



INTER - AMERICAN COMMISSION ON HUMAN RIGHTS
COMISION INTERAMERICANA DE DERECHOS HUMANOS
COMISSÃO INTERAMERICANA DE DIREITOS HUMANOS
COMMISSION INTERAMÉRICAINÉ DES DROITS DE L'HOMME



ORGANIZACIÓN DE LOS ESTADOS AMERICANOS
WASHINGTON, D.C. 2 0 0 0 6 EEUU

June 17, 2011

Re: Case No. 12,651
César Alberto Mendoza et al.
(Perpetual imprisonment and confinement of adolescents)
Argentina

Dear Secretary:

I am pleased to address you on behalf of the Inter-American Commission on Human Rights in order to submit to the jurisdiction of the Honorable Inter-American Court of Human Rights Case No. 12,651, *César Alberto Mendoza et al. (Perpetual imprisonment and confinement of adolescents)* with regard to the Argentine Republic (hereinafter "the State," "the Argentine State," or "Argentina"). This case has to do with the arbitrary imposition of the sentences of perpetual imprisonment on César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, and Saúl Cristian Roldán Cajal, and of perpetual confinement on Ricardo David Videla Fernández, for acts that occurred when they were still children. These penalties were imposed pursuant to an adolescent justice system that allows for them to be treated like adult offenders. In addition, the respective judicial authorities acted in repudiation of the international standards applicable to juvenile criminal justice, in particular, that deprivation of liberty should be used only as a last resort and for the shortest possible time, as well as the obligation to ensure a periodic review of the possibility of release from prison. This situation was aggravated by the restrictions on the scope of the review, by means of motions for cassation filed by the victims, which resulted in them not being able to argue fact issues and evidentiary issues by means of those motions, and which consolidated the injustice brought about by the sentencing of the adolescents to perpetual imprisonment and confinement.

Mr. Pablo Saavedra Alessandri, Secretary
Inter-American Court of Human Rights
Apartado 6906-1000
San José, Costa Rica
Attachments

The instant case is also related to a series of violations that occurred in the framework of the serving of sentences under the custody of the State. Ricardo David Videla Fernández and Saúl Cristian Roldán Cajal were subjected to inhumane conditions of detention incompatible with their human dignity at the Provincial Prison (Penitenciaría Provincial) of Mendoza, a situation that ultimately led to the death of Ricardo David Videla Fernández, who suffered from mental health problems; without the State adopting reasonable measures to prevent his death, and, subsequently, to effectively investigate it. For his part, Lucas Matías Mendoza lost his eyesight when the State failed to give him medical treatment to prevent the deterioration of his situation, while Claudio David Núñez and Lucas Matías Mendoza were victims of acts of torture that were not investigated adequately.

The Argentine State ratified the American Convention on Human Rights (hereinafter "the American Convention," "the Convention," or "the ACHR") and accepted the contentious jurisdiction of the Inter-American Court on September 5, 1984.

The Commission has designated Commissioner Luz Patricia Mejía and the Executive Secretary of the IACHR, Santiago A. Canton, as its delegates. In addition, Elizabeth Abi-Mershed, Assistant Executive Secretary, María Claudia Pulido, Silvia Serrano Guzmán, and Andrés Pizarro shall serve as legal advisers.

In keeping with Article 35 of the Rules of Procedure of the Inter-American Court, the Commission attaches a copy of Report 172/10, drawn up in observance of Article 50 of the Convention, as well as a copy of the entire record before the Inter-American Commission (Appendix I) and the attachments used in the preparation of Report 172/10 (Attachments). Notice of that report on the merits was given to the Argentine State by communication of November 19, 2010, giving it two months to report on implementation of the recommendations. In response to the requests by the Argentine State and its express waiver of preliminary objections with respect to the time period set forth at Article 51(1) of the American Convention, the Commission granted three extensions for the State to adopt the respective measures.

The Commission submits the instant case to the jurisdiction of the Inter-American Court because of the need to obtain justice for the victims in the face of the lack of substantial progress by the Argentine State in carrying out the recommendations.

