

REPORT N 101/99
CASE 11.425
JUAN FRANCISCO BUENO ALVES
ARGENTINA
September 21, 1999

I. SUMMARY

1. Juan Francisco Bueno Alves (hereinafter "the petitioner") submitted a petition to the Inter-American Commission on Human Rights (hereinafter "the Commission") on August 24, 1994, accusing the Argentine Republic (hereinafter "Argentina" or "the State") of allegedly violating the following rights enshrined in the American Convention on Human Rights (hereinafter "the Convention"): the right to humane treatment (Article 5), the right to personal liberty (Article 7), and the right to a fair trial and judicial protection (Articles 8 and 25).

2. The petitioner describes a series of events to the Commission, chiefly involving the alleged arbitrary arrest and torture carried out against him by officers of the "*Divisi de Defraudaciones y Estafas*." These incidents allegedly took place on April 5 and 6, 1988, respectively. In reply, the State maintains that the remedies available under domestic law have not been exhausted and that consequently, under Article 46(1)(a) of the Convention, the case is not admissible.

3. The Commission concludes that the petitioner has not exhausted the remedies offered under domestic law in connection with the alleged threats made against him by the police. This aspect of the case is therefore inadmissible under Article 46(1)(a) of the Convention and Article 37 of the Commission's Regulations. The Commission concludes that the allegations of arbitrary arrest do not constitute a violation of rights enshrined in the Convention, as required by Article 47(b) of the Convention and Article 41(b) of the aforesaid Regulations. On the contrary, in the Commission's view those allegations are manifestly groundless, as described in Article 47(c) of the Convention and Article 41(c) of the Regulations.

4 The Commission also concludes that the petitioner's allegations of torture, the denial of a fair trial, and ineffective judicial recourse do meet the admissibility requirements set forth in Article 47(b) of the Convention and Articles 31 and 41(b) of the Regulations in that they do describe incidents that could tend to establish a violation of rights protected by the Convention.

II. PROCESSING BY THE COMMISSION

5. The Commission received the petition on August 24, 1994. It forwarded the relevant parts of it to the State the following September 20.

6. The petitioner sent the Commission additional information whose receipt was acknowledged on October 31.

7. The State sent the Commission its initial reply on December 15; receipt of this was acknowledged and it was forwarded to the petitioner on December 21.

8. On January 20, 1995, the Commission received the petitioner's comments on the State's reply. On that same date the case was opened and, on January 30, the petitioner was informed thereof and the relevant parts were forwarded to the State. On April 3 the State asked for additional time to prepare its reply; this extension, for 45 days, was granted by the Commission on that same date. On July 21 the Commission resent its request for information to the Argentine State; subsequently, on July 24, the Commission received the State's reply.

9. The petitioner sent the Commission additional information on September 14, 1995; the Commission acknowledged receipt of this and forwarded it to the State on October 11. The State replied on December 7, and notice of this was given to the petitioner on December 13. The petitioner sent the Commission a communication on December 21 to inquire about the State's reply.

10. On January 19, 1996, and then on February 8 and August 23, the petitioner sent the Commission additional information; acknowledgement of these submissions was given on February 8, February 21, and October 9.

11. Then, on October 1, 1996, the State sent the Commission updated information on the legal proceedings related to this case; acknowledgement of this was given and it was forwarded to the petitioner on October 24.

12. The Commission received a further communication from the petitioner on December 5; acknowledgement of this was given and it was forwarded to the State on December 19.

13. On March 6, 1998, the Commission received a letter from the petitioner reporting new allegations of victimization. Acknowledgement that this communication was received was sent on March 18.

14. On June 29, 1999, the Commission asked the petitioner for additional information, which he sent on July 23. On August 11, the State was sent the petitioner's allegations, giving it a period of 30 days in which to reply.

