

REPORT No. 104/13

PETITION 643-00

ADMISSIBILITY

HEBE SÁNCHEZ DE AMÉNDOLA AND DAUGHTERS

ARGENTINA

November 5, 2013

I. SUMMARY

1. On December 14, 2000, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition submitted by Hebe Sánchez de Améndola and Ingrid Elizabeth Améndola, represented by the Coordinator Against Police and Institutional Repression [*Coordinadora Contra la Represión Policial e Institucional –CORREPI*] (hereinafter “the petitioners”). The petition claims that the Republic of Argentina (hereinafter “the State” or “Argentina”) is internationally responsible for the alleged arbitrariness of a court judgment impairing the rights of Hebe Sánchez de Améndola and her four daughters¹ (hereinafter “the alleged victims”), which was handed down in a civil proceeding for damages against the State, for the death of Mrs. Sánchez de Améndola’s husband, Ricardo Osvaldo Améndola, committed by agents of the Argentine Federal Police.

2. The petitioners allege violations of the rights of the alleged victims to judicial guarantees and protection enshrined in Articles 8 and 25 of the American Convention on Human Rights (hereinafter “the American Convention”), as well as the obligation to respect and ensure the rights provided for under Article 1.1 thereof. The State alleges that the claims are inadmissible because they do not amount to violations under the American Convention and because the IACHR is not a court of appeal.

3. After examining the parties’ position in light of the admissibility requirements established in Articles 46 and 47 of the American Convention, the Commission concludes that it is competent to hear the claim and that the claim is admissible based on the alleged violation of the rights enshrined in Articles 8 and 25 of the American Convention, in relation to Article 1(1) thereof, to the detriment of the alleged victims. Consequently, the Commission has decided to notify the parties of the report and order that it be published and included in the Commission’s Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

4. The petition was registered under number 643-00. After preliminary analysis, the pertinent parts were transmitted on October 31, 2003 to the State for its observations. On May 28, 2004, September 9, 2005 and January 9, 2009 the State presented its observations, which were forwarded to the petitioners. The petitioners submitted their observations on August 9, 2004, as well as additional information on February 16, 2007, September 25, 2008 and March 12, 2009. These were [then] forwarded to the State.

¹ Ingrid Elizabeth, Noelia Ximena, Ivana Soledad and Leticia Analía Améndola.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

5. The petitioners contend that on January 27, 1989, at approximately 10:30 p.m., two Argentine Federal Police Sergeants killed Ricardo Osvaldo Améndola in "Sarmiento" park in the city of Buenos Aires, allegedly in the line of duty and using their police-issued weapons. The petitioners state that the police officers were tried for these acts and sentenced to 12 years and 3 months of prison for voluntary manslaughter [*homicidio simple*] and accessory after the fact [*encubrimiento*], respectively.

6. They allege that Hebe Sánchez de Améndola, the alleged victim's wife, appeared as the complainant in said criminal proceeding, and once the final judgment was handed down she also filed a civil action for damages against the perpetrators of the crime and the State, given that they were police officers. She did so pursuant to her own rights and in representation of her four minor daughters.

7. The petitioners state that the Federal Criminal and Correctional First Instance Judge of San Martín, in keeping with his decision of June 24, 1998, denied the motion to dismiss for legal shortcoming [*excepción de defecto legal*] submitted by one of the sergeants and denied the motion to dismiss based on the lapsing of the statute of limitations [*excepción de prescripción*] submitted by the other sergeant. They contend, however, that the judge admitted the motion to dismiss based on the lapsing of the statute of limitations filed by the State as the judge considered that the suit was filed subsequent to the expiration of the two-year deadline provided for under Article 4037 of the Civil Code.

