

REPORT No. 96/12
DECISION TO ARCHIVE
CASE 11.819
ARGENTINA
November 8, 2012

ALLEGED VICTIM: Christian Daniel Domínguez Domenichetti

PETITIONER: Centro de Estudios Legales y Sociales (CELS), Centro por la Justicia y el Derecho Internacional (CEJIL) and Coordinadora contra la Represión Policial e Institucional (CORREPI)

ALLEGED VIOLATIONS: Articles 1.1, 4, 5, 8 y 25 of the American Convention on Human Rights

DATE PROCESSING BEGAN: October 14, 1997

I. POSITION OF THE PETITIONERS

1. The petitioners maintain that the State is responsible for the death of Christian Domínguez Domenichetti, caused by wounds inflicted when he was severely beaten by prison guards on February 15, 1995. They further maintain that the State failed to fulfill its international obligations to punish in a manner commensurate with the gravity of the torture suffered by Mr. Dominguez. They argue that because the judgment handed down in the criminal proceedings did not adequately punish the violations of Mr. Domínguez's right to life and physical integrity, his family were victims of denial of justice. Specifically, they maintain that the State failed to correctly apply the relevant legal provisions and ended the investigation and prosecution without even determining who was responsible for his death.

2. The petitioners maintain that on February 15, 1995, when he was being held at Penitentiary Unit No. XV of the Penitentiary Service of the Province of Buenos Aires, Christian Domínguez was detained in the Prison's Psychiatric Unit when he grabbed a piece of glass and used it to take the prison doctor, Bladimiro Pawlum Czesjic, hostage by pressing the piece of glass against the doctor's throat. Holding the doctor captive, Domínguez ordered the male nurse to open the doors of the cell to let him through to the Maximum Security wing. Once he was there, he managed to get a guard to open the first set of railings, which let him into the central or Control Wing of the prison. While this was happening another guard alerted the Control Zone regarding the hostage-taking and a guard approached Domínguez, who then freed the Doctor and took the nurse hostage. Before Domínguez managed to open the second set of railings, more guards arrived, who tried in vain to get Domínguez to let his hostage go and surrender. They then managed to seize him, the hostage was set free, and Domínguez was hauled to the Admission Sector.

3. The petitioners report that Domínguez was then held in a cell used for transferring people in and out of the prison. The guards removed his clothes from the waist down, including his shoes. They handcuffed him behind his back and then attached the handcuffs to a bar in the cell, after which he was savagely beaten by the prison guards all over his body, as a punishment for the incident described above. The beating caused grave damage to his liver, resulting in a massive hemorrhage and death. By this time, he had been to another part of the prison. The petitioners state that the autopsy report mentions, apart from the injuries to the liver, injuries to the head, neck, extremities, back, lungs, spleen, and ribs caused by punches and kicks and a blunt or semi-blunt instrument.

4. The petitioners claim that, because of the above, criminal proceedings were initiated and the Public Prosecutor accused five prison officers in Penitentiary Unit No. XV of the Penitentiary Service of the Province of Buenos Aires, under the amended text of the Criminal Code. Four people were accused of torture followed by death and one was accused of negligence in the performance of duties

(*negligencia funcional*). They say that the Criminal and Correctional Court in Mar del Plata handed down judgment on March 24, 1997. Of the four people accused of torture followed by death, two were declared guilty of torture, one of negligence in the performance of duties, and the other was acquitted. The fifth person originally accused of negligence in the performance of duties was also acquitted. Those convicted of torture were sentenced to 13 and 11 years in prison, respectively, and both were disqualified, absolutely and perpetually, from holding similar security positions ever again. The person convicted of negligence in the performance of duties was sentenced to 18 months in prison and disqualified from holding similar security positions for three years.

5. The petitioners point out that the judgment confirmed that at least two of the accused actively participated in the torture and, according to the expert testimony presented, Mr. Domínguez's death was necessarily caused by the blows he was dealt. Nonetheless, they allege that nobody was convicted of his death and that no additional proceedings were instituted to determine that responsibility.

6. The petitioners point out that once a sentence had been handed down, however much the relatives of the alleged victim questioned its validity, those relatives had no legal grounds for challenging it under the provisions of the Code of Criminal Procedure of the Province of Buenos Aires in effect at that time. They specify that only the Public Prosecutor was entitled to appeal the conviction or assert the inappropriateness of the characterization of the criminal act for which liability was established and that in the present case he refrained from doing so.

7. The petitioners maintain that Argentina is obliged, under the American Convention and the Inter-American Convention to Prevent and Punish Torture, not only to characterize acts of torture as serious crimes but also to punish those responsible for inflicting it with sentences that fully match the seriousness of the act. The petitioners argue that while Argentina has complied with its obligations in the first regard, in the present case it failed to do so in the second, or punishment, aspect. Inter alia, the petitioners maintain that in practice the court imposed a requirement not contemplated in the law and impossible to meet under the circumstances of a case of torture, thereby facilitating the imposition of a lighter sentence.

8. The petitioners further maintain that the judicial authorities deliberately and arbitrarily refrained from trying and punishing the accused in accordance with the seriousness of the crimes committed against Christian Domínguez. They maintain that the legal provision applied by the court to determine liability for the crimes committed against Christian Domínguez and to punish their perpetrators was incompatible with the requirements of the American Convention and the Inter-American Convention to Prevent and Punish Torture. Although the State correctly characterized the crime as one of torture followed by death, since it provided for more severe punishment in that circumstance, in practice the augmented penalty was not imposed. The petition places on record that Article 144.3.iii of the Argentine Criminal Code stipulates that "if the victim should die on account or in the process of torture the sentence shall be life imprisonment with or without hard labor. If the victim suffers any of the injuries contemplated in Article 91 (very serious injuries), the sentence shall be imprisonment with hard labor or imprisonment for between 10 and 25 years." The petitioners argue that the imposition of appropriate and adequate sentences constitutes a deterrent for future human rights violators.