III. POSITIONS OF THE PARTIES

A The petitioner

a. Regarding the facts

15. The petitioner initiated a real-estate sales transaction with Norma Lage and Jorge Denegri, which was not finalized. He filed a complaint against the two of them for fraud and threats in January 1988. In turn, on February 22, Norma Lage filed a complaint against the petitioner and another individual, alleging fraud and extortion, with which criminal proceedings N 24519 began. The petitioner states that on the following March 20, he and the other parties to the transaction agreed to cancel the transaction. However, on April 5, the petitioner and his attorney were arrested, the attorney's professional office was searched, and the recording of the cancellation meeting was seized. This series of actions was carried out by officers of the Fraud Division of the Argentine Federal Police, acting on a court order issued as a part of criminal proceedings N 24519.

16. He claims he was tortured at the facilities of the police on April 6, 1988, to coerce him into making a statement against his attorney,¹ a fact which he reported to the judge in charge of the case. "The injuries described in the complaint were duly recorded in the medical report." He claims that the torture he suffered resulted in "perforation of the eardrum caused by direct trauma to the right ear, [...] from which injuries I suffer permanent aftereffects, with the weakening of one organ and two senses: my hearing, and my balance."

¹ The petitioner argues that the alleged animosity of the police was because his attorney, Carlos A. Pez Galindo, had previously defended a former police officer in a notorious criminal case in which, he claims, other officers from the Federal Police's Fraud Division were involved.

17. In addition, he claims he was punched in the stomach, which “was not recorded,” and kept from taking the medication intended to prevent ulcer pain that he was carrying when arrested.

18. Because of the torture inflicted on the petitioner, proceedings N 24079, “for maltreatment,” were initiated. The petitioner claims these proceedings were plagued with irregularities, such as:

- Failure to carry out the preventive custody orders served on the three federal police offices accused of torturing the petitioner;
- Release of the defendants “on account of an ungrounded ruling by the prosecutor” and their subsequent promotion within the police force;
- “[...] irregularities in the trial of [Police Officer] Ruiz: the judge’s reluctance to take a statement from him in spite of the Chamber’s ruling, paralysis of the case, etc.”

19. After 15 days in preventive custody the petitioner was released and, on October 5, 1988, the criminal action initiated against him was provisionally dismissed on account of insufficient evidence.

20. He adds that:

My right of freedom has been grossly affronted, in that I was illegally arrested in spite of the fact I was executing a perfectly correct and legal contract rescission and then sent to prison for two weeks, despite being the only real victim of a case of fraud [...] To this deprivation of freedom [...] we must add that which I have suffered over the past seven years [said in January 1995], curtailing all journeys in public to the absolute minimum because of my grounded fears of suffering new attacks.”

21. He reports that in addition to case N 24079 (“maltreatment”), he has initiated a number of other “both judicial and administrative” proceedings, which can be summarized as follows:

Judicial

Proceedings N 24519, “providing the evidence necessary to demonstrate the falsehood of the accusations that I committed fraud and made threats.” The petitioner claims that this evidence subsequently “disappeared” from the case file.

Proceedings N 32989, “for irregularities in the proceedings: no procedural measure was ever ordered.”

Proceedings N 26696/95 and/or N 57642, “for threats made by police personnel and for the irregular promotion of [accused police officer] Ren Derecho.”

Proceedings N 11425, “for human rights violations.”

Proceedings N 25156, “for threats made by members of the Federal Police.”

Proceedings N 6269/96, “for the disappearance of evidence.”

Administrative

Complaint filed with the General Auditing Office of the Nation (AGN).

Complaint filed with the "National Secretariat of Human Rights."

b. Regarding the law

22. The petitioner maintains that the right to judicial protection, "was not respected," in that in proceedings N 24519 he reported that he had been the victim of fraud but "I was tried for it [and I was tortured by the police personnel in charge]." He adds:

in proceedings N 24079, for maltreatment, they allowed one of the accused to work in that court; they never carried out the preventive custody orders issued against the three police officers charged in the case; and, finally, the case was dismissed because of an ungrounded report by the Chamber's prosecutor. Since my claims were not addressed by the Chamber, I filed an extraordinary remedy with the Supreme Court of Justice of the Nation, which was rejected by the intervening Court to which I had previously appealed without said appeal being resolved, on the grounds that the Court's judges could not judge their own actions. [...] in proceedings N 25156, for threats made against my person, no procedural measure was ever ordered. In proceedings N 32989, for irregularities in proceedings N 24079, no conclusion was ever reached. [...] in proceedings 6269/96, for the disappearance of evidence, no procedural measure has been ordered.

