

REPORT No. 93/12
DECISION TO ARCHIVE
PETITION 322-02
ARGENTINA
November 8, 2012

ALLEGED VICTIM: Amado Raúl Aued

PETITIONER: Blanca Matilde Aued

ALLEGED VIOLATIONS: The petitioner explicitly refers to alleged violations of Articles 4, 5, 8, 9, 10, 11, 17, 24, 25, 26, 28, 29, 30, and 32 of the American Convention on Human Rights

INITIATION OF PROCESSING: March 31, 2004

I. POSITION OF THE PETITIONER

1. On May 6, 2002, the Inter-American Commission on Human Rights (hereinafter the "Commission" or the "IACHR") received a complaint lodged by Mrs. Blanca Matilde Aued, the alleged victim's daughter, who claimed that on August 28, 1996, her father had been admitted to the Necochea regional hospital with a diagnosis of neuropathy and had died on August 31 of that year as a result of medical malpractice during his hospitalization.

2. The petitioner asserted that she filed a criminal complaint against the attending physicians. In the course of the case, evidence was taken and tests done that allegedly proved that the physicians charged with treating the alleged victim were negligent and their negligence resulted in Mr. Aued's death.

3. She added that the transition judge decided to dismiss the case, citing the statute of limitations. The petitioner alleged that the delay was the fault of the court itself and of the prosecutor's office. Both the petitioner and the prosecutor's office filed appeals to challenge the decision to dismiss the case. The appeal went to the Appellate Chamber for Civil, Commercial, and Criminal-law Guarantees (*Cámara de Apelaciones en lo Civil, Comercial y Garantías en lo Penal*) in the Province of Buenos Aires, which upheld the lower court's decision. The petitioner filed a special appeal seeking reversal of the appellate court's decision, which was denied on the grounds that the aggrieved party was not entitled to challenge the appellate court's ruling; only the prosecutor's office could challenge an appellate ruling. The petitioner explained that she then filed a remedy of complaint with the Supreme Court of the Province of Buenos Aires, which confirmed the Appellate Court's argument that she did not have procedural standing. Finally, she filed a special federal appeal with the Supreme Court of Justice of the Nation, but Argentina's highest court dismissed her case on the grounds that it was not filed within the prescribed time period.

4. Ms. Aued contends that she was denied access to justice and that those responsible for her father's death were protected and never offered her any form of compensation.

II. POSITION OF THE STATE

5. The State asked that the Commission declare the petition inadmissible on the grounds that it was filed after the six-month time period required under the American Convention. It observed that on September 8, 2000, Ms. Aued was notified of the final decision adopted at the domestic level, whereas Ms. Aued would have the six-month period counted from the Supreme Court's October 30, 2001 ruling in which it decided to deny the petitioner's argument seeking nullification on the grounds of false notification, but did not address the merits of the case.

6. The State further alleged that the facts as presented by the petitioner did not tend to establish violations of Mr. Amado Raúl Aued's rights to life and to physical integrity that could be blamed on the State. It added that the records of the criminal case revealed that the petitioner had filed a criminal complaint two years after her father's death and that from the time the complaint was first filed, the petitioner enjoyed her right to be heard and was able to exercise her right to petition the judge seeking the measures that she deemed appropriate and to file the remedies allowed under the procedural rules in force.

III. PROCESSING WITH THE IACHR

7. The petition was received at the Commission on May 6, 2002, which forwarded it to the State on March 31, 2004, and asked the State to present its observations within two months.

8. By a communication dated May 24, 2004, the State requested an extension of the deadline for presenting its response. The Commission granted it a one-month extension. The State submitted its response on July 7, 2005, and again on October 29, 2008. The State's response was forwarded to the petitioner on March 25, 2009, who was asked to present her observations within one month.

9. When no additional communications were forthcoming, on August 24, 2010 the Commission again asked the petitioner for her response to the State's observations. It also advised her that if her reply was not received within six months, the IACHR might decide to close the record on the case.

10. In October 2011, staff of the IACHR Executive Secretariat twice attempted to contact the petitioner by phone. While they called the number she had provided for the purpose, they were never able to speak with her.

IV. BASIS FOR THE DECISION TO ARCHIVE

11. Both Article 48 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 information has been received or the period set for receiving such information has expired, the IACHR shall verify whether or not the grounds for the petition or communication exist or subsist and, if not, or if it does not have available the information needed to adopt a decision on the petition or case, the IACHR shall order that the file be archived.

12. As of the present, the petitioner has not sent her response to the communications the Commission sent on March 25, 2009 and August 24, 2010, and has supplied no further information since she filed her complaint in 2002. Having examined this matter, the Commission considers that it does not have sufficient information to determine whether the petition is admissible or whether the grounds for the original petition still exist. Therefore, in keeping with Article 48(b) of the Convention and Article 42 of the Commission's Rules of Procedure, it decides to close the record on this petition.