

Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Gonzalo Xavier and Matias Angel Reggiardo Tolosa v. Argentina
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Decided by:	President: Sonia Picado-Sotela
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WHEREAS:

1. In a fax dated October 20, 1993, and received at the Secretariat of the Inter-American Court of Human Rights (hereinafter "the Court") on November 8 of that same year, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted to the Court, pursuant to Articles 63(2) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and 24 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), a request for provisional measures in connection with Case 10.959 currently before the Commission. The provisional measures requested relate to "the mental integrity of minors Gonzalo Xavier and Matías Ángel, Argentine citizens," who, according to the petition presented to the Commission on June 23, 1991, by the Grandmothers of the Plaza de Mayo, a non-governmental organization, are the "children of Juan Enrique Reggiardo and María Rosa Ana Tolosa, a married couple who were the victims of a forced disappearance;"
2. The petition was filed with the Commission because the aforementioned minors have not been delivered to their legitimate family and the family demands that they be placed under its care in provisional custody. This demand has not been met to date, a fact that severely endangers the mental integrity of the minors;
3. According to the petition, on February 12, 1987, the National Federal Criminal and Correctional Court of First Instance N° 2 applied the hemogenetic procedure provided by Law 23.511 establishing the National Genetic Data Bank in order to make an identification and determined that the aforementioned minors, who were born during the illegal detention of their mother, are the offspring of disappearance victims Juan Enrique Reggiardo and María Rosa Ana Tolosa;
4. According to the request for provisional measures, Gonzalo Xavier and Matías Angel were born in April 1977, during the captivity of their mother, and were immediately removed and later registered as the children of Samuel Miara, a former assistant police inspector of the Federal Police, and his wife, Beatriz Alicia Castillo. When the minors reached the age of eleven,

they became aware of the fact that the Miara couple were not their real parents. In 1985, they were taken to Paraguay, where they lived, confined to their home, until 1989. That year they were brought back to Argentina "and placed for a period of time with a foster family, pending the results of the immunogenetic tests. Despite evidence as to the true origins of these children, they continue to be held by the persons who abducted them and falsified their real identities;"

5. According to the request for provisional measures, the proceedings before the Commission developed as follows:

6. On August 21, 1992, the Commission received a request for provisional measures from the petitioners. Their argument was that the minors were caught in a situation which is being prolonged indefinitely and poses grave psychological risks to them as a result of the suppression of their identities, their being withheld from their family, and their remaining in the hands of persons who have been prosecuted for crimes committed against them. This request was transmitted to the Government.

7. By note of September 16, 1992, the Government countered that the claim was not admissible because some important issues were still pending a decision by the Judiciary. The Government informed the Commission that on September 7 of that same year, the Office of the Attorney General had requested the Trial Judge to declare the birth certificates of the minors to be null and void and to order their provisional registration under the surname of REGGIARDO-TOLOSA, or under an assumed surname, until such time as the family problem is resolved. It also reported that the preventive custody of the MIARAs had been confirmed by the National Federal Court of Criminal and Correctional Appeals of the Federal Capital because it had found them to be prima facie criminally responsible for the crimes of concealment and withholding of minors and misrepresentation of public documents accrediting the identity of persons.

8. By note of March 11, 1993, the Commission declared the case admissible, taking into account the fact that the minors had been identified as belonging to the REGGIARDO-TOLOSA couple and the inability of the family members of the minors to file appeals because they are deemed to be parties in the proceedings at which the custody of said minors is to be decided. Pursuant to Article 46(2)(c) of the Convention, the Commission determined that the unwarranted delay in rendering a final judgment exempted the petition from the requirement of exhaustion of domestic remedies. In accordance with Article 29 of its Regulations, the Commission furthermore requested that the Government of Argentina adopt provisional measures to provide without delay for the placement of the minor children in a foster home under temporary custody and to arrange for them to receive appropriate psychological treatment under the supervision of a professional appointed by their family, until such time as their delivery to their legitimate family is settled.

9. By note of June 2, 1993, the Government of Argentina responded to the request for provisional measures by informing the Commission that, on April 15, the Federal Judge with jurisdiction over Custody Arrangements for Minors had ordered two hearings to be held with the purpose of placing the minor children under temporary custody in a foster home. The Government also reported that the annulment of the birth registration of the MIARA minors had been ordered, and that they had been registered under the name of REGGIARDO-TOLOSA.

