

REPORT No. 77/13
DECISION TO ARCHIVE
PETITION 12.106
ARGENTINA
July 16, 2013

ALLEGED VICTIMS: Enrique Hermann Pfister Frías y Lucrecia Oliver de Pfister Frías

PETITIONER: Julio César Strassera, Nicolás Corradini y Santiago Felgueras¹

ALLEGED VIOLATIONS: Articles 1.1, 7, 8, 22, 24 y 25 of the American Convention on Human Rights.

INITIATION OF PROCESSING: April 29, 1998

I. POSITION OF THE PARTIES

A. Position of the petitioners

1. The petitioners stated that Enrique H. Pfister Frías served as Minister of the Interior, Justice and Public Instruction of the Province of Salta from May 25, 1973 to February 1974. They stated that on March 12, 1975 a car bomb allegedly exploded in the Pfister family home that destroyed the house. They allege that as a result, the Pfister family temporarily moved to the city of Buenos Aires and then to Acassuso, Province of Buenos Aires, where they remained until October 10, 1976.

2. The petition states that after the military coup of March 24, 1976, the alleged victims heard from different sources about "the imminent threat to their personal freedom and physical integrity," so they sought political asylum at the Embassy of the Republic of Venezuela. According to the petitioners, on October 10, 1976 the Pfister family entered the premises of the Embassy and were "deprived of their freedom in their own country, because they were subject to discretionary action of the Government, its security officers, and unofficial agents". They allege that for reasons of physical space in the embassy, Enrique H. Pfister Frías was the only one that stayed there. They also claimed that Mr. Pfister Frías remained with "political asylum at the embassy for nearly eight months, deprived of his freedom." Additionally, they presented information that demonstrates that the Pfister family traveled to Venezuela on April 1977 and returned to Argentina on December 22, 1983.

3. In relation to the exhaustion of domestic remedies, the petitioners stated that as a result of the friendly settlement agreement in the report No. 1/93 of the Inter-American Commission on Human Rights, the state had adopted a policy of reparations for victims of the military dictatorship that are provided by the law 24.043. They claimed that the alleged victims asked the Ministry of Interior for benefits under this law. They indicated that on October 23, 1996, the Minister of Interior issued the Resolution N° 2770, by which the benefit was rejected for "lack of framing" of the facts in the Law 24.043.

4. They also indicated that they filed a direct appeal stated in the law before the House Administrative Committee against the resolution N° 2770 which was rejected by decree of October 9, 1997. They hold that by filing this appeal the domestic remedies were exhausted. They also argue that the law 24,043 was passed to address the situation of people who have suffered similar human rights violations, and that they have not had an appropriate way to make their claim.

5. The petitioners also explained the reasons why they did not try an ordinary trial. They indicate that the jurisprudence of domestic courts suggest that if the legislation provides for a direct appeal before the Court of Appeals, an ordinary trial of first impression is forbidden to the parties. They argue that such action does not allow broader discussion in the judiciary, and that there has not been a successful case similar to their own. Regarding the damages findings, they argued that this action was barred by the statute of limitations. They indicated that the position of the courts was to consider that the period of limitations began at the time the restoration of democratic order in 1983.

6. Regarding the alleged violation of the obligation to repair the damage caused by the alleged violation of the rights to personal integrity and the freedom of movement and residence, the petitioners argued that if they had not taken refuge in a foreign embassy "they would probably have been killed or disappeared". They said that because of that threat, along with the harassment, they were forced to migrate to another country, without documents nor possibility of return, which generated a "significant damage as well as the constant and prolonged violation of [these] rights".

7. Regarding the alleged violation of Article 8 (1) of the American Convention, the petitioners argued that during the internal procedures they offered evidence and testimony from people who were allowed to establish that if the family Pfister Frias had remained in Argentine territory, they would have been arrested, as well as the circumstances that have led them to the exile. According to what is stated by the petitioners, proof of these facts was never sought, neither in the administrative nor the judicial process.

8. Regarding the alleged violation of the right to equality, the petitioners state that in similar cases to theirs, compensation under law 24.043 has been granted. In this sense, they claimed that the Argentine government has compensated people who were detained for few hours or who never were detained at all.

9. Based on the above allegations, the petitioners have asked the Commission to declare a violation of their rights to personal liberty, a fair trial, freedom of movement and residence, and judicial guarantees contained in Articles 7, 8, 22, 24 and 25 and to recommend the Argentine State to grant a fair compensation.

10. By letter of September 27, 2012, the lawyer Juan Ignacio Gomez Naar informed the IACHR of the withdrawal of Lucrecia Oliver Pfister Frías from Case No. 12,106.