8. The petitioners hold that said judgment is arbitrary because the legislation stipulates that criminal proceedings toll the statute of limitations for tort liability suits, not only with regard to the perpetrators of the crime, but also civil authorities. They assert that pursuant to Article 3982 bis² of the Civil Code (in keeping with Articles 1101 and 4037 thereof), the statute of limitations of a civil action arising from a criminal act is tolled with respect to all those responsible (including civil authorities against whom it is impossible to file a criminal suit) from the moment that the criminal proceedings begin until they conclude, as provided for by case law³ and scholarly legal theory⁴. In this regard, the petitioners cite

[...] given the civil judgment's dependence on the prior ruling of the criminal judge when there has been a criminal complaint brought against the party or parties criminally liable

² To support their argument the petitioners cite Article 3982 bis of the Civil Code: "If the victim of an illicit act has filed a criminal complaint against those responsible for the act, this filing suspends the running of the statute of limitations of the civil action, although the victim has not requested awarding of damages before the criminal court. The suspension ceases upon conclusion of the criminal proceedings or withdrawal of the complaint."

³ In support they argue that several Argentine courts have interpreted these provisions similarly in other cases, such as: (i) Isaach, Jorge S. v. Simonetti, Ramón: "Given that the perpetrator and the legal owner or guardian of the hazardous thing with which harm was caused are indisputably united, the pending criminal proceedings against the former tolls the statute of limitations of the civil action that is brought against the latter." (ii) National Civil Court of Appeals of Buenos Aires, Courtroom F, March 14, 2000, proceeding Franco de Palomo, Sara v. Balentini, Carlos A. et al: "Article 3982 bis of the Civil code is to be interpreted separately from Article 3981 of the Code, which is why the criminal complaint brought against the perpetrator of the crime tolls the statute of limitations against the accused and all those civilly liable."

⁴ The petitioners cite: "The suspension provided for under Article 3982 bis applies to all the subjects that may be found civilly responsible for the harm caused by the crime." Carlos Creus. *Influencia of Criminal Proceedings on Civil Proceedings [Influencia del Proceso Penal sobre el Proceso Civil]*, p. 63.

for the act, it is appropriate to consider that the criminal complaint suspends the running of the statute of limitations, in the terms provided for under Article 3982 bis, against all the responsible parties [...] the complaint filed against the co-defendants Barry and Bigozzi—the doctors accused of the crime—tollled the statute of limitations against them of course, but it also tollled it against civil authorities that were not accused or not likely to being accused. In these terms, the judgment appealed is therefore overturned inasmuch as it allowed the defense based on the statute of limitations that opposed the advancement of the action by the Private Polyclinic for Medicine and Surgery, Inc. [*Policlínica Privada de Medicina y Cirugía S.A.*].⁵

9. The petitioners hold that pending criminal proceedings against the former suspends the running of the statute of limitations of the civil action that is brought against the latter. They allege that upon appearing as a complainant, the deadlines for filing a civil action for damages were suspended. This standard would be related to Article 1101 of the Civil Code, which precludes a civil court from issuing a judgment until the criminal judgment is final. The petitioners contend that they appeared as complainants in the case well before the statute of limitations lapsed, and continued as such until the conviction became final. Accordingly, they assert that the civil suit was brought under the “umbrella” of the suspension, during which time the statute of limitations did not run, and was therefore filed in a timely manner.

10. The alleged victim filed an appeal before the First Section of the Federal Appeals Court of San Martín, which issued a ruling upholding the prior decision on November 23, 1999. An extraordinary appeal filed was also denied by the same Federal Court. Subsequently, the petitioners filed a remedy of complaint [*recurso de queja*] before the Supreme Court of Justice of the Nation, which was denied on May 31, 2000, in keeping with the provisions of Article 280 of the National Civil Code of Procedure⁶. This decision was notified on June 8, 2000.

11. The petitioners maintain that despite the State’s direct responsibility in the death of Ricardo Osvaldo Améndola, the State has not responded with appropriate reparation. They allege that the Améndola family was a victim of “state violence,” [and] that through this unfair ruling “is once again being victimized by another State agency, denying them the possibility to claim the proper relevant material damages.”

12. As to the State’s allegation that the petition was filed out of time (see III.B below), the petitioners respond that although the decision on the remedy of complaint was notified on June 8, 2000, “this decision becomes *res judicata* as of the appellants’ acceptance thereof,” which occurred on July 15, 2000, in keeping with Argentine legislation⁷.

