

REPORT No. 22/10
DECISION TO ARCHIVE
PETITION 695-01
ARGENTINA
March 16, 2010

ALLEGED VICTIM: Leonardo Cristian Rocha

PETITIONER: Delia María Berttelotti de Rocha and Héctor Oscar Rocha

ALLEGED VIOLATIONS: Articles 7, 8, 5.1, and 25 of the American Convention on Human Rights, respectively

DATE PROCESSING BEGAN: May 4, 2004

I. POSITION OF THE PETITIONER

1. On October 9, 2001, the Inter-American Commission on Human Rights received the complaint filed by Delia María Berttelotti de Rocha and Héctor Oscar Rocha, for the alleged violation of the rights of Leonardo Cristian Rocha (hereinafter referred to as the alleged victim) to personal freedom, due process of law, personal safety and legal protection by the State of Argentina.

2. In its communication, the petitioners stated that the alleged victim had been sentenced on November 31, 2000 to 15 years imprisonment for the rape and sexual abuse of six women. They indicated that, since then, the accused had insisted on his innocence and had presented witnesses who had stated that they were with him on the dates and at the times when these crimes were allegedly perpetrated. Nevertheless, they pointed out that some of these witnesses accounts were contradictory, asserting the presence of the convicted person in two different places at the same time.

3. The petitioners also assert that the alleged victim is innocent and that the trial had been biased, thus infringing the right to due process of law; they also contend that, while Mr. Rocha was in preventive custody in Penal Unit No. of Ezeiza, he had been threatened, sexually harassed and hit by some of the guards, as a result of which, by means of a writ of habeas corpus, he had been transferred to the Naval Prefecture, where he was incarcerated until the complaint was filed with the Commission.

4. Finally, the petitioners specified that a well-known journalist, Enrique Sdrech, had made statements about the innocence of the alleged victim and had been subpoenaed to make a statement in the appeal for reviewing the case filed by the family of Mr. Rocha, but unfortunately he died before appearing in court to testify.

II. POSITION OF THE STATE

5. The State alleged that, two days after the arrest and imprisonment of Mr. Rocha, he had been identified in a lineup of suspects by each one of the six women who were victims of rape and sexual abuse. It added that the petitioners, in their complaint, had confined themselves to providing their own version of the facts, questioning the identification of the suspect by the victims and recognition of the evidence that had been submitted.

6. The State also pointed out that, in the present case, one of the admissibility requirements has not been met, because domestic remedies had not been exhausted in line with generally recognized principles of international law pursuant to Article 46.1.a of the American Convention on Human Rights, because Leonardo Rocha had not filed and exhausted special federal proceedings of appeal with the Supreme Court of Justice of the Nation.

7. Likewise, the State indicated that the petition was inadmissible as the facts alleged by the petitioners do not characterize violations of the human rights of Leonardo Rocha, since a close examination of the complaint clearly points out that the petitioners wish the Inter-American Commission to act as a fourth judiciary jurisdiction and to review the rulings on the facts and the law issued by the second instance court in its decision. It adds that the petitioners intend to attribute international responsibility for the violation of the American Convention on the basis of the argument that Leonardo Rocha did not commit the crimes for which he was convicted, building this premise on the basis of assertions supported by their own appraisal of the evidence or elements involved in the case.

III. PROCESSING BY THE IACHR

8. The petition was received on October 9, 2001. The IACHR remitted the petition to the State of Argentina on May 4, 2004 so that, within a lapse of two months, it would send a response.

9. On December 6, 2004, additional information submitted by the petitioner was remitted to the State. On that same date, the State of Argentina was requested once again to submit its observations as requested on May 4, 2004.

10. The State's reply was received on April 20, 2005, and it was remitted to the petitioner on March 13, 2006. As the petitioner did not respond, the Commission reiterated its request for information on February 5, 2009, but to date the petitioner has failed to send any reply whatsoever. In an informal communication made on March 10, 2010, the petitioner Héctor Oscar Rocha indicated to the Commission's Executive Secretariat that his son had completed his sentence and therefore he felt that the petition had become an abstract matter.

IV. BASIS FOR THE DECISION TO ARCHIVE

11. Both Article 48, paragraph b) of the American Convention on Human Rights and Article 30 paragraph 6 of the Rules of Procedure of the Inter-American Commission on Human Rights provide that, in the processing of a petition, once the information has been received or the period set for receiving it has elapsed with no observations received, the IACHR shall verify whether or not the grounds for the petition or communication exist or subsist, and if they do not it shall order the case archived.

12. More than three years have elapsed since the last procedural step on March 13, 2006, without any response from the petitioners with respect to the observations made by the State. On February 5, 2009, the request for information to the petitioners was reiterated, but to date there has been no formal response from them. After due examination of the case, the Commission considers that it lacks sufficient elements to determine the admissibility or inadmissibility of the petition and, on the basis of what was said by the petitioner, the grounds for the original petition do not subsist. Therefore, pursuant to Article 48, paragraph b) of the Convention, as well as Article 30, paragraph 6 of the Rules of Procedure of the IACHR, the Commission decides to archive this petition.

Done and signed in the city of Washington, D.C., on the 16th day of the month of March, 2010.
(Signed): Felipe González, President; Paulo Sérgio Pinheiro, First Vice-President; Dinah Shelton, Second Vice-President; María Silvia Guillén, Rodrigo Escobar Gil, and José de Jesús Orozco Henríquez, Members of the Commission.