9. The petitioners point to other violations of the State's obligation to investigate the torture and death of Mr. Domínguez. They maintain that, although it was proved that at least the Director, the Assistant Director, and the Medical Officer facilitated the torture by omission, having failed in their duty to stop it when it was in their power to do so, they were fully acquitted of any participation in the acts. They maintain, furthermore, that additional steps should have been taken to investigate the death of the alleged victim and effectively establish liability for it.

II. POSITION OF THE STATE

10. The State's main argument is that it responded to the situation denounced as required under the American Convention and the Inter-American Convention to Prevent and Punish Torture. The State recognizes the fact that the injuries to the victim which brought about his death were inflicted by

staff of the Penitentiary Services of the Province of Buenos Aires, on February 15, 1995. As Penitentiary Service officials, those responsible were agents of the State, although they acted independently and not by virtue of an order or plan. Based on the pleadings, the acts denounced were duly investigated, criminal proceedings were instituted, and those convicted were duly sentenced.

11. The State maintains that it complied with its international obligation under the American Convention and the Inter-American Convention to Prevent and Punish Torture to characterize the acts of torture as felonies. Under the Criminal Code, the crime of torture, when followed by death, is punishable by the most severe sentence applicable under Argentine criminal law. Moreover, the State maintains that it fulfilled its international obligations to punish those who participated in the facts denounced in a manner commensurate with the gravity of the crimes. The right to judicial protection recognized by the Convention consists of the right to simple and prompt access to a competent, independent, and impartial court that offers the possibility, but never a guarantee, of a favorable remedy. The State argues that in the present case the petitioners did in effect have that recourse at their disposal.

12. The State maintains that the sentences handed down in domestic judicial systems are a matter pertaining exclusively to domestic legislation and jurisdiction. Each State is obliged to establish adequate punishments for crimes committed within its jurisdiction and in that context judges are obliged to impose those sentences in accordance with due process of law. The State maintains that there are no international provisions establishing specific terms for specific sentences and therefore the alleged lightness of the sentence imposed in the instant case may not form the basis for a complaint within the Commission's jurisdiction. Furthermore, the State points out, according to Article 5.6 of the American Convention, punishments consisting of deprivation of liberty shall have as an "essential aim" "the reform and social re-adaptation" of the prisoner, not the number of years served.

13. The State alleges that, in light of the evidence presented, the domestic court complied with its international obligations and reached the conclusion that the evidence sufficed for conviction but did not suffice to impose the maximum punishment the petitioners hoped for.

14. The State argues that, with respect to the crimes committed against the alleged victim, perpetrated by State agents acting independently, it assumed responsibility and adequately complied with its international obligations, by investigating the facts, prosecuting those involved, and sentencing the perpetrators. It maintains, furthermore, that the Commission is not competent to review decisions taken by Argentine judicial authorities acting within their sphere of competence. The State points out that the mere fact that the petitioners disagree with a domestic sentence, or are not satisfied with it, is not sufficient grounds for admitting their complaint.

III. PROCESSING BY THE IACHR

15. The petition was received on September 23, 1997. On October 14, 1997 the Commission began processing it and forwarded the pertinent parts thereof to the State, with a request, pursuant to the IACHR's Rules of Procedure in effect at that time, that it reply within 90 days. On a note dated that same day, it notified the petitioners of that decision. The State subsequently asked for extensions of the deadline and then presented its reply in a communication dated August 28, 1998, which was duly forwarded to the petitioners.

16. The IACHR subsequently received information and observations from both parties. On October 24, 2003, the IACHR adopted Admissibility Report No. 51/03 regarding the instant case, in which it concluded that it was competent to examine the allegations of the petitioners and that the petition was admissible under Article 46 and 47 of the American Convention, with respect to the alleged violations of Articles 8, 25, and 1.1 of that international instrument. The parties were notified of the Report on January 12, 2004. In a Note dated March 12, 2004, the petitioners expressed interest in seeking a friendly settlement. In Notes dated August 30, 2004 and May 10, 2005, the petitioners asked the Commission to continue processing the case.

17. In Notes dated December 10, 2010 and May 17, 2011, the IACHR requested updated information from the petitioners. In a Note dated November 14, 2011, the petitioners filed an official request to desist from their case before the IACHR pursuant to Article 41, stating that they had lost contact with the relatives of Christian Domínguez Domenichetti and were therefore prevented from representing them. That communication was forwarded to the State for its information.

IV. REASONS FOR THE DECISION TO ARCHIVE

18. Article 41 of the Rules of Procedure of the IACHR regulates withdrawal, stating that “The petitioner may at any time desist from his or her petition or case, to which effect he or she shall so notify the Commission in writing. The statement by the petitioner shall be analyzed by the Commission, which may archive the petition or case if it deems it appropriate, or continue to process it in the interest of protecting a particular right.”

19. In the instant case, and pursuant to the aforementioned regulatory framework, the IACHR notes that the petitioners wrote asking to desist from processing the case before the IACHR. Under those circumstances, the IACHR decides to archive Case No. 11.819 in accordance with Article 48.1.b of the American Convention and Article 42.1 of its Rules of Procedure.

Done and signed in the city of Washington, D.C., on the 8th day of the month of November, 2012.
(Signed): José de Jesús Orozco Henríquez, President; Felipe González, Second Vice-President; Dinah Shelton, Rodrigo Escobar Gil, Rosa Maria Ortiz and Rose-Marie Antoine, Commissioners.