



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

August 19, 2011

Ref.: Case No. 12.221
Jorge Omar Gutiérrez and Family
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. 12.221 *Jorge Omar Gutiérrez y familia v Argentina* (hereinafter "the State", "the Argentinian State" or "Argentina") before the jurisdiction of the Honorable Inter-American Court of Human Rights. The instant case refers to the murder of the deputy commissioner Gutiérrez on August 29, 1994, who was investigating a corruption case later known as "case of parallel customs" which there were involved important businessmen and government officials of high hierarchy.

During the investigation two eyewitnesses affirmed that the perpetrators were agents of the Federal Police. The above mentioned witnesses recognized a police officer as the author of the murder. Another witness indicated the Inspector of the Police of the Province of Buenos Aires as the intellectual author of the facts. On the other hand, two youth people were detained and said they were tortured by agents of the Superintendent of Railway Safety of the Federal Police Argentina to confess to be guilty of the death of deputy commissioner Gutiérrez. Also, other witnesses have been threatened to indict these two young people who were alleging to have been tortured to take responsibility for the death of Mr. Gutierrez. In addition, an official involved in the investigation of death was removed from the investigation.

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

On the facts of the case, an investigation was opened in the Ordinary Criminal Jurisdiction in which there was an investigative deficit. In 2006, the judge in charge decided to temporarily dismiss the case "for not having been able to determine the involvement of others, receiver or accomplices in the act under investigation in which Jorge Omar Gutiérrez lost his life". The relatives of Gutiérrez and the Prosecutor interposed appeals, before which the Court of Appeals and Criminal Guarantees revoked the dismissal. The judge considered her intervention in the case might be biased and she excused herself from the case. Nevertheless, her recusation was denied. In December 2009, the judge ruled to provisionally dismiss Francisco Severo Mostajo on the grounds that there was not sufficient evidence to impute to him the death of Jorge Omar Gutiérrez. Regarding the administrative proceedings, it concluded in 2001 that the death of Jorge Omar Gutiérrez was attributable to service as deputy commissioner and that his family has with the right to be compensated.

In synthesis, after 17 years of the execution of the deputy commissioner Jorge Omar Gutiérrez, there is still no certainty of the circumstances of his death and no one has been sanctioned by his murder. To criterion of the IACHR, this configures a situation of impunity.

The State ratified the American Convention on Human Rights on August 14, 1984 and accepted the contentious jurisdiction of the Court on September 5, 1984.

The Commission has designated Commissioner Luz Patricia Mejía and Executive Secretary of the IACHR Santiago A. Canton, as its delegate. Likewise, Elizabeth Abi-Mershed, Deputy Executive Secretary, Karla I. Quintana Osuna, Paulina Corominas and María Claudia Pulido 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. 63/11, 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 documents used to elaborate the report 63/11 (attachments). The Merits Report was notified to the State by means of communication of April 19, 2011, granting two months to the State in order to inform its fulfillment of the recommendations. By means of communication of June 17, 2011, the State requested an extension. In this communication the State informed that "it forwarded the merits report to the national authorities with competence regarding the recommendations, requesting to submit comments with regards to the Commission's conclusions" This extension was granted for a period of one month. On August 1, 2011, the IACHR received a communication from the State in which it reported the progress in implementing the recommendations of Report 63/11.

In that communication, the State reported its measure in connection with the recommendation to conduct a complete, impartial, effective and prompt investigation of the facts, in order to identify and punish the intellectual and material responsibility of all people who participated in the events related to the execution of Omar Jorge Gutiérrez. The State reported that on April 14, 2011 and

in accordance with the provisions of Article 215 of the CPP (Law 3589), the court closed the pre-trial phase with respect to the co-defendant Mostajo. This resolution was being notified to the parties. Regarding the above mentioned recommendations, the prosecutor stated that the measures taken or to be taken by the Public Prosecutor "will eventually emerge and to be raised at the hearing for debate." Moreover, it was stated that the merits report was submitted to the Supreme Court asking to indicate measures taken or to be taken to implement the recommendations.

The State provided no information about the recommendations relative to the complete, impartial, effective and prompt investigation with regard to the various state bodies that have been involved in the investigations and prosecutions carried out regarding the case facts people; or about the compensation for the relatives of Omar Jorge Gutierrez.

Accordingly, the Inter-American Commission asks the Court concludes that the States of Argentina has not showed progress on the compliance with the recommendations.

The Commission refers the instant case to the jurisdiction of the Inter-American Court based on the State's failure to comply with the recommendations and the resulting need to obtain justice in the instant case. The Commission submits to the Inter-American Court all the facts and violations of Human Rights stated in the Report on the Merits 56/12 and request that the Inter-American Court declare that the State of Argentina is responsible for: the violation of the right to life of article 4, Inter-American Convention in regards to article 1.1 of the same instrument, in detriment of Jorge Omar Gutiérrez. Furthermore, the Commission concludes that the State is responsible for the violation of the right to the personal integrity, to the judicial guarantees and to the judicial protection of articles 5, 8 and 25 of the Inter-American Convention respectively, in relation with article 1.1 of the same convention, in detriment of the victim's family, in specific, his wife, children and brother.

Based on the foregoing conclusions, the Commission recommended to the State:

1. to conduct a complete, impartial, effective and prompt investigation of the facts, in order to identify and punish the intellectual and material responsibility of all people who participated in the events related to the execution of Omar Jorge Gutierrez.

2. to conduct a complete, impartial, effective and prompt with regard to the people assigned to the different state organs which have been involved in the investigation and procedures carried out on the occasion of the facts of this case, in order to determine the responsibility that applies (administrative, disciplinary, criminal or of another natures) for the deficiencies in the investigation and prosecution, and obstruction of the facts, which has led to impunity.

The Commission also emphasizes that the case presents issues of inter-American public order in relation to the duty of States to respond effectively when

there is clear indications of concealment and deviation of the investigations by state authorities. The human rights violations to the detriment of Jorge Omar Gutierrez and his family occurred as a result of the lack of effective investigation by the Argentine judicial authorities on the participation of state agents in the murder of Mr. Gutierrez. Furthermore, the investigations implemented, including the judicial and the one conducted by Congress, showed signs of manipulation regarding the gathering of evidence, the obstruction of justice, the procedural delays and even the threat and torture witnesses. In this regard, the Commission considers that this case will allow the Court to develop its jurisprudence regarding the State's obligation to guarantee the right to life through a serious, impartial and effective investigation, especially when state actors are involved and there is also a cover-up by the authorities themselves.

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 would provide an expert testimony on the duty of the States to give an effective response not only with regard to the violent death of a person, but also on the specific duty to investigate clear indications of concealment and diversion investigations by state authorities

The curricula vitarum of the experts' will be included in the appendix of the Merit Report 63/11.

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:

Centro de Estudios Legales y Sociales (CELS)

[REDACTED]

Ciudad Autónoma de Buenos Aires, Argentina

[REDACTED]

CEJIL/ARGENTINA

Centro por la Justicia y el Derecho Internacional

[REDACTED]

Ciudad Autónoma de Buenos Aires, Argentina

[REDACTED]

Signed in the original

Elizabeth Abi-Mershed
Executive Deputy Secretary