10. Nevertheless, on August 19, 1993, the Commission received a communication from the Association of Grandmothers of Plaza de Mayo, informing it that no steps had been taken to transfer the minors to a foster home. Consequently, they asked the Commission, pursuant to Article 63 of the Convention, to request the Inter-American Court to order provisional measures to ensure that the Argentine Government place the minors in a foster home.

6. The Commission considers that the situation giving rise to the petition is grave because "the longer [it] . . . is allowed to continue without justification, the more serious the mental condition of the minors becomes" and is further exacerbated by the suppression of their identities and by the fact that they are not being returned to their legitimate family or transferred to a foster home under temporary custody;

7. The Commission also believes that justice has been unjustifiably delayed, for the identity of the minors had already been established in 1989. Nevertheless, they continue to be held by the very persons who are being prosecuted for committing illegal acts against them. The case history of the minors presents a prima facie case of imminent danger to their mental health and the Commission considers that Argentine law does not provide adequate ordinary guarantees to protect their mental identity;

8. The Commission therefore requests that the Court, in application of Article 63(2) of the Convention "require the Government of Argentina to order the immediate transfer of the minor children to ensure that they be placed under temporary custody in a substitute location and be provided adequate psychological treatment until such time as the matter of their delivery to their legitimate family is settled;" and,

9. The President of the Court, Judge Rafael Nieto-Navia, recused himself from hearing this request for provisional measures on the ground that he is a "member and President of the Argentine-Chilean Arbitral Tribunal to delimit the boundary between Milestone 62 and Mount Fitz Roy." Consequently, the Presidency has been assumed by Judge Sonia Picado-Sotela, Vice President of the Court.

CONSIDERING THAT:

1. Argentina is a State Party to the American Convention on Human Rights since November 5, 1984, date on which it also accepted the jurisdiction of the Court, in accordance with Article 62 of the Convention;

2. Article 63(2) of the Convention provides that
In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court shall adopt such provisional measures as it deems pertinent in matters it has under consideration. With respect to a case not yet submitted to the Court, it may act at the request of the Commission.

3. Article 24(4) of the Rules of Procedure stipulates that
If the Court is not sitting, the President shall convoke it immediately. Pending the meeting of the Court, the President, in consultation with the Permanent Commission and, if possible, with the other judges, shall call upon the government concerned to adopt the necessary urgent measures

and to act so as to permit any provisional measures subsequently ordered by the Court to have the requisite effect.

4. Despite the fact that the Commission has not yet submitted the case to the Court, the mental integrity of the two minors is at stake and it is important to prevent them from suffering irreparable damage as a result of the situation alleged in the request for provisional measures. This situation is characterized by the gravity and urgency necessary for the request to be acted upon;

5. Argentina has the obligation to adopt all necessary measures to protect the mental integrity of, and prevent irreparable damage to, all persons whose rights might be threatened, in this case those of minors Gonzalo Xavier and Matías Angel;

THEREFORE:

THE PRESIDENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

taking into consideration Article 63(2) of the American Convention on Human Rights and exercising the authority conferred on her by Article 24(4) of the Rules of Procedure, in consultation with the Judges of the Court,

ORDERS:

1. To enjoin the Government of the Republic of Argentina to adopt without delay whatever measures are deemed necessary to protect the mental integrity of, and avoid irreparable damage to, minors Gonzalo Xavier and Matías Angel Reggiardo-Tolosa, in strict compliance with its obligation to respect and guarantee human rights under Article 1(1) of the Convention, in order to ensure that the provisional measures that the Court may adopt during its next regular session, to be held from January 10 to 21, 1994, will have the requisite effect.

2. To request the Government of Argentina to submit a report on the measures taken pursuant to this order to the President of the Court no later than December 20, 1993, to enable her to bring this information to the attention of the Court.

3. To instruct the Secretariat to promptly transmit to the Inter-American Commission on Human Rights the report to be received from the Government of the Republic of Argentina.

Sonia Picado-Sotela
President

Manuel E. Ventura-Robles
Secretary