

REPORT No. 92/12
DECISION TO ARCHIVE
PETITION 200-02
ARGENTINA
November 8, 2012

ALLEGED VICTIM: Mauricio Gerardo Rolón

PETITIONER: Office of the Public Defender with the Federal Criminal Trial Courts of Argentina

ALLEGED VIOLATIONS: The petitioner refers to alleged violations of Articles 5, 7, 8, 9, 23, and 25 of the American Convention on Human Rights, read in conjunction with articles 1(1) and 2 thereof. It also alleged violations of Article XXVI of the American Declaration of the Rights and Duties of Man.

INITIATION OF PROCESSING: July 16, 2008

I. POSITION OF THE PETITIONER

1. On March 22, 2002, the Inter-American Commission on Human Rights (hereinafter the "Commission" or the "IACHR") received a complaint lodged by the Office of the Public Defender with the Federal Criminal Trial Courts (*Defensoría Oficial ante los Tribunales Orales en lo Federal Criminal*) of Argentina. The petition was filed on behalf of Mr. Mauricio Gerardo Rolón.

2. The petition stated that on October 13, 1999, the alleged victim was sentenced to 25 years in prison, having been found criminally responsible for the crime of homicide committed in the course of a robbery. The petition alleged that the rebuttal arguments and evidence presented by Mr. Rolón's defense counsel were ignored, and that his conviction was based on conflicting and incompatible testimony. The petition also mentioned that extenuating circumstances were not considered, such as the fact that Mr. Rolón was apprehended for a crime he committed when he was just 20 years old, suffering from health problems and with two small children to support. The petition went on to say that the lower-court's ruling did not set forth the reasons why the alleged victim was given the harshest sentence allowed for crimes of this type.

3. As for the matter of exhaustion of domestic remedies, the petitioner reported that a cassation appeal was filed to challenge the conviction; when that appeal was denied, a complaint appeal was brought. Both appeals were denied, and in their decision the courts held that the weighing and evaluation of the evidence were the purview of the court that heard the merits of the case. The petitioner alleged that the higher court did not examine the merits of the lower-court ruling, thereby violating Mr. Rolón's right to judicial review. Furthermore, the petitioner explained that the complaint appeal was partially upheld, specifically the alleged victim's grievance regarding the reasoning of the verdict. However, the decision in that appeal was also subsequently overturned by the Court of Criminal Cassation (*Cámara de Casación Penal*), which held that the defense's arguments regarding the severity of the sentence were unacceptable, as the sentence was consistent with the sentencing guidelines. A special appeal was filed to challenge the ruling by the Court of Criminal Cassation, but was declared inadmissible, whereupon a complaint appeal was filed with the Supreme Court of the Nation to challenge the decision on the special appeal. That appeal was also denied.

II. POSITION OF THE STATE

4. The State argued that the petitioner did not elaborate upon or state the grounds for most of the violations alleged. Hence, the State did not respond to those allegations. As for the fact that the alleged victim had received the maximum sentence, the State observed that the Criminal Code provides the judge with a range of sentences to fit the crime. At time of sentencing, it is up to the court to assess which the appropriate sentence would be based on the crime committed. It argued that the court acted within its authorities.

5. As for the arguments made concerning violation of the right to have a judgment reviewed by higher courts, the State observed that the petition essentially concerns a disagreement with the decision adopted in a criminal case. It reminded the Commission that it does not have the authority to act as a quasi-judicial organ of fourth instance and review decisions handed down by domestic courts. Nevertheless, the state asked the Commission to divide the petition into two parts. The allegations made in connection with Article 8(2)(h) of the Convention would be joined with a petition that was already in a friendly settlement process; it asked that the petition be declared inadmissible with respect to the other Convention violations alleged.

III. PROCESSING WITH THE IACHR

6. The Commission received the petition on March 22, 2002. Additional information was received from the petitioner on July 8, 2004. The IACHR forwarded the petition to the State on July 16, 2008, and asked that it submit its observations. Those observations were submitted on February 20, 2009, and forwarded to the petitioner on March 30, 2009. On May 13, 2009, the Commission received additional information from the petitioner and forwarded it to the State on November 3, 2009, for its information.

IV. BASIS FOR THE DECISION TO ARCHIVE

7. 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.

8. In a communication dated May 13, 2009, the petitioner announced that it would not pursue this petition any further, since "the principal violation denounced –i.e. application of Article 24 of the Criminal Code, which established a more onerous formula as to how time spent in pre-trial detention would be computed and counted toward a prison sentence- had been corrected at the local level". In that same submission, the petitioner reported that Mr. Mauricio Gerardo Rolón was deceased and that the Office of the Public Defender had no contact with any member of his family. Having done the corresponding analysis, and inasmuch as the Commission does not have any information regarding Mr. Rolón's family members and since, as reported, the grounds for the original complaint no longer exist, the Commission decides to close the record on the present petition, pursuant to Article 48(b) of the Convention and Article 42 of the Commission's Rules of Procedure.