As for the recommendation to **order the measures necessary for César Alberto Mendoza, Claudio David Núñez, Lucas Matías Mendoza, and Saúl Cristian Roldán Cajal to be able to file a remedy to obtain a broad review of the guilty verdicts in keeping with Article 8(2)(h) of the American Convention**, and the recommendation to **ensure that in such review international standards regarding criminal justice in the case of children and adolescents are adhered to, and that a determination be made as to the legal status of the victims consistent with those standards**, the reports from the State indicate that to date a motion for reconsideration (*recurso de revisión*) filed on behalf of Saúl Cristian Roldán Cajal is

currently pending before the Supreme Court of Justice of Mendoza. The Commission observes that there is insufficient information on this victim to be able to issue a pronouncement on whether said motion for reconsideration is appropriate for carrying out this recommendation. With respect to the other victims, the State indicated that the possibility of commuting the sentence has been explored. Nonetheless, there is no information on specific steps taken on this point, or on the possibility of the victims having a review of their convictions in keeping with the recommendation in the report on the merits. In summary, the Commission observes that this recommendation has yet to be carried out, and that the procedural situation of the victims continues unchanged.

With respect to the recommendation to **ensure that the victims get the medical care they need as long as they are deprived of liberty**, the State reported that all the youths receive such care based on their needs. The Commission does not have sufficient information to evaluate whether this recommendation has been carried out, and reiterates the importance of the State continuing to provide the medical care they need so long as the victims remain under its custody.

As regards the recommendation to **adopt the legislative and other measures for the system of criminal justice applicable to adolescents for conduct committed when they were under 18 years of age to be compatible with the State's international obligations as regards special protection for children and the purpose of the penalty**, the State referred to the legislative initiative called "Criminal Justice Regime applicable to Persons under 18 Years of Age in Conflict with the Criminal Law," which is said to be before the Chamber of Deputies under File No. 0130-S-2009. The information available indicates that to date no modification whatsoever of the Argentine juvenile criminal justice system has been implemented.

As for the recommendation to **adopt legislative and other measures to ensure effective observance of the right enshrined in Article 8(2)(h) of the American Convention**, the State indicated that at present a preliminary bill is before the Executive related to Article 8(2)(h) of the Convention. This preliminary bill was introduced by a group of petitioners in the context of a petition that is pending before the IACHR. Based on the information provided, it does not appear that the Argentine authorities have adopted specific measures aimed at bringing Argentina's domestic legislation into line with what is established in Article 8(2)(h) of the Convention.

As for the recommendation to **undertake a complete, impartial, and effective investigation within a reasonable time to clarify the death of Ricardo David Videla Fernández and, if appropriate, to impose the corresponding sanctions, including determining possible liabilities for the omissions or breaches of the duty to prevent of the public officials under whose custody the victim was in**, the State reported that the victim's representative requested the case be reopened on February 28, 2011. The IACHR observes that to date the case is still archived, and that the State has not adopted any measure whatsoever to order, on its own initiative, that the investigations into the death of the young Videla Fernández continue.

With respect to the recommendation **to undertake a complete, impartial, effective investigation within a reasonable time to clarify the acts of torture suffered by Lucas Matías Mendoza and Claudio David Núñez and, if appropriate, to impose the corresponding sanctions**, the State reiterated that the facts were the subject of an administrative investigation in which no administrative sanctions were meted out. In addition, it indicated that two judicial cases were pursued that were archived on February 29 and July 2, 2008. This information is prior to the Commission's report on the merits; accordingly, this recommendation has yet to be carried out.

With regard to the recommendation **to adopt measures of non-repetition that include programs for training prison personnel in international human rights standards, in particular on the right of persons deprived of liberty to be treated with dignity, and on the prohibition of torture and other forms of cruel, inhuman, or degrading treatment**, the State reported on the diversity of courses and training activities. The Commission takes note of this information and hopes that the State will continue strengthening and consolidating those training programs, along with other measures of non-repetition.

As for the recommendation **to adopt the measures necessary to ensure that the conditions of detention at the Provincial Prison of Mendoza comply with the relevant inter-American standards**, the Commission hopes that the State continues the process of improving and adapting the conditions of detention at that prison.

Finally, with respect to the recommendation **to make adequate material and moral compensation for the human rights violations found**, the State did not present information, so it has yet to implement this point.

In view of the foregoing observations, the Commission considers that the Argentine State has not made progress in carrying out the recommendations made in the report on the merits. Accordingly, the IACHR considers it appropriate to submit this case to the jurisdiction of the Court.

The Inter-American Commission submits to the jurisdiction of the Court all of the facts and human rights violations described in report on the merits 172/10. Accordingly, the IACHR asks the Court to find and declare that the Argentine State is internationally responsible for the violation of:

Accordingly, the Commission asks the Inter-American Court to order the following measures of reparation:

In addition to the need to obtain justice for the victims and their next-of-kin, the IACHR emphasizes that this case involves several issues of inter-American public order of human rights.

First, the imposition of the penalties of perpetual imprisonment and confinement occurred in application of a legal framework for juvenile criminal justice which, on allowing identical treatment for adolescents as for adult offenders, including the application of a disproportionate time period before the possibility of

release, is incompatible with the American Convention. In particular, that legal framework is incompatible with the special obligations of protection and with the social readaptation function of the penalty, established in Articles 19 and 5(6) of the American Convention, interpreted in light of the *corpus juris* on the rights of children and adolescents. In this way, the instant case will enable the Court to apply some of the general principles on juvenile criminal justice set forth in Advisory Opinion 17 and, accordingly, to develop solid case-law on the issue.

Second, the limitations with respect to review by means of the motion for cassation in the instant case occurred due to the persistence of a legal framework and judicial practice that is still incompatible with the scope and content of the right enshrined in Article 8(2)(h) of the American Convention. The apparent tension between the principles of accusatory criminal procedure system and the scope of the right to a broad review continues to be a current issue in Argentina and in other countries of the region, and which continues generating restrictions on the scope of the right to appeal.

Finally, the violation of the right to life with respect to Ricardo David Videla Fernández occurred, among other omissions, due to the lack of adequate care for the mental health situation that afflicted him. Accordingly, the instant case will enable the Inter-American Court to develop relevant standards on the state's obligations with respect to the mental health of persons under its custody in its special position as guarantor of their life and personal integrity.

Mindful of the foregoing, and in the understanding that the existence of legal frameworks incompatible with the American Convention, as well as the development of case-law on novel issues in the inter-American system, are issues that significantly affect the inter-American public order of human rights as per Article 35(1)(f) of the Court's Rules of Procedure, the Commission takes the opportunity to offer the following expert witnesses:

1. Expert whose name will be provided as soon as possible, who will testify as to international human rights standards in the area of juvenile criminal justice, including the criteria of special nature of the applicable framework in relation to both substantive and procedural aspects, the application of the deprivation of liberty as a last resort, and for the shortest possible time, the inappropriateness of applying the penalty of perpetual imprisonment to adolescents, with disproportionate times before being able to be released, among other aspects. In addition, the expert will analyze Argentina's legal framework in relation to juvenile criminal justice in light of those standards.
2. Alberto Bovino, who will testify on the scope of the right enshrined in Article 8(2)(h) of the American Convention, particularly in relation to the *a priori* exclusion of the possibility of review of issues of fact or evidence due to the apparent tension between the principles

of certain systems of criminal procedure and the right to appeal the ruling.

3. Expert whose name will be given as soon as possible, who will testify on international human rights standards applicable in the area of mental health in centers of detention, and the state obligations that derive from those standards.

The Commission shall submit the résumés of the experts proposed along with the attachments to Report on the Merits 172/10.

Finally, the Commission informs the Inter-American Court that those who participated as petitioners during the processing of the case before the IACHR are:

In representation of César Alberto Mendoza, Lucas Matías Mendoza, Claudio David Núñez, and Saúl Cristian Roldán Cajal:

Stella Maris Martínez
Official Public Defender before the
Supreme Court of Justice of the Nation
[REDACTED]
(1023) City of Buenos Aires
Argentina
[REDACTED]

In representation of Ricardo David Videla Fernández and his next-of-kin:

Fernando Gastón Peñaloza
[REDACTED]
City of Mendoza, Mendoza
Argentina
[REDACTED]

I take this opportunity to convey very cordial greetings.

Signed in the original

Elizabeth Abi-Mershed
Assistant Executive Secretary