⁵ The petitioners cite: National Civil Court of Appeals of Buenos Aires, Courtroom F, December 16, 2002, Proceedings M.M. v. Barry, Federico et al. re: damages.

⁶ Art. 280. – Closing of the evidentiary period prior to handing down the decision. Denial of extraordinary appeals. Briefs for ordinary appeals. When the Supreme Court hears extraordinary appeals, receipt of the case shall mean closing the evidentiary period prior to handing down the decision. The court, in keeping with its fair-minded discretion, and with the mere invocation of this standard, may deny the extraordinary appeal, for lack of sufficient federal harm or when the matters raised are unsubstantial or lack transcendence.

⁷ The petitioners indicate that the time period for becoming *res judicata* is five working days or seven calendar days in a row.

B. Position of the State

13. The State alleges that the petition is inadmissible given that no violations to the American Convention have been described. It contends that the Commission is not a court of appeals. It further contends that the petition to the State was forwarded out of time given that it was sent almost three years after its submission to the IACHR and that the petition does not fulfill the 6-month [submission] requirement set forth in the American Convention.

14. Argentina asserts that the alleged victim's claim for damages against the National State was denied because the statute of limitations to bring a civil action for the alleged tort liability had lapsed, inasmuch as the two-year time period provided for under Article 4037 of the Civil Code had passed. It further asserts that the international claim revolves exclusively around the domestic courts' interpretation of Article 3982 bis of the Civil Code and that the complaint is based on the claimants' mere disagreement with the rulings of the domestic courts.

15. The State holds that there were no irregularities during the proceedings, nor was there a lack of Independence or impartiality on the part of judges, and no allegations were made in this regard; rather, there was appropriate respect for the guarantees of due process in keeping with applicable international standards in this regard. The State alleges that the intention of the petitioners is to use the international jurisdiction as a kind of "fourth instance," as if it were a court of appeals to the domestic courts.

16. As to the lapsing of the statute of limitations for civil action, the State asserts that the majority of scholarly legal opinion and preponderance of case law⁸ provides that the benefit of tolling the statute of limitations has relative and personal effects insofar as "it cannot be invoked except for by the persons, or against the persons, to the detriment or benefit of for whom it was established, and not by their joint litigants or against their joint litigants"⁹. Therefore, the statute of limitations is tolled when the law so expressly stipulates, a condition that imposes a strict interpretation. In this regard the State cites that:

As regards the responsible parties of the act referred to in Article 3982 bis of the Civil Code, it is should be noted that it may not be anyone other than the perpetrators or accessories to the illicit act because a criminal suit may only be brought against them. Accordingly, tolling the statute of limitations of a civil action may only have effects on the aforementioned persons without this extending to other civil authorities that have not been passive subjects of the repressive action or to those who are accused of vicarious liability.¹⁰

⁸ In support of its argument, the State cites: the National Civil Court's judgment of February 18, 2004. "[...] To establish who the subjects are to which the provision refers as benefiting from tolling the statute of limitations, consideration is to be given to the principle set forth in Article 3981 of the Civil Code, which has not been abrogated or amended by these new grounds included by the abovementioned Law 17.711.- In keeping with what is regulated by this legal precept, the benefit of tolling the statute of limitations has relative and personal effects given that "it cannot be invoked except for by the persons, or against the persons, to the detriment or benefit of for whom it was established, and not by their joint litigants or against their joint litigants." In keeping with the foregoing, it is improper to extend the effects of tolling the statute of limitations through the filing of a criminal complaint to those who were sued in the civil proceedings but have not been a party to the criminal proceedings. [...] In other words, the suspensory effect provided for in Article 3982 bis of the Civil Code does not extend from one debtor to another even where they are jointly or concurrently liable."

⁹ The State cites the judgment of the National Civil Court of February 18, 2004.

¹⁰ The State cites the judgment of the National Civil Court of February 18, 2004.