23. With regard to the violation of the specific guarantee of being heard by the courts within a reasonable time, he reports that, "In 1988 I began the first of my suits. [...] Eight years have gone by [stated in December 1996] since the incidents that gave rise to the claim. Thus, the reasonable time has been violated, over and above the complexity of the matter."

24. He also claims that, "I did not find in the domestic courts the simple and prompt recourse that would protect me against the actions of my respondents," in violation of Article 25 of the Convention. In addition: "The frequent irregularities in this case constitute serious, exact, consistent, and adequate indications of the absence of judicial impartiality," in breach of the terms of Article 8(1) of the Convention.

25. He maintains that in addition to the torture and cruel, inhuman, and degrading treatment he suffered during his police arrest:

the attacks on my person did not end when I secured my freedom; instead, I have received threats from members of the Argentine Federal Police. In combination with the procedural irregularities, this has affected me not only physically, but also morally and psychologically, by placing me in a situation of defenselessness.

26. Finally, he claims, his arrest was arbitrary in nature.

27. To summarize, the petitioner's allegations cover three general groups of supposed situations: (a) his arbitrary arrest on April 5, 1988, (b) the torture inflicted the following day, lack of due process and effective remedies for proving his claims, and (c) the threats made by members of the police.

B. The State

a. Regarding the facts

28. The State has not contradicted any of the petitioner's allegations and, instead, focused its answers to the Commission on explaining the course of the judicial proceedings in this case. In its

communications it specifically refers to proceedings Nos. 24079, for “maltreatment” (torture), and 61720, for “the possible crime of destroying a public instrument.”

29. Its reply of July 24, 1995, explains the course of the criminal investigation conducted into the alleged maltreatment of the petitioner by three police officers.

30. In its reply of December 7, 1995, it reports the dismissal of proceedings N 57.144 (for threats), brought before National First-Instance Criminal Investigating Court N 30, and of the provisional dismissal of proceedings N 25.156 (for threats), brought before National First-Instance Criminal Investigating Court N 23. Within these latter proceedings, the Argentine Federal Police was ordered to “identify and capture the perpetrator(s) of the crime.”

31. In its communication of October 1, 1996, it offers a detailed description of the course of the different judicial proceedings initiated by the petitioner. It refers to the judgment of January 31, 1996, in proceedings N 24079 (maltreatment), which ordered the final dismissal and acquittal of the alleged torturers. It explains the steps taken in connection with the letter the petitioner sent to the President of the Republic on June 16, 1989. It notes that, “in proceedings N 26.696/95, on June 3, 1996, it was decided to file the case because of the nonexistence of a crime.”

b. Regarding the law

32. In its reply of December 15, 1994, it maintains that the petitioner has not exhausted the remedies available under domestic law as required by Article 46(1)(a) of the Convention and that, consequently, the petition is inadmissible. The State has not addressed the other legal issues raised in the case.

IV. ANALYSIS

A. Competence of the Commission

a. Competence *ratione materiae*

33. The petitioner’s claims involve alleged violations of Articles 5, 7, 8, and 25 of the Convention, to which Argentina is a party. Consequently, the case comes under the Commission’s competence *ratione materiae*.

b. Competence *ratione personae*

34. The victim is an individual and he appears before the Commission as the petitioner. Consequently, the Commission holds that it has active competence *ratione personae* in this case.

35. The petitioner’s claims describe alleged violations of the Convention for which Argentina would be responsible. Consequently, the Commission has passive competence *ratione personae* to hear this case.

c. Competence *ratione temporis*

36. The petition describes events that allegedly violated the Convention and that exclusively took place after the Convention had come into force for Argentina (September 5, 1984). Consequently, the Commission has competence *ratione temporis* to hear the case.

