



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



ORGANIZACIÓN DE LOS ESTADOS AMERICANOS

WASHINGTON, D.C. 2 0 0 0 6 EEUU

May 29, 2012

Ref.: Case No. 12.167
Hugo Oscar Arguelles y otros
Argentina

Mr. Secretary:

I am pleased to address you on behalf of the Inter-American Commission on Human Rights in order to file Case No. 12.167 *Hugo Oscar Arguelles et al. v. Argentina* (hereinafter “the State”, “the Argentinian State” or “Argentina”) before the jurisdiction of the Honorable Inter-American Court of Human Rights regarding the with the violation of the right to personal liberty and the right to a fair trial in the domestic proceedings against members of the military for the crime of military fraud, pursuant to the provisions of the Code of Military Justice of Argentina (hereinafter CMJ), then in force. Specifically, the facts that gave rise to this case occurred during 1978-1980; and they resulted in the detention in solitary confinement [incomunicado] of approximately 50 officers, 21 of which are victims in the instant case, who were in charge of funds belonging to a number of Argentine Air Force bases.

In its Merits Report, the Commission concluded that the State infringed upon the right, with prejudice to the victims, to have technical assistance in their defense, as article 87 of the CMJ did not grant defendants the right to a lawyer but only to be defended by an active or retired military officer, and the right to defense by a lawyer was provided for once the defendant had made a statement before the court (article 252, CMJ).

It was also the opinion of the Commission that the victims remained incommunicado for a period exceeding the permissible limit under the CMJ; that the CMJ did not establish a deadline for the Military Tribunal to decide the case of a detainee, and that, moreover, the victims were in preventive detention for nearly 7 years, with no justification given by the State for the delay.

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

Regarding the CMJ, the Commission held that it included certain provisions that prima facie constituted an infringement of the right to a fair trial and to access to justice, which was acknowledged by the State itself when it repealed the code; the repeal, however, did not result in reparations for the victims. It should be noted that the State repealed the CMJ in the framework of the friendly settlement of the Correa Belisle case, which had similar issues regarding due process, although in a different context.

Finally, with respect to the total duration of the proceedings, including both the proceedings before the military tribunals and the cassation stage and a subsequent extraordinary appeal before the civil justice system, the Commission considered that in this case there was no controversy regarding the following: a) it was a complex matter (the case file had more than 14,000 pages and there were 32 defendants), b) the victims had not delayed the proceedings, and c) the proceedings took over 16 years. In these circumstances, the Commission concluded that the duration of the proceedings exceeded the reasonable time period provided for by the American Convention.

The State ratified the American Convention on Human Rights and accepted the Court's contentious jurisdiction on September 5, 1984. In this respect, even though the proceedings were initiated in September of 1980, the proceedings took place before the military tribunals at least until June 5, 1989 when the Supreme Council of the Armed Forces ruled on the merits of the case. On the other hand, the Code of Military Justice was in force until 2008. Additionally, the victims were in preventive detention between 7 and 8 years and the infringement of the right of be trial within a reasonable time continued until April 1998, when a final decision was handed down by the highest court of Argentina. In these circumstances, according to the analysis of Report N° 135/11, there are human rights violations that took place after the acceptance of the competence of the Court by the State of Argentina.

The Commission has designated Commissioner Rodrigo Escobar and Santiago Canton, executive secretary, as its delegate. Likewise, Elizabeth Abi-Mershed, Deputy Executive Secretary, Silvia Serrano Guzmán and Tatiana Gos, attorneys of the Executive Secretariat of the IACHR, have been designated to serve as legal advisors.

In accordance with Article 35 of the Rules of Procedure of the Inter-American Court, the Commission is enclosing a copy of Merits Report No. 135/11, prepared in compliance with Article 50 of the American Convention, as well as a copy of the entire file before the Inter-American Commission (Appendix I.) and the attachments used to prepare the Report on the Merits (Attachment). The Commission adopted its Report on the Merits No. 135/11 on October 31, 2011 and transmitted to the State on December 29, 2011, granting it two months to provide information on the measures adopted in compliance with the recommendations. In January 2012, the petitioners requested that the case be submitted to the Court. On March 2, 2012, the State of Argentina sent a communication requesting an extension to report on the measures adopted in compliance with the recommendations made in Report No. 135/11 and waived the right to fill preliminary objections with respect to this term. On March 29, 2012 the Commission notified the State the concession of the extension for two months. On April 27, 2012, the State presented a report which does not reveal any progress in the compliance of the recommendations.

The Executive Secretariat notes that the State only indicated that the pecuniary determination of the reparations should be done by the initiation of domestic proceedings.

Taking into account the aforementioned, and in view of the failure of the State carrying out the Commission's recommendations and the need to obtain justice for the victims of this case, the Executive Secretariat suggests the referral of the case to the Court.

While the victim's deprivation of liberty and the proceedings before military tribunals began before Argentina ratified the American Convention and accepted the contentious jurisdiction of the Inter-American Court on September 5, 1984, these situations have continued subsequent to that acceptance. Accordingly, the Inter-American Court has jurisdiction to rule on the human rights violations for which the State of Argentina is responsible since the acceptance of the contentious jurisdiction of the Court, i.e., the violation of the right to personal liberty of the victims by maintaining them in a situation of preventive detention that exceeded the limits of reasonableness and the right to be trial within a reasonable time period.

The Commission submits to the Inter-American Court all the facts and violations of Human Rights committed by the Argentinian State and that continued after its acceptance of the Court's contentious jurisdiction on September 5, 1984. The State violated the right of the personal freedom of the victims on having maintained them in preventive detention for an excessive period, and the violation of the right to be judged by the due guarantees in a reasonable term. The Commission request that the Inter-American Court declare that the State of Argentina is responsible for:

the violation of the right of the personal freedom (Article 7 of the American Convention), and the right to a fair trial (article 8) in in relation to Article 1.1 of the same treaty, to the prejudice of al the 21 victims in this case.

Taking into account the aforementioned, the Commission requests the Inter-American Court to take the following reparations measures:

1. To grant integral repairs, especially suitable compensation, to 21 victims of the case.

In addition, the Commission notes that this case raises issues of inter-American public interest related to the right to a fair trial in proceedings under military jurisdiction, regarding military officers on active duty being tried for offenses in the course of duty. In this respect, the system's jurisprudence has in the past developed standards and case law regarding both the treatment of civilians in military courts, and proceedings before military courts against military officers accused of human rights violations. However, since it has a factual basis different from those already examined by the inter-American system, this case would allow the Court to establish standards for due process and for the protection of the right to personal liberty in this specific context..

Since these matters affect in a significant manner the inter-American public order of human rights, pursuant to Article 35.1.f of the Rules of Procedure of the Inter-American Court, the Commission wishes to offer declarations by the following expert

David Lovatón, who will refer to international standards regarding guarantees of due process and limitations of the right to personal liberty under military jurisdiction involving members of the military in active service who are accused of committing offenses in the course of duty.

Finally, the petitioners expressed the victims' interest in the submission of the present case to the Inter-American Court and informed that the following shall be representatives of the victims:

Alberto De Vita, Mauricio Cueto

[REDACTED]
[REDACTED]
Argentina

Eduardo Barcesat
Miguel A. Maluf, Noemí Murature, Alberto Jorge Pérez

[REDACTED]
Argentina

Juan Carlos Vega
Hugo O. Arguelles

[REDACTED]
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Signed in the original

Elizabeth Abi-Mershed
Deputy Executive Secretary