17. Furthermore, the State alleges that the case law cited by the petitioners omitted the following paragraph:

[...] this has given rise to differing legal opinions in this regard. This Court, with its previous make-up, following the guidance of the lion's share of legal thinking and case law, ruled that for the complaint to have a suspensory effect on the statute of limitations under Article 3982 bis of the Civil Code, not only is it necessary that the intention to take action or to continue asserting the right claimed be clearly evidenced, with the creditor coming out of his silence or inaction, but also that the action be addressed directly against the debtor himself. Indeed, this is the proper interpretation of the aforementioned article when it states that the criminal complaint should be directed "against those responsible for the act." [...] Similarly courts have decided that when the responsibility of different subjects arises due to differing causes for attributing fault, this is a case of concurrent liability and not joint liability; this is why the criminal complaint against the party who is the perpetrator of the act does not have suspensory effects for the principal [...] In other words, in keeping with this understanding, pursuant to the provisions of Article 3982 bis, the criminal complaint brought against the perpetrator of the crime only tolls the statute of limitations against the accused and its effect does not extend to those civilly responsible who were not the accused¹¹.

18. The State contends that the alleged victims have had appropriate access to justice with due respect for procedural guarantees, without any kind of restrictions or impairments. It points out that in contrast to the scholarly legal opinions and case law that chiefly supported the position argued by the petitioners, "minimum diligence" would have shown the advisability of filing a suit against the state regardless of the criminal case.

19. The States asserts that the alleged victims could have brought a suit for damages against the National State, but decided to do so only once the criminal proceedings had concluded and the statute of limitations for filing a tort liability suit had already lapsed. It further asserts that the petitioners did not use the domestic remedies available to them and that due to their lack of procedural skill—out of their own negligence—their right to file a suit lapsed. The State argues that the petitioners lost their chance to fulfill the requirement of exhausting all prior domestic remedies, thereby disqualifying the IACHR's subsidiary competence.

20. The State alleges that the Supreme Court of Justice of the Nation notified the petitioner of its decision on the case on June 8, 2000, and that bearing in mind the date the petition was received by the IACHR, the petition is inadmissible because it was submitted subsequent to the 6-month deadline provided for under Article 46(1)(b) of the American Convention.

21. The State argues that the commission is a body of a subsidiary nature and may not review judgments of national courts handed down in keeping with due legal guarantees, except where it considers that the American Convention has been violated. The State further argues that the domestic legal procedure unfolded pursuant to international standards of due process and that the justice system adopted its decision based on its interpretation of the facts, evidence and applicable law. The Government therefore considers that there are no elements in fact or law that could constitute a violation of the rights and guarantees recognized under the Convention.

¹¹ The State cites: Proceedings of M.M. v. Barry, Federico et al. re: damages, National Civil Court of Appeals of Buenos Aires (CNCIV), Courtroom F, December 16, 2002.

IV. ANALYSIS

A. Competence of the Commission *ratione personae, ratione loci, ratione temporis* and *ratione materiae*

22. The petitioners have standing to submit a petition to the Commission in keeping with the provisions of Article 44 of the American Convention. The petition identifies as alleged victims individuals with respect to whom the State has undertaken the commitment to respect and ensure the rights recognized under the American Convention. As regards the State, the commission takes note that Argentina has been a State party to the American Convention since September 5, 1984, date upon which it deposited its ratification instrument. Therefore, the Commission is competent *ratione personae* to review the petition.

23. The Commission is competent *ratione loci* to consider the petition, because said petition alleges violations of rights protected by the American Convention that occurred in the territory of a State party to these instruments [*sic*]. The IACHR is competent *ratione temporis* in relation to each instrument [*sic*] as regards acts that occur after such instruments' entry into force by the State, respectively. Finally, the Commission is competent *ratione materiae* because the petition alleges violations of human rights protected under the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

24. Article 46(1)(a) of the American Convention calls for the prior exhaustion of available domestic remedies in keeping with the generally recognized principles of international law as a requirement for admitting claims on alleged violations of the American Convention. However, Article 46(2) of the Convention provides that the requirement for prior exhaustion of domestic remedies shall not apply when: (i) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (ii) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (iii) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