B. Other requirements for admissibility

a. Exhaustion of domestic remedies

37. One of the requirements set by Article 46 of the American Convention for a case to be admitted is that “the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.” This requirement was introduced to allow states a chance to resolve disputes through the legal and judicial channels provided by their own domestic laws.

38. The State claims, in its communication of December 15, 1994, that the case is inadmissible because the stipulation requiring the exhaustion of domestic remedies has not been met.

39. The petitioner, in turn, has invoked the exception to this requirement set forth in Article 46(2)(c) of the Convention, regarding the unwarranted delay in resolving the domestic remedies available in his case:

[For 11 years] I have been waiting for a legally correct solution; during that entire time I have seen my human rights systematically violated. I have been appearing before the courts since 1988 in my attempts to end the police pressure that keeps me from living a normal life. [...] My frequent requests for judicial protection have been formally received, but the treatment given to them has been either not effective or patently arbitrary [...] making it virtually impossible to exhaust the domestic remedies.

40. The Commission notes the fact that the situation has changed since the parties gave their statements on this aspect of the case. As of the date of this report's adoption, all the corresponding judicial proceedings under Argentine law have concluded.

41. One of the reasons for the complexity of this case is the fact that it involves seven trials, each dealing with different issues. For the purpose of assessing compliance with the requirement of exhausting domestic remedies, however, only the ordinary judicial remedies related to the allegedly violated rights are of interest.²

Regarding the alleged arbitrary arrest

42. The petitioner was placed in preventive custody as part of proceedings N 24519, for fraud. In other words, he was detained on the orders of a judge with competence to order such an arrest, a requirement that can be deduced from Article 7 of the Convention. The judge, responsible for National First-Instance Criminal Investigating Court N 39, ordered a dismissal in the petitioner's favor in October 1988; this ruling was finalized and the case was filed. The petitioner maintains that, “since I was considered the accused and not the complainant, I was legally barred from appealing the dismissal resolution” [emphasis in the original]. The State has made no objection to that claim and, in the interests of procedural economy, the Commission will refrain from further analysis of whether proceedings N 24519 were indeed a suitable remedy for seeking recourse against the accusation. Consequently, the Commission holds that the requirement has been met as regards this aspect of the case.

Regarding the alleged torture

² The information contained in this report is based on the update on the domestic legal proceedings as of July 23, 1999, submitted by the petitioner, and on the relevant parts of the State's submissions.

43. The proper recourse for this allegation was proceedings N 24079 ("for maltreatment"), which also dealt with the alleged removal of a medical report evidencing the torture allegedly inflicted on the petitioner. Domestic jurisdiction was exhausted with the ruling of the Supreme Court of Justice of the Nation on April 15, 1997, dismissing the petitioner's complaint alleging that extraordinary recourse had been denied. Consequently, the Commission holds that the requirement has been met in this aspect of the case.

Regarding the alleged denial of a fair trial

44. The proper recourse for this allegation was proceedings N 32989, begun by the petitioner on February 11, 1995, "for irregularities in the proceedings [24079, allegedly committed by unidentified police and judicial officers.]" The petitioner had claimed that "no procedural measure was ever ordered," but in a later communication he admitted that the magistrate responsible for Investigating Court N 30 dismissed the complaint "because no crime existed." The petitioner holds that, "I was legally unable to appeal against this resolution, and so to date it is final and the case has been FILED" [emphasis in the original]. Since State has not challenged that claim, in connection with these proceedings the domestic remedies are deemed to have been exhausted.

Regarding the alleged threats made by police personnel

45. The proper recourse for this was proceedings N 25156, the purpose of which was to address the alleged threats made by members of the Federal Police. It was "opened on March 14, 1989, and, on March 29, 1989 (15 days later), it was closed without any investigation being conducted or procedural measure ordered under a provisional dismissal ruling that, to date, is final and the proceedings have been FILED" [emphasis in the original].

