

REPORT No. 108/12
DECISION TO ARCHIVE
CASE No. 11.561
PARAGUAY¹
November 8, 2012

ALLEGED VICTIMS Susana Carolina and Pablo Hernán Bianco

PETITIONERS: Estela B. de Carlotto and Alcira E. Ríos (Grandmothers of Plaza de Mayo)

ALLEGED VIOLATIONS: The petitioner refers to the alleged violation of Articles 3, 17.1, 18, 19, 20, 24, 25, in relation to Articles 1.1 and 2 of the American Convention on Human Rights

INITIATION OF PROCESSING: November 7, 1994

I. POSITION OF THE PETITIONERS

1. On September 19, 1994, the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "IACHR") received the complaint filed by Estela B. de Carlotto and Alcira E. Ríos (hereinafter "the petitioners"), on behalf of Susana Carolina and Pablo Hernán Bianco (hereinafter "the alleged victims") against the Republic of Paraguay (hereinafter the "State" or "Paraguay"), arguing violation of the alleged victims' right to juridical personality, the right to protection of the family, the right to a name, the rights of the child, the right to nationality, the right to equal protection of the law, and the right to judicial protection. Specifically, they argue that that State of Paraguay did not comply with the order of the Republic of Argentina for the extradition of Mr. Norberto Atilio Bianco and Ms. Nilda Susana Wherli, for the alleged abduction of Susana Carolina and Pablo Hernán Bianco from their biological parents, nor with the requests made to the judicial authorities to perform DNA tests on them.

2. The petitioners stated that in 1985 Norberto Atilio Bianco and his wife, Nilda Susana Wherli, were accused before Lower Federal Criminal and Correctional Court No. 1 of San Isidro (*Juzgado Federal de Primera Instancia en lo Criminal y Correccional No. 1*), in the Province of Buenos Aires, Argentina of being the perpetrators of a crime against the minors Susana Carolina and Pablo Hernán Bianco, as there was sufficiently clear evidence of them having committed the crimes of falsifying the legal status of minors and forgery of public deeds during the military dictatorship in Argentina.

3. They pointed out that, in 1986, when said court ordered the immunogenetic analysis of Norberto Atilio Bianco and Nilda Susana Wherli, the alleged offenders fled, taking Susana Carolina and Pablo Hernán Bianco with them. They stated that Norberto Atilio Bianco and Nilda Susana Wherli were found in Paraguay and that, on April 28, 1987, the Judiciary of the Republic of Argentina issued a formal request to the Judicial Authorities in Paraguay to extradite the accused and return Susana Carolina and Pablo Hernán Bianco, in order to ascertain their identity and, if applicable, decide on their custody.

4. They pointed out that the Supreme Court of Paraguay ordered the extradition of Norberto Atilio Bianco and Nilda Susana Wherli on April 30, 1989 and that that decision became final on April 16, 1990. The petitioners alleged that, although the Paraguayan judiciary had ordered the extradition of Norberto Atilio Bianco and Nilda Susana Wherli, the Paraguayan State had neither implemented that order nor returned Susana Carolina and Pablo Hernán Bianco to their biological families, thereby violating Articles 3, 17.1, 18, 19, 20, 24, and 25 in conjunction with the obligations set forth in Article 1.1 of the American Convention on Human Rights (hereinafter "the American Convention").

¹ Commissioner Rosa María Ortiz, a Paraguayan national, did not participate in the deliberations or voting on this report, in accordance with Article 17.2.a of the IACHR's Rules of Procedure.

5. However, the petitioners went on to say that, after lengthy procedures before the Executive Branch of the Paraguayan Government and thanks to intercession by the IACHR, on March 7, 1998, Norberto Atilio Bianco and Nilda Susana Wherli were extradited and placed at the disposal of the judicial authorities of the Argentine Republic. The petitioners reported that on May 15, 2000, the Lower Federal Court for Criminal and Correctional Matters No. 2 (*el Juzgado Federal de Primera Instancia en lo Criminal y lo Correccional No. 2*) of San Martín, of the Argentine Republic condemned Norberto Atilio Bianco and Nilda Susana Wherli to 12 and 10 years in prison, respectively, plus payment of secondary claims and costs. They said that both had been convicted on two counts, one of which related to the withholding and hiding of the individual registered as Pablo Hernán Bianco. They reported that the sentence was subsequently reduced to 10 and 8 years, respectively, and that both Norberto Atilio Bianco and Nilda Susana Wherli were soon released due to the fact that in an unappealable judgment the Appeals Chamber (*la Cámara de Apelaciones*) reduced the length of the sentences and included as part of the sentence the length of time spent resisting extradition in Paraguay, during which time they had been under house arrest.

6. In the amplification of their complaint of August 5, 1997, the petitioners argued that Paraguay had not complied with reiterated formal requests by the Argentine judicial authorities to conduct genetic tests on those registered as Pablo Hernán and Susana Carolina Bianco, who were minors at the time of the amplification. They considered that Paraguay had obstructed the genetic testing ordered by the Argentine judicial authorities and they concluded that Paraguay had not cooperated with said authorities in ensuring that the alleged victims discovered the truth of what had happened and recovered their identity. They further argued non-compliance with the obligation set forth in Article 2 of the American Convention.

7. They reported that in 2002, Pablo Hernán Bianco had agreed to let Juliana García, a member of the Grandmothers of Plaza de Mayo, take a blood sample from him for analysis in a laboratory, the result of which showed that Pablo Hernán Bianco was biologically related to Norma Tato and Jorge Carlos Casariego, who had both disappeared during the military dictatorship in Argentina. They stated that, in 2007, Pablo Hernán Bianco and Susana Carolina Bianco were summoned to give blood samples by order of the Federal Criminal and Correctional Court No. 1 in San Isidro, Argentina. The findings of the DNA studies carried out by the National Genetic Data Bank confirmed the information provided by the laboratory in the case of Pablo Hernán Bianco, but showed that Susana Carolina Bianco was not biologically related to any of the families in the databank.

II. POSITION OF THE STATE

8. The State alleged that the claims made in the complaint were false, because domestic remedies had not been exhausted. Nevertheless, at the hearing conducted in the offices of the Organization of American States on October 9, 1996, Paraguay undertook to extradite Messrs. Norberto Atilio Bianco and Nilda Susana Wherli. That commitment was kept to when the State ordered the extradition in a resolution dated February 21, 1997 and carried out the extradition on March 6, 1997.

9. Subsequently, the State reported that Norberto Atilio Bianco and Nilda Susana Wherli had been tried in Argentina and requested that this case be archived, as the objective pursued by the complaint had been achieved.

III. PROCESSING BY THE IACHR

10. The petition was received by the Commission on September 19, 1994. The IACHR forwarded the petition to the State on November 7, 1994 with a request for its observations.

11. On March 28, 1995, the State requested additional time for answering the petition. The IACHR granted it a further 30 days to submit the information as of March 29, 1995. On August 7, 1995, the Commission informed the State that if it did not receive the information requested within 30 days, it would assume that the facts presented in the complaint were true, pursuant to Article 42 of its Rules of Procedure in force at that time.

12. On September 8, 1995, the State replied, requesting an extension of the time allowed for submitting the information requested, given that the custody file on the minors was being "reconstructed," as this was an old case. The information was forwarded to the petitioners. The State sent word on April 1, 1996 that the Judiciary was being reorganized and that the file "reconstruction" was continuing. This communication was forwarded to the petitioners.

13. On June 3 1996, the petitioners requested a hearing, which was scheduled by the IACHR for October 9, 1996. On October 7, 1996, the State advised that it would participate in the hearing.

14. On January 16, 1997, the IACHR placed itself at the disposal of the Parties with a view to reaching a friendly settlement and convened a meeting on the matter to be held on February 25, 1997. The State confirmed that it would attend the meeting on January 28 and February 20, 1997, while the petitioners did so on February 19, 1997.

15. The State informed the IACHR on March 3, 1997 that the competent judicial authority had issued a resolution on February 21, 1997, ordering the extradition of Norberto Atilio Bianco and Nilda Susana Wherli. In addition, on March 7, 1997, the State sent a communication advising that Norberto Atilio Bianco and Nilda Susana Wherli had been extradited on March 6, 1997.

16. On August 5, 1997, the petitioners submitted an amplified complaint, which was forwarded to the State. On February 24, 1998, the IACHR convened a meeting of the Parties for March 25, 1998, to ascertain whether they were willing to continue the friendly settlement process.

17. The petitioners submitted additional information on October 23, 1995, October 3, 1996, February 19, 1997, and September 15, 1997, while, on October 5, 2005 and October 21, 2005, the State presented additional information, which was duly forwarded to the Parties. On July 15, 2005, the petitioners again amplified their complaint, which was duly forwarded to the State.

18. Given the absence of any further communications, on April 5, 2010, the Commission asked the parties for updated information on the case. On August 17, 2010 and June 21, 2011, the State sent in updated information, which was forwarded to the petitioners. On August 4, 2011, the IACHR again requested updates from the Parties.

19. Due to the lack of communication thereafter, on February 07, 2012, the Commission reiterated its request for information of August 04, 2011, pointing out that the IACHR could archive the case if it did not receive a reply within three months. However, in a communication received on May 7, 2012, the petitioners pointed out that "while the original grounds for which the petition was lodged with the Honorable Commission no longer subsist, it is to be noted that the settlement of the conflict that gave rise to the petition was achieved without recourse to intervention by the Paraguayan State. That said, we hereby indicate that we have no objection to the case being archived."

IV. BASIS FOR THE DECISION TO ARCHIVE

20. 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.

21. As indicated in a communication received by the Commission on May 7, 2012, the petitioners considered that the original grounds for presentation of the case to the Commission no longer subsisted and said they were not opposed to the petition being archived. Given that both the petitioners and the State agreed to this petition being archived, pursuant to Article 48.1 (b) of the American Convention on Human Rights and Article 42 of its Rules of Procedure, the IACHR hereby decides to archive this complaint regarding alleged violations of the State of Paraguay.