25. Pursuant to the Rules of Procedure of the Commission, and the opinions of the Inter-American Court of Human Rights, whenever a State alleges that the petitioners have failed to exhaust all domestic remedies, the State has the burden of identifying which remedies are to be exhausted and showing that the remedies that have not been exhausted are "appropriate" for redressing the alleged violation; in other words, that the function of these remedies in the domestic legal system are suitable for protecting the legal situation infringed.¹²

26. The petitioners hold that remedies were exhausted through the decision denying their remedy of complaint on June 8, 2000. The State, for their part, does not specifically allege failure to

¹² Article 31(3) of the Rules of Procedure of the Commission. See also Inter-American Court of Human Rights, *Caso Velásquez Rodríguez*, Judgment of July 29, 1988, paragraph 64.

exhaust domestic remedies, rather a lack of legal expertise on the part of the petitioners for not having filed a civil action within the timeframe provided for.

27. The Commission notes that the subject of this petition refers to the alleged arbitrariness of a court judgment that presumably impaired the rights of the alleged victims to judicial guarantees and protection in a civil proceeding for damages, which had been brought to seek appropriate reparation for the death of the husband and father of the alleged victims at the hands of police officers.

28. The Commission observes that the criminal proceedings regarding the acts that occurred on January 7, 1989, in which Hebe Sánchez de Améndola appeared as the complainant, concluded with a conviction. Thereafter, a civil suit for damages was filed against the perpetrators of this crime and the State. The action against the State was denied on June 24, 1998, based on the application of the two-year statute of limitations. The Federal Court of Appeals of San Martín denied the appeal lodged against this decision on November 23, 1999. An extraordinary appeal was [then] lodged, which was denied by the same Federal Court based on the lapsing of the statute of limitations regarding the action. On May 31, 2000, the Supreme Court of Justice of the Nation denied the remedy of complaint, in keeping with the provisions of Article 280 of the Argentine Civil Code of Procedure. This decision was notified on June 8, 2000.

29. On that point, the petitioners allege that upon their appearance as complainants, the deadlines for filing a civil action for damages were suspended. The State, for its part, maintains that the majority of scholarly legal opinion and preponderance of case law provides that the benefit of tolling the statute of limitations has relative and personal effects, and that the tolling applies only when the law so expressly stipulates.

30. Based on these arguments, the Commission would have to examine whether the petitioners duly exhausted domestic remedies, taking into account the “majority” of scholarly legal opinion to which the State refers. Without going into issues of domestic law, the Commission does take into consideration, based on a preliminary review of legal precedents and scholarly opinion on the subject,¹³ that there are two approaches as to whether the tolling of the statute of limitations can be applied to individuals who have not been accused in criminal proceedings. In that review the IACHR, for illustrative and not exhaustive purposes, identified both positions in case law in a series of decisions issued before and after June 24, 1998, the date of the first domestic court decision applying the statute of limitation in this petition.¹⁴

31. Bearing in mind that different approaches to this subject already existed in case law, albeit one a majority and the other a minority approach, and for purposes of the admissibility stage, the Commission considers that the alleged victims exhausted the civil action with a reasonable expectation of receiving an effective response to their claims.

¹³ See <http://www.laleyonline.com.ar>; <http://www.eldial.com.ar>.

¹⁴ The Commission notes that there is scholarly opinion that refers to the *pro homine* principle and Article 29 of the American Convention in support of the position favoring the tolling of the statute of limitations. MIGUEZ, María Angélica, and ROBLES, Estela, *Efectos suspensivos del término de la prescripción de la acción civil, producidos por la querrela penal. Un Fallo Esclarecedor*, LA LEY 2000-F, p.312.

32. Therefore, given the characteristics of this petition, the Commission deems that domestic remedies were exhausted through the judicial decision dismissing the remedy of complaint, which was notified on June 8, 2000.

2. Time period for lodging the petition

33. The American Convention establishes that for a petition to be admissible by the Commission, it must be lodged within a period of six months from the date on which the party alleging violation of his or her rights was notified of the final judgment.

34. In that regard, the State maintains that the Supreme Court of Justice of the Nation notified the petitioner of the decision in her case on June 8, 2000, and that bearing in mind the date the petition was received by the IACHR, the petition is inadmissible because it was lodged after the six-month deadline established in Article 46(1)(b) of the American Convention. The petitioner, for her part, responds that although the decision was notified on that date, "this decision becomes *res judicata* as of the appellants' acceptance thereof," which occurred on July 15, 2000, in keeping with Argentine legislation.

35. The Commission notes that the decision by which domestic remedies are exhausted was notified to the alleged victims on June 8, 2000, and that the undated petition was received by the IACHR via the postal service on December 14, 2000, six months and six days following notification of said decision. In that regard, based on the IACHR's practice in these matters,¹⁵ assuming the days that elapsed while the petition was in the mail, the Commission considers that the petition was lodged in a timely manner, thus satisfying the requirement established in Article 46(1)(b) of the American Convention.¹⁶

3. Duplication of international proceedings

36. The record of the petition does not contain any information that would suggest that this matter is pending settlement in another international proceeding or that it has been decided previously by the Inter-American Commission. Therefore, the IACHR concludes that the exceptions established in Article 46(1)(d) and Article 47(d) of the American Convention do not apply.

4. Characterization of the facts alleged

37. This petition has presented a series of arguments on the alleged violation of the rights to a fair trial and to judicial protection enshrined in Articles 8 and 25 of the American Convention. Specifically, the petitioner contends that the June 24, 1998, decision by the Federal Criminal and Correctional First Instance Judge of San Martín was arbitrary. For its part, the State asserts that due process guarantees were not violated in the judicial process and that the petition assigns to the Commission the role of a court of appeals. In addition, it alleges a lack of procedural expertise on the

¹⁵ See: IACHR, Report No. 69/08, Petition 681-00, Guillermo Patricio Lynn, Argentina, Admissibility, October 16, 2008, paras. 44-46; Report No. 93/03, Petition 337-07, Samanta Nunes da Silva, Brazil, Admissibility, September 7, 2009, paras. 43-44; Report No. 79/08, Petition 95-01, Marcos Alejandro Martín, Argentina, Admissibility, October 17, 2008, paras. 38-39.

¹⁶ IACHR. Report No. 115/12, Giovanna Janett Vidal Vargas, Chile, Admissibility, November 13, 2012, para. 42.

part of the petitioners, who should have filed the civil action in question before the established deadline, thus interrupting the statute of limitations.

38. In this regard, the Commission understands that the right to reparation for human rights violations, specifically as regards the right to life, is an autonomous right, which is why it is independent of national law and is part of the State's international responsibility with respect to conduct by its agents that infringes on this right. According to what is alleged in this petition, the domestic legal system did not offer the alleged victim the best possibilities to exert her right to reparation. An analysis should be done in the merits stage to determine whether the domestic legal system offered adequate means to seek appropriate reparation in these circumstances, or to what extent it would have been necessary for the petitioners to have the results of the investigation and criminal proceeding to be able to exercise their right to reparation with the information and evidence required.

39. In light of the foregoing considerations, the Commission notes that the allegations set forth could be characterized as violations of the right to a fair trial and to judicial protection protected in Articles 8 and 25 of the American Convention in relation to Article 1(1) thereof.

V. CONCLUSIONS

40. The Commission concludes that it is competent to examine the claims presented by the petitioners as to the alleged violation of Articles 8 and 25, in accordance with Article 1(1), of the American Convention, and that these claims are admissible, pursuant to the requirements established in Articles 46 and 47 of the American Convention.

41. Based on the arguments of fact and law laid out above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition admissible with respect to Articles 8 and 25, in connection with Article 1(1), of the American Convention.
2. To notify the Argentine State and the petitioners of this decision.
3. To continue analyzing the merits of the case.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 5th day of November 2013. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González, Dinah Shelton (en contra), Rodrigo Escobar Gil, y Rose-Marie Antoine, Members of the Commission.