46. Unlike the allegations regarding arbitrary arrest and torture, in this regard the petitioner has not supplied evidence to indicate his exhaustion of the available domestic remedies. The petitioner has not claimed to have appealed against the decision in proceedings N 25156, nor has he claimed that additional remedies do not exist. The State, in contrast, has alleged the petitioner's global failure to exhaust domestic remedies. Consequently, the Commission concludes that this aspect of the case is inadmissible because said remedies have not been exhausted.

47. In summary, for the purposes of processing this case, the domestic remedies have been exhausted in connection with the allegations of arbitrary arrest, torture, and the denial of a fair trial. They have not been exhausted as regards the alleged threats made by members of the police.

b. Filing period

48. The following section analyzes compliance with this requirement in respect of the proceedings in which the domestic remedies were deemed to have been exhausted. Under Article 46(1)(b) of the Convention and Article 38(1) of the Commission's Regulations, the deadline for submitting petitions is six months after the date on which notice of the "final ruling" is served. The petition in this case was submitted on August 24, 1994, and that will be used as the starting date for calculating compliance with this requirement.

Regarding the alleged arbitrary arrest

49. The Commission's file does not contain a copy of the final ruling in proceedings N 24519 (for fraud), during which the petitioners' preventive custody was ordered. But the petitioner has maintained that, "A provisional dismissal was ordered in October 1988, and that ruling has been

finalized and the case filed.” The State, in turn, in its reply of December 15, 1994, has globally held “that [with regard to all the proceedings initiated by the petitioner, which by reason of the date include the proceedings in question, N 24519] they show that domestic remedies have not been exhausted.” In sum: (a) the exact date on which the ruling became final and was notified is not known, and (b) the State, by maintaining that the domestic remedies have not been exhausted, forfeits the right to argue any failure in complying with filing period in connection with this case. Consequently, the Commission declares that said requirement has been met in respect of these proceedings.

Regarding the alleged torture

50. The proper remedy was proceedings N 24079 (for maltreatment and removal of the medical file). The Supreme Court’s final ruling was handed down on April 15, 1997, and notice was given over the following days. Consequently, as regards this aspect of the case, the requirement has been met.

Regarding the alleged denial of a fair trial

51. The proper remedy was proceedings N 32989, “for irregularities in the proceedings [24079, allegedly committed by unidentified police and judicial officers].” The final ruling issued by the investigating judge is dated February 21, 1995, and notice was given over the following days. Consequently, as regards this aspect of the case, the requirement has been met.

52. In sum, the filing period requirement has been met as regards the alleged deprivation of personal liberty, torture, and denial of a fair trial.

c. Duplication of proceedings and *res judicata*

53. There is no evidence to indicate that the substance of the petition is pending settlement in any other international proceeding or that it is substantially similar to another case already examined by the Commission or any other supranational agency.

d. Nature of the allegations

54. After the analysis of the Commission’s competence and of the formal requirements for admissibility, the substance of the case has been reduced to the following allegations: arbitrary arrest (illegal deprivation of personal liberty); torture; and denial of the right to a fair trial. The next step is to determine whether, if the allegations are confirmed, they constitute *prima facie* violations of the Convention as required by Article 47.b.

Regarding the alleged arbitrary arrest — illegal deprivation of personal liberty (Convention, Article 7)

55. The Commission notes that the petitioner’s allegations refer to the arrest warrant issued against him by National Criminal Investigating Court N 30 and carried out on April 5, 1988.

56. There is nothing in the petitioner’s submissions that would allow the Commission to conclude that these allegations constitute a breach of the provisions of Article 7 of the Convention regarding the right to personal liberty. The petitioner was arrested “for the reasons and under the conditions established beforehand by the laws of Argentina[.]”

57. Neither do the petitioner's claims indicate that the judge in charge of proceedings N 24519 and who ordered his arrest acted in an illegal or clearly abusive fashion or exceeded the limits of reasonable discretion in the performance of his duties as a magistrate.

58. Consequently, the Commission concludes that the petitioner's allegations regarding his alleged illegal arrest, even if proven true, do not constitute a violation of the Convention, particularly of Article 7 thereof, as required by Articles 47(b) of the Convention and 41(b) of the Commission's Regulations. On the contrary, in the Commission's opinion, those allegations are manifestly groundless, in accordance with Articles 47(c) of the Convention and 41(c) of the Commission's Regulations.

Regarding the alleged torture and cruel, inhuman, and degrading treatment inflicted on the petitioner (Convention, Article 5(2))

59. The petitioner claims that after his arrest, "at approximately one o'clock in the morning [on April 6, 1988], in the place where he was being held, the same officer who had arrested him applied blows with a cupped hand over both ears, an attack that was then repeated by another person."

60. It should be noted that the petitioner has also claimed that during his arrest, his police guards "punched him in the stomach" but that "no evidence was given [...] of the results of such blows."

61. According to the information contained in the case file, the petitioner's torture allegations were addressed by criminal proceedings N 24079, brought before Investigating Court N 13, Secretariat N 140, against the police officers who supposedly perpetrated the punishable acts: RenJes Derecho, Horacio Soto, and Norberto Cldido Ruiz. The judge issued an order for them to be placed in preventive custody, which was not carried out, and this was addressed by the ruling of February 21, 1995, in proceedings N 32989 brought by the petitioner.

62. Proceedings N 24079, "for maltreatment," was the legal recourse available to the petitioner after his allegations about the mistreatment he supposedly suffered while under arrest at the police building. These proceedings also analyzed the petitioner's claims about the alleged disappearance of the medical report drawn up by the Federal Penitentiary Service which, he maintains, contained evidence of the torture inflicted on him.

63. The Commission notes that it is not clear that proceedings N 24079 addressed all the petitioner's torture allegations, since the ruling in the case solely refers to the violence carried out against the petitioner's ears and hearing apparatus. In other words, the ruling makes no mention of the alleged blows to the stomach or to the deliberate denial of the medication needed to combat the ulcer pains from which the petitioner suffered.

64. The Commission also notes that the State's replies to the Commission have not specifically addressed these allegations made by the petitioner.

65. The Commission concludes that, if these allegations are proven true, this aspect of the case meets the requirement of constituting *prima facie* rights violations, as set forth in Articles 47.b of the Convention and 41.b of the Commission's Regulations. Consequently, it declares the case admissible in this regard.

Regarding the alleged absence of judicial guarantees and resources for substantiating the petitioner's claims under argentine law

66. The Commission notes that the petitioner has maintained that there were a number of irregularities in criminal proceedings N 24079, in which his torture allegations were examined. Criminal proceedings N 32989, processed by the National First-Instance Criminal Investigating Court N 39, Secretariat N 135, was intended to subject all the alleged irregularities in proceedings N 24079 to judicial scrutiny. That was the remedy available to the petitioner under Argentine law in order to obtain a ruling on his allegations about the failure to observe due process in proceedings N 24079.

67. The Commission believes that this allegation, together with his claims about a lack of effective judicial remedies, is closely related to the main issue regarding alleged torture.

68. The Commission concludes that, if these allegations are proven true, this aspect of the case meets the requirement of constituting *prima facie* rights violations set forth in Articles 47(b) of the Convention and 41(b) of the Commission's Regulations. Consequently, it declares the case admissible in this regard.

V. CONCLUSIONS

69. Based on the factual and legal arguments given above, and without prejudging the merits of the case.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible with respect to the alleged violations of Articles 5, 8, and 25 of the Convention.
2. To declare this case inadmissible with respect to the alleged violation of Article 7 of the Convention and to the alleged threats made against the petitioner by members of the police.
3. To notify the parties of this decision.
4. To continue with its analysis of the merits of the case.
5. To make itself available to the parties with a view toward reaching a friendly settlement based on respect for the rights enshrined in the American Convention, and to invite the parties to make a statement regarding the possibility thereof.
6. To publish this decision and to include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on September 21, 1999. Robert K. Goldman, Chairman; HioBicudo First Vice-Chairman; Claudio Grossman, Second Vice-Chairman; Commissioners Carlos Ayala Corao, Jean Joseph Exumand Alvaro Tirado Mejia.