B. Position of the State

11. In its written submissions to the Commission the State filed three defenses: (i) that the request was submitted beyond the limits of reasonable time, (ii) that domestic remedies had not been

12. In connection with the filing of the petition outside the reasonable time, the State argued that although at the time of the alleged violations there were no appropriate mechanisms for filing claims, this situation ceased by December 10, 1983. It said that it took more than 15 years of democracy in Argentina until the petitioners submitted their case to the Commission, which exceeds the reasonable period envisaged in the Rules of Procedure of the Commission.

13. Regarding the lack of exhaustion of domestic remedies, the State argued that the law 24.043 does not deal with the situation submitted by the petitioners, that they are actually questioning the content of the law itself, for which purpose they should conduct a trial to analyze the constitutionality of the law. It added that domestic remedies are available and are effective to challenge the norm. It also noted that the route used by the petitioners to access their claim was incorrect, because the selection criteria made by the legislature to establish the beneficiaries of the law could not be addressed by the Institutions in which the petitioners sought recourse.

14. The State asserted that the law 24,043 applies when there has been a formal act providing for the detention of a person or when a person has been detained regardless of whether there was a formal act ordering such detention. It said that the benefits provided by the law apply to people for whom an arrest order was issued, but who had not been arrested. It said that people detained under the Executive Branch that took the option to leave the country, also fell into one of those two categories. It noted that unlike previous successful cases, the petitioners had not demonstrated actual deprivation of liberty, or the existence of a formal act of detention.

15. The state also alleged that the petitioners had not exhausted the damages trial process. In this regard it affirmed that, according to the request, the event in question ended at the beginning of democracy in Argentina. Consequently, according to the State, the prescription of period of two years ran within the democratic regime without the petitioners ever having come the courts, as other people at that time had successfully done.

16. In addition, the State argued that the complaint filed by the petitioners does not characterize a violation of the Convention in accordance with Article 47 (b) thereof. It added that according to the "fourth instance formula" the Commission cannot review the judgments of domestic courts acting within their competence and with due process, unless they have committed a violation of the Convention, which has not occurred in this case.

17. As for the requirement that the facts constitute a violation of the American Convention, the State also asserted that there was no violation of Article 8 (1) of that treaty, because the recognition of the alleged victims as beneficiaries of the law 24.043 did not depend on the analysis of the evidence offered, but on the scope of the law. It added that the decision of the House Administrative Committee would have proved the facts alleged by the petitioners and that it was not a lack of evidence of the facts, but their legal qualification. which caused the case to be rejected.

18. Additionally, the State held that a different outcome of a dispute on any issue is normal in any judicial system. The State also argued that, while it is possible to present elements to support one or another position, these decisions are framed by the findings of the lower courts and are therefore outside the jurisdiction of the Commission. It considers that the law clearly states that the remedy in

19. Regarding the alleged violation of the right to equality, the State argued that it should be granted a "scope of discretion" to determine the extent of its reparation policies. It said that the rule of equality should only be analyzed in light of the fact that the provisions of law 24.043 are an exceptional benefit, not to seek redress, and that the scope of this policy is governed by the principle of equity and not by "linear and strict" equality.

II. PROCEEDINGS BEFORE THE IACHR

20. On March 16, 2010 the Inter-American Commission decided to admit the petition and proceed with the analysis of the merits of the alleged violations of Articles 8 (fair trial) and 25 (judicial protection), relative to 1.1 (obligation to guarantee the rights) and 2 (duty to adopt domestic legal measures) of the American Convention and Articles I and VIII of the American Declaration on the Rights and Duties of Man.

21. By letter on July 8, 2010, the petitioners reported that they had been in contact with representatives of the Argentine government to seek a friendly settlement agreement, requesting the rescission of the term given for allegations on the merits. Also in this letter they reported that the alleged victim, Mr. Enrique Hermann Pfsiter Frías, had died on August 19, 2005. On May 27, 2011, the State reported that it had opened a forum for dialogue with the petitioners to explore the possibility of a friendly settlement agreement.

22. By letter of September 27, 2012, the lawyer Juan Ignacio Gomez Naar informed the IACHR of the withdrawal of Lucrecia Oliver de Pfister Frías to the Case No. 12,106. He said that the reason for her withdrawal was that the Argentine government had granted the alleged victim the benefit provisions of law 24.043, which was the main object of his petition before the IACHR.

III. GROUNDS FOR THE DECISION TO ARCHIVE

23. 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."

24. 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. 12.106 in accordance with Article 48.1.b of the American Convention and Article 42.1 of its Rules of Procedure.

