

REPORT No. 33/12
DECISION TO ARCHIVE
PETITION 907-03
ARGENTINA
March 20, 2012

ALLEGED VICTIMS: Ricardo Alberto Barreda

PETITIONERS: Octavio Etchegoyen Lynch and Eduardo Luis Gutiérrez

ALLEGED VIOLATIONS: The petitioners refer to alleged violations of Articles 7.5, 7.6, 8.2.h, 9, 24, 25, and 1 of the American Convention

INITIATION OF PROCESSING: October 28, 2005

I. POSITION OF THE PETITIONERS

1. On October 30, 2003, the Inter-American Commission on Human Rights (hereinafter the "Commission" or "IACHR") received a complaint submitted by Octavio Etchegoyen Lynch and Eduardo Luis Gutiérrez (hereinafter "the petitioners") as representatives of Ricardo Alberto Barreda (hereinafter "the alleged victim"), for the alleged violation of the right to a trial within a reasonable time, the right to recourse to a competent judge or court, the right to appeal the judgment before a higher judge or court, the principle of legality and retroactivity, the right to equality before the law, and the right of judicial protection.

2. The petitioners alleged that Ricardo Alberto Barreda was held in prison since November 1992 without having his conviction reviewed by a higher court. The alleged victim was sentenced to life imprisonment on August 15, 1995 by the First Chamber of the Third Court of Appeals in Criminal and Correctional Matters (*la Sala I de la Cámara III de Apelación en lo Criminal y Correccional*) of La Plata, for the murder of his wife, his two daughters, and his mother-in-law.

3. In response to that decision, on August 29, 1995 Barreda's defense submitted to the Supreme Court of Justice of the Province of Buenos Aires an Extraordinary Appeal on Inapplicability of the Law (*Recurso Extraordinario de Inaplicabilidad de la Ley*). That appeal was rendered without effect on December 1, 1998 because of subsequent changes in the Criminal Procedure Code. Consequently, Ricardo Barreda's defense decided to submit a cassation appeal (*recurso de casación*) to the Provincial Cassation Court, which was rejected because it did not attach the certified copy of the official notice of the earlier decision, which the defense alleged that it never received.

4. On March 30, 1999, the defense sought a declaration nullifying the notice, which was granted by the First Chamber of the Third Appeals Court in Criminal and Correctional Matters (*la Sala I de la Cámara III de Apelación en lo Criminal y Correccional*) of La Plata. However, on August 27, 2001, when it again ruled on the admissibility of the cassation appeal, the Provincial Cassation Court declared the appeal inadmissible because it failed to attach the records of what had been decided by the superior court and the respective notices. Consequently, on October 5, 2001, the defense submitted an Extraordinary Appeal on Inapplicability of the Law (*Recurso Extraordinario de Inaplicabilidad de la Ley*) before the Supreme Court of Justice of the Province of Buenos Aires, which ruled in favor of the defense and ordered that the case be sent back to the Provincial Cassation Court, since that court had been excessively strict in terms of procedural formalities.

5. Finally, on February 18, 2005, the Provincial Cassation Court ruled on the appeal, rejecting the claims made by the defense. In response to that decision, the defense filed an Extraordinary Appeal on Inapplicability of the Law (*Recurso Extraordinario de Inaplicabilidad de la Ley*) before the Supreme Court of Justice of the Province of Buenos Aires, which is pending a decision.

6. With respect to the exhaustion of domestic remedies, the petitioners stated that even though a decision was pending at the time they submitted the complaint to the IACHR, Article 46.2(c) of the American Convention on Human Rights was applicable due to delay and the amount of time elapsed.

II. POSITION OF THE STATE

7. The State asked the Commission to declare the petition inadmissible because the domestic remedies had not been exhausted, in that there was a suitable and effective remedy in which a decision was pending. The State also alleged that the facts presented by the petitioners did not represent a violation of human rights and what the petitioners were really trying to do was to have the Commission act as a fourth instance to review the factual and legal assessments made by the domestic courts.

8. The State indicated that the proceeding in the domestic courts was in accordance with all the guarantees of due legal process, consistent with the standards required by the American Convention. Thus, it noted that Mr. Barreda faced independent and impartial judges, that he had the opportunity to present everything he considered appropriate, and that he was able to challenge or appeal all the decisions adopted by the domestic judges with which he disagreed. With respect to Mr. Barreda's personal freedom, the State indicated that he is legally detained as the result of a criminal conviction for quadruple homicide to which he himself confessed. In addition, the State indicated that the alleged violation of the right to appeal the judgment (*derecho a la doble instancia judicial*) cannot be supported because on February 18, 2005 the Cassation Court of the Province of Buenos Aires conducted a comprehensive review of the decision under appeal. That court reviewed not only the formal and legal aspects of the sentence but all the issues discussed and analyzed by the lower court as well.

9. In addition, the State maintained that, without detriment to the existence of an appeal pending decision, the Provincial Cassation Court had declared that Article 24 of the Penal Code was unconstitutional, which in Mr. Barreda's case would mean that his life confinement could be converted into a prison sentence and he consequently would be in a position to seek the benefit of Law 24.390. According to that law, after two years of preventive detention, one day of preventive detention can be counted as two years in prison so that Mr. Barreda could be granted conditional release.

III. PROCESSING BY THE IACHR

10. The Commission received the petition on October 30, 2003. The IACHR forwarded the petition to the State on October 28, 2005, asking that it send its observations.

11. The petitioners submitted a communication on February 17, 2004.

12. In a communication dated December 29, 2005, the State asked for a two-month extension to submit its observations, which it finally submitted on October 18, 2006. The IACHR forwarded these observations to the petitioners on November 7, 2006, asking them to submit their observations regarding that information.

13. In the absence of subsequent communications, on September 23, 2008 the Commission repeated its request of November 7, 2006 to the petitioners asking for information and informed them that the IACHR could archive their case if it did not receive a response within one month.

IV. BASIS FOR THE DECISION TO ARCHIVE

14. Both Article 48.1(b) of the American Convention on Human Rights and Article 42 of the Rules of Procedure of the Inter-American Commission on Human Rights establish that, when processing a petition, once the information has been received or the period for receiving the information has elapsed, the IACHR shall verify whether the grounds for the petition or communication exist or survive and, should they not exist or survive, shall order the archiving of the file.

15. To date, the petitioners have not responded to requests for information from the IACHR dated November 7, 2006 and September 23, 2008, and no information has been provided since 2004. Having done the appropriate analysis, the Commission feels that it does not have sufficient evidence to determine the admissibility or inadmissibility of the petition, or whether the grounds that formed the basis of the original complaint still exist. Thus, in accordance with Article 48 (b) of the Convention as well as Article 42 of the Rules of Procedure of the IACHR, it decides to archive this petition.

Done and signed in the city of Washington, D.C., on the 20th day of the month of March 2012.
(Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González, Second Vice-President; Dinah Shelton, Rodrigo Escobar Gil, Rosa María Ortiz, and Rose-Marie Antoine, Commissioners.