

REPORT N° 17/06 1
PETITION 531-01
ADMISSIBILITY
SEBASTIAN CLAUS FURLAN AND FAMILY
ARGENTINA
March 2, 2006

I. SUMMARY

1. The present report addresses the admissibility of petition 531/01. The petition was opened by the Inter-American Commission on Human Rights (hereinafter "Inter-American Commission, "Commission" or "IACHR") pursuant to the filing of a series of communications, starting on July 18, 2001, by Danilo Pedro Furlan, father of the presumed victim, Sebastian Furlan, (hereinafter "the petitioner") against the Republic of Argentina (hereinafter "Argentina" or "State"). The petitioner alleges that the State bears responsibility under the American Convention for having failed to provide timely justice in legal proceedings seeking compensation for an accident suffered by his son.

2. The petitioner indicates that Sebastian Furlan, then 14 years old, suffered severe injuries as a result of an accident that took place in an abandoned military training area in the locality of Ciudadela, in the Province of Buenos Aires. He recounts that Sebastian and other boys were playing in the area, used by local residents as a public space, when a heavy beam fell on his head. His father affirms that Sebastian sustained a fractured skull and irreversible cognitive, psychological and physical damage.

3. The petition recounts that, in view of the severity and permanence of the injuries and the need for care and treatment for Sebastian, his father instituted judicial proceedings in 1990 seeking compensation. Those proceedings were resolved at first instance in 2000. The decision concluded that the State bore responsibility for having created a situation of risk, but that Sebastian bore 30% of the responsibility for having entered the area. The court allocated an award of damages based on the 70% of the responsibility that corresponded to the State. That decision was confirmed on appeal later in 2000, and executed in 2003. The petitioner complains that the judicial proceedings were subject to unjustified delay, and that the compensation finally awarded was minimal and disproportionate to the responsibility the State bears for the severity and permanence of the harm.

4. The State, for its part, maintains that the petitioner had full access to effective judicial remedies, which functioned with due guarantees to deliver a judgment in accordance with applicable law. It argues that, if the petitioner disagreed with the compensation awarded, he should have exhausted the further remedy of an extraordinary federal appeal before the Supreme Court of Justice. The State maintains that, because he did not exhaust this remedy, the petition is inadmissible. Further, the State maintains that the petitioner's disagreement as to the amount of the compensation is a question of domestic law, and that resolution of the petition would require the Commission to act as a "fourth instance" of appeal, outside of its sphere of competence.

5. Pursuant to the following analysis, the Commission concluded that, while a disagreement as to an amount of compensation would not, in and of itself, present a cognizable claim under the American Convention on Human Rights (hereinafter "American Convention" or "Convention"), other aspects of the petition raise claims within the scope of the Convention, and are admissible pursuant to the terms of Articles 46 and 47 of the Convention. Consequently, during the merits phase, the Commission will analyze the compatibility of the duration of the judicial proceedings with the rights to timely judicial protection and guarantees (Articles 25 and 8); the compatibility

1 Pursuant to Article 17.2.a of the Rules of Procedure of the IACHR, Commissioner Víctor E. Abramovich, an Argentine National, did not participate in the discussion or decision in the present case.

of the standards applied in the determination of Sebastian Furlan's rights with the rights of the child (Article 19); the relation of the claims raised to the right to personal integrity (Article 5), taking into account Sebastian's status as a minor at the time of the facts; and the relation of the claims to the State's general obligation to respect and ensure protected rights (Article 1.1).

II. PROCESSING BEFORE THE COMMISSION

6. The first communication was presented at the OAS office in Buenos Aires on July 18, 2001, and forwarded to the Commission's offices. This was followed by communications received on August 7, 2001, July 24, 2002, August 16, 2002, and October 28, 2002. The Commission initiated the processing of the petition on December 16, 2002, when it transmitted the pertinent parts to the State with a request for relevant information within two months.

7. The State presented information in response by note of February 24, 2003, with a brief additional note of February 27, 2003. The State's responses were transmitted to the petitioner in a note of March 17, 2003, with the presentation of observations requested within one month.

8. The petitioner presented additional information and observations by means of communications dated March 10, 20 and 26, 2003. These were transmitted to the State on May 28, 2003, with a request for observations within one month. Additionally, the Commission transmitted a communication from the petitioner of April 3, 2003, via note of May 28, 2003. The State responded with a communication dated June 30, 2003, which was transmitted to the petitioner on August 20, 2003.

9. The petitioner filed an additional communication on November 17, 2003, which was subsequently transmitted to the State. He filed further communications on July 28, September 13, and November 8, 2004. These were transmitted to the State on November 22, 2004. The petitioner presented a further communication on November 24, 2004, which was subsequently transmitted to the State.

10. In December of 2004, the Commission carried out a working visit in Argentina, and during that time met with the parties in a number of petitions, including with Danilo Furlan and representatives of the State. The meeting included a discussion as to the whether it would be possible for the State to facilitate access to psychological care for Sebastian Furlan and his family, as well as to two other forms of assistance. The Commission thereafter addressed a communication to the State manifesting its interest in the definition of certain preliminary points discussed. The State responded with a note of January 7, 2005, reporting on some preliminary steps in the framework of possible humanitarian assistance. While a constructive dialogue was initiated, it did not produce a change in the situation.

11. For his part, the petitioner presented additional information by a note of January 21, 2005, and this was transmitted to the State by note of February 3, 2005. The petitioner provided additional submissions on March 17, April 4, April 25, May 23, May 24, June 1, June 10, August 4, August 11, September 7, September 9, October 21, December 19, and December 29, 2005, as well as January 9, 2006. The pertinent parts of these communications were transmitted to the State. The State, for its part, filed an additional communication dated November 11, 2005, which was transmitted to the petitioner.

III. POSITION OF THE PARTIES

A. Position of the Petitioner

12. The petitioner recounts that Sebastian Furlan was 14 years old when, on December 21, 1988, he went with his little brother and some other boys to play in an abandoned military installation

located in their neighborhood in Ciudadela. Sebastian was hanging from a crossbeam (travesaño) that had served as part of an obstacle course, when the beam fell on his head with the force of 45 to 50 kilograms. The accident left him unconscious and bleeding, with a fractured skull.

13. The petitioner reports that Sebastian was taken to the hospital, and underwent brain surgery. He remained in a coma for some 20 days. When he was discharged a month after the accident, he had a limited ability to speak or move his limbs. His father affirms that Sebastian was left with irreversible cognitive, psychological and physical damage. His father reports, for example, that Sebastian went from being a boy adept at sports to spending months learning how to walk again. The petition recounts that the cognitive damages mean that Sebastian operates at the level of an adolescent, and that his disabilities mean he cannot study effectively or hold a regular job.

14. The petitioner recounts that, in view of the extent of the damages suffered by Sebastian and need for treatment and care, he instituted judicial proceedings on his son's behalf in the *Juzgado N° 9, Secretaría N° 28* seeking compensation for the consequences of the accident. Those proceedings, "Furlan Sebastian Claus c. Estado Nacional s/ daños y perjuicios" were resolved at first instance by the *Juzgado N° 9* in a decision dated September 7, 2000.

15. The decision, a copy of which was presented with the petition, concludes that the State bore responsibility for having created a situation of risk. It was undisputed that the field was owned by the State (the Armed Forces), had been abandoned for years, and was open and unfenced. The court concluded that it was habitually used by children for play and sports, and was regarded as a public space by local residents. The decision indicates that the State did not contest the facts of the accident, but argued that Sebastian Furlan and his parents bore responsibility for his having entered the area.

16. The decision reflects that the court dismissed the State's arguments to the effect that Sebastian's parents bore responsibility, but determined that the 14-year old Sebastian Furlan himself bore 30% of the responsibility for the accident. The court allocated an award of damages of 130,000 pesos in favor of Sebastian based on the 70% of the responsibility that pertained to the State. