

Institution:	Inter-American Court of Human Rights
Title/Style of Cause:	Guillermo Jose Maqueda v. Argentina
Doc. Type:	Order (Preliminary Objections)
Decided by:	President: Hector Fix-Zamudio; Vice President: Hernan Salgado-Pesantes; Judges: Alejandro Montiel-Arguello; Maximo Pacheco-Gomez; Antonio A. Cancado Trindade
	Judge Oliver Jackman abstained from hearing this case due to his previous participation in several stages of the case while it was being examined by the Inter-American Commission on Human Rights.
Dated:	17 January 1995
Citation:	Maqueda v. Argentina, Order (IACtHR, 17 January 1995)
Represented by:	APPLICANTS: CEJIL and Human Rights Watch/Americas
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In the Maqueda Case,

the Inter-American Court of Human Rights delivers the following decision pursuant to Article 43 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Rules of Procedure") on the instant case submitted by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") against the Republic of Argentina (hereinafter "the Government" or "Argentina").

I.

1. This case was submitted to the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") by the Commission by note of May 25, 1994, which was accompanied by Report N° 17/94 (Case 11.086) of February 9, 1994.

2. The Commission submitted this case in order for the Court to determine whether there had been a violation, by the Government, of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") "by virtue of the sentencing of Guillermo José Maqueda, an Argentine citizen, to ten (10) years of imprisonment, in violation of the Convention."

The Commission asked the Court to declare that Argentina has, to the detriment of the alleged victim, violated:

the right to a hearing by an impartial tribunal (Article 8(1)); the right to be presumed innocent (Article 8(2)); and the right to appeal the judgment to a higher court (Article 8(2)(h)), together with the judicial guarantees provided for by Article 25, all of the above in relationship to the generic obligation to respect the rights and freedoms recognized in the Convention and to ensure their free and full exercise pursuant to Article 1(1) thereof. It also asked the Court to declare that the State of Argentina violated Article 2 of the Convention for failure to adopt the necessary internal legal measures to guarantee the right provided for in Article 8(2)(h).

It further asked the Court:

2. That it declare that the State of Argentina must order the immediate release of Guillermo Maqueda by means of pardon or commutation of sentence.
3. That it declare that the State of Argentina must provide adequate reparation and indemnification to Guillermo Maqueda in consideration of the serious damage inflicted on him—both materially and morally—as a consequence of the violation of his rights as protected under the Convention.
4. That it declare that the State of Argentina is obligated to establish a regular mechanism to ensure the right to appeal in the procedure established by law 23.077, with the purpose of making said rule compatible with the American Convention as establishes on with its Article 2.
5. That it sentence the Government of Argentina to pay court costs and attorneys' fees in relationship to these proceedings.

3. According to the petition, Guillermo Maqueda was an active member of Movimiento Todos por la Patria (hereinafter "MTP" - All for the Fatherland Movement), "a political movement of a democratic nature that is legally recognized" in Argentina. On January 22, 1989 Mr. Maqueda attended a meeting together with other members of the MTP, where one of the leaders

Mr. Francisco Provenzano, informed them about the possibility of a military uprising at a base in the La Tablada area—not an exceptional occurrence in Argentina in 1989, where there had been several military uprisings as well as rumors of possible uprisings. Motivated by the possibility of such an uprising the participants discussed the organization of several activities to promote and protect democracy and constitutional order. Mr. Maqueda was then informed that a group of persons would take part in a peaceful demonstration against the uprising, as had been done on previous occasions. Consistent with his democratic convictions, Mr. Maqueda decided to participate in said act of protest.

4. According to the Commission, when Guillermo Maqueda and other members of the MTP, arrived on the morning of the following day near the La Tablada base, they found a different situation from what they expected: an armed confrontation resulting from the actions of a group of persons who were attempting to take the base, a circumstance that prevented them from carrying out the scheduled peaceful demonstration. A few hours later Mr. Maqueda left the area.

5. The petition further states that "among the participants in said confrontation were some members of the MTP, mainly leaders of the movement," who were arrested and later sentenced for the commission of several offenses.

6. According to the Commission's petition, on May 19, 1989, four months after his participation in the demonstration, Mr. Maqueda was arrested. On June 11, 1990 the San Martin Federal Chamber sentenced him to ten (10) years of imprisonment pursuant to

Law 23.077, passed on August 9, 1984, known as the Law for the Defence of Democracy—a copy of the law (sic) is provided as evidence—. Said law (sic) creates a special criminal procedure for cases involving acts of violence whose purpose is to make an attempt against constitutional order and democratic life.

The San Martin Federal Chamber sentenced Guillermo Maqueda as:

- a) an accomplice in the crime of qualified unlawful assembly, and
- b) an accessory in the offenses of rebellion, illegal seizure, aggravated robbery, aggravated unlawful imprisonment, consummated and attempted doubly aggravated homicides, and serious and minor damages.

Mr. Maqueda's representatives lodged a special appeal that was rejected by the San Martin Federal Chamber of Appeals on October 25, 1990. In view of such denial, they lodged a complaint appeal for rejection of the special appeal with the Supreme Court of the Nation which was also rejected on March 17, 1992, thereby exhausting all existing procedural possibilities provided for in the internal jurisdiction.

According to the Inter-American Commission, Guillermo Maqueda

did not have the possibility to lodge a remedy for review of the judgment, since Law 23.077 does not provide for the possibility of any appeal or broad remedy before any higher court whatsoever. Therefore, the only alternative for the accused was to appeal before the Supreme Court by means of a special appeal, which is of an exceptional type and subject to restrictions.

7. On September 15, 1992 the Inter-American Commission received Guillermo Maqueda's complaint against Argentina. It was presented by his parents, Ernesto Maqueda and Licia M. Quiroga-de-Maqueda, Human Rights Watch/Americas and the Center for Justice and International Law (CEJIL). The petition alleged

that the sentencing of Mr. Maqueda to ten (10) years of imprisonment for his alleged involvement in the January 23, 1989 attack of the 3rd Motorized Infantry Regiment of La Tablada, in the Province of Buenos Aires, violated his human rights as recognized in the American Convention, particularly in Articles 2, 8 and 25 in relationship to Article 1(1).

8. On February 24, 1994, due to the absence of a friendly settlement between the parties, the Commission delivered Report N° 17/94 to the Government, which was approved on February 9 of that same year, with its conclusions and recommendations. The Commission resolved that, if

upon conclusion of the 60-day term, the Government did not correct the violations "of Guillermo Maqueda's human rights it would submit the case to the Court for consideration." At the request of the Government, the Commission agreed to grant an extension of 20 days to inform about the measures adopted in relationship to the Report.

9. The Court is competent to hear the instant case. Argentina has been a State Party to the American Convention since September 5, 1984, and on that same date it accepted the contentious jurisdiction of the Court referred to in Article 62.

10. In submitting the case to the Inter-American Court, on May 25, 1994, the Commission designated Michael Reisman as its Delegate and Edith Márquez-Rodríguez, Executive Secretary of the Commission, and Meredith Caplan, an attorney of the Secretariat of the Commission, as assistants. In the same communication, the Commission informed the Court that the petitioners are the parents of Guillermo Maqueda, Ernesto Maqueda and Licia de-Maqueda.

11. By means of the Resolution of June 22, 1994, the President of the Court (hereinafter "the President"), Judge Rafael Nieto-Navia delegated the Presidency to Judge Héctor Fix-Zamudio, Vice President of the Court, to hear this case, because he is a "member and President of the Argentine-Chilean Arbitration Court for the determination of the boundary line between Landmark 62 and Mount Fitz Roy."

12. On June 24, 1994 the Secretariat of the Court (hereinafter "the Secretariat"), after the preliminary examination by the President ad hoc, notified the Government about the case, and advised it that it was allowed a period of three months to answer the complaint (Article 29(1) of the Rules of Procedure), two weeks to designate its agent and deputy agent (Articles 28(3) and 21(3) of the Rules of Procedure) and 30 days to file preliminary objections (Article 31(1) of the Rules of Procedure).

13. By note of the same date, the Secretariat, following instructions of the President ad hoc, advised the Government that, in accordance with Article 18 of the Rules of Procedure and 10(3) of its Statute, it had 30 days to appoint an ad hoc Judge.

14. By note of July 8, 1994, the Government designated Orlando Enrique Sella, Ambassador of the Republic of Argentina to the Government of Costa Rica, to represent the Government in this case.

15. On September 21, 1994, Argentina petitioned the Court for an extension of three months to answer the complaint. By note of September 21, 1994, the Secretariat informed the Government of the President ad hoc's decision to grant an extension of 45 days to answer the petition.

16. By note of October 4, 1994, the Commission, pursuant to Article 43 of the Rules of Procedure, notified the Court of its decision to discontinue the action brought in the Maqueda vs. Argentina Case. This decision was made on the basis of an agreement that "takes into account the interests of the parties and conforms with the spirit and letter of the Convention," and whose compliance had been ascertained.

II.

17. On November 1, 1994, the Secretariat asked the Commission to send all the documentation related to the discontinuance of the action, in particular a copy of the agreement between the parties, the remarks of Mr. Guillermo Maqueda and his parents, and the published decree that granted Mr. Maqueda conditional liberty. The Secretariat also informed the Government about the Commission's decision to discontinue the action brought in the case.

18. By note of November 2, 1994, the Commission submitted a copy of the September 20, 1994 agreement between the parties and of Decree N° 1680/94, published in the Official Bulletin N° 27.895, Section 1, which granted Mr. Maqueda conditional liberty.

The agreement, which was signed in Washington, D.C. on September 20, 1994 between the Government and the representatives of Guillermo Maqueda, establishes the following:

2. To this effect, the State of Argentina commits to issue a decree of commutation of sentence to reduce the time that Guillermo Maqueda was sentenced to spend in prison. The commutation decree shall allow Maqueda to be immediately granted conditional liberty in accordance with Argentine provisions of law.

3. The State commits to execute and publish the respective decree and to provide for the processing of his release without any further requirement whatsoever neither from the prisoner nor from the petitioners. The State further commits to instruct that this measure be taken and to implement this agreement within ten days as of the date of this agreement.

4. The representatives of Guillermo Maqueda commit to petition the IACHR [Commission] to discontinue the action brought before the Inter-American Court of Human Rights, once the measures provided for in paragraphs 2 and 3 of the within decree have been complied with and upon the release of the former.

5. The representatives of Guillermo Maqueda commit to petition the Inter-American Court of Human Rights to approve the homologation of this agreement pursuant to Article 43 of the Rules of Procedure of the Court.

6. The representatives of Guillermo Maqueda warrant that, if the State of Argentina complies with the obligations to which it commits by virtue of this agreement, their party shall expressly renounce all claims for monetary indemnification for the benefit of Guillermo Maqueda or his parents, as well as for court costs and attorneys' fees relative to the international judicial proceedings currently in progress.

...

8. The commitments hereby made by the petitioners pursuant to paragraphs 4, 5 and 6 are subject to prior compliance by the State of the commitments made in this same agreement.

19. The President of the Inter-American Commission and Delegate for this case, Michael Reisman, expressed on that same day his concurrence with the September 20, 1994 agreement and affirmed the following:

1. That he shall address the Inter-American Court of Human Rights with an application for discontinuance of the action brought by the IACHR against the State of Argentina in the

Guillermo Maqueda Case, since this agreement takes into account the interests of the parties and is found to be in conformity with the spirit and letter of the American Convention on Human Rights.

2. That this shall be done once the representatives of Guillermo Maqueda inform him that they have ascertained compliance with the commitments made as per the above agreement.

...

4. That at that time he shall ask the Inter-American Court to approve the homologation of the present agreement and close the proceedings of the Maqueda Case by discontinuance, without a declaration by the Court on the merits of the case and without setting either indemnification or court costs and attorneys' fees, at the next regular meeting.

20. By note of November 8, 1994, the Secretariat, following instructions of the President ad hoc and pursuant to the provisions of Article 43 of the Rules of Procedure, requested the opinions of the Government, CEJIL and Human Rights Watch/Americas concerning the discontinuance. The Court made December 8, 1994 as the deadline for the submission of these observations.

21. On December 5, 1994 CEJIL and Human Rights Watch/Americas, representing the parents of Guillermo Maqueda, informed the Court that the parties they represented agreed to the discontinuance formulated by the Commission. They added that Mr. Maqueda "recovered his freedom after a commutation of the sentence; and that at this time he is at his home on release under conditional liberty." They also reported that the sentence of Guillermo Maqueda expires in April 1997.

22. On December 12, 1994 the Government expressed its "favorable opinion concerning the request of the Commission" in this case.

III

23. The Court is competent to hear a petition for discontinuance in a case submitted to the Court in accordance with Article 43 of the Rules of Procedure, which states as follows:

Article 43. Discontinuance

1. When the party which has filed the case notifies the Court of its intention not to proceed with it, the Court, after having obtained the opinions of the other parties thereto and the persons referred to in Article 22(2) of these Rules, shall decide whether it is appropriate to approve the discontinuance and, accordingly, to strike the case off its list.

2. When the parties to a case inform the Court that there exists a friendly settlement, arrangement or other fact capable of providing a solution of the matter, the Court may strike the case off its list after having obtained the opinion of the persons referred to in Article 22(2) of these Rules.

3. Notwithstanding the existence of the conditions indicated in the two preceding paragraphs, the Court, mindful of its responsibility to protect human rights, may decide that it should proceed with the consideration of the case.

24. In the terms of the transcribed regulatory precept, this Court must decide whether or not said agreement is consistent with the Convention and, therefore, whether to accept the discontinuance or whether the case should, instead, continue under consideration.

25. From the records on file, it appears, that in compliance with the September 20, 1994 agreement, the Government issued Decree N° 1680/94, which reduced his sentence and allowed the conditional release of Mr. Maqueda.

26. This Court, pursuant to the provisions of the above-transcribed paragraph 1 of Article 43 of its Rules of Procedure, has obtained the opinions of the parties in this case, including those of the representatives of the family of the victim. All of them reiterate their conformity with the September 20, 1994 agreement, as well as with the Government's compliance therewith.

27. Taking into account the above and considering that the principal matter of the case is the violation of Mr. Maqueda's right to freedom, and that this right has been restored by means of the agreement between the parties, the Court is of the opinion that the agreement does not violate the letter and spirit of the American Convention. Although, in its complaint, the Commission submitted other rights protected under the Convention, as well as mechanisms and provisions of internal law were cited, they were pleaded in relationship to the right to freedom. Notwithstanding such conditions, the Court, mindful of its responsibility to protect human rights, reserves the power to reopen and proceed with consideration of the case, should at any future time a change occur in the circumstances that gave rise to the agreement.

Therefore,

THE COURT

DECIDES:

1. To admit the discontinuance of the action brought by the Inter-American Commission on Human Rights in the Maqueda vs. the Republic of Argentina Case.
2. To dismiss the Maqueda Case.
3. To reserve the power to reopen and proceed with consideration of the case, should at any future time a change occur in the circumstances that gave rise to the agreement.
4. To transmit this decision to the parties.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes
Alejandro Montiel-Argüello
Máximo Pacheco-Gómez
Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary