, if proven, could tend to establish possible violations of the rights guaranteed by the Convention.

27. From the information and arguments put forward by the petitioners, the Commission finds that Mr. Ángel Pedro Falanga was charged with the offenses of monopoly and “economic subversion” under two laws passed during the last de facto government of Argentina. Said judicial proceeding began in April 1980 and the Commission notes that the case was not finally decided until April 2, 2001. The State, for its part, has not contested the arguments of the petitioners in this respect.

28. According to the allegations, on December 11, 1985 after spending 5 years abroad, Mr. Falanga presented himself before the Federal Judge of Mendoza being held in pre-trial detention until April 7, 1986 when he was released. On May 17, 1993, he was convicted to 3 years of suspended imprisonment, a ban from engaging in trade, and a fine, for the offense of monopoly. Such sentence was appealed and on November 7, 1995, a year and a half later, the conviction was partially amended and he was sentenced to one year and six months of imprisonment, a ban from engaging in trade, and a fine.

29. In addition, on December 17, 1997 he was sentenced to 3 years of imprisonment, a ban from engaging in trade and a fine for the offense of economic subversion. Such sentence was appealed by the Office of the Attorney General and two years later on March 17, 1999, he was convicted to 4 years of imprisonment. The same date it was issued a decision which consolidated the two sentences into a single penalty, such decision was appealed and a final resolution was delivered on February 2001.

30. In sum, the petitioners allege that Mr. Falanga was subjected to two criminal proceedings which lasted 8 and 13 years, respectively, from the date on which Mr. Falanga presented himself to the state officials, to the second instance sentence. Both proceedings lasted 16 years until a

final decision was made. The State has neither provided any evidence regarding the length of the proceedings nor disputed this element of admissibility.

31. Thus, the Commission finds, with respect to the issue of reasonable time, that, if proven, the allegations of the petitioners could tend to establish violations of Article 8 of the Convention, which would have to be examined in the merits stage. Furthermore, bearing in mind the excessive length of the judicial proceeding, as regards the right to prompt access to judicial protection and in accordance with the principle of *jura novit curia*, the Commission will also examine, to the extent appropriate, possible violations of Article 25 of the American Convention.

32. Moreover, as regards to the alleged violations of article 5 of the Convention against Mr. Angel Pedro Falanga, the Commission considers that it has insufficient evidence to declare that the facts tend to establish a violation of such article of the American Convention.

33. The Commission, in accordance with the principle of *iura novit curia*, will examine, where appropriate, possible violations of Articles 7 and 22 of the American Convention in relation to the deprivations of liberty to which Mr. Falanga was subjected in 1986 and 1999, and the ensuing ban on his leaving the country, as a consequence of an allegedly excessively long trial.

34. Accordingly, in the instant case, the Commission concludes that the petitioners have made allegations which, if compatible with other requirements and demonstrated to be true, could tend to constitute violations of rights protected under the American Convention, specifically those provided in Articles 7 (right to personal liberty), 8 (right to a fair trial), 22 (freedom of movement and residence), and 25 (right to judicial protection), in connection with Article 1(1) (obligation to respect rights).

V. CONCLUSIONS

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

36. Based on the arguments of fact and law given above, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the instant case admissible in relation to the alleged violations of the rights recognized in Articles 7, 8, 22, and 25, of the American Convention in conjunction with Article 1(1) thereof, as well as Articles I, XVIII, and XXV of the American Declaration as regards the alleged events prior to 1984.
2. To declare inadmissible the petition with respect to the alleged violations of article 5 of the American Convention.
3. To notify the parties of this decision.

4. To proceed with its analysis of merits in the matter.
5. To make this report public and to publish it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 7th day of the month of August 2009.
(Signed): Felipe González, Second Vice-president, Sir Clare K. Roberts, Paulo Sérgio Pinheiro,
and Paolo Carozza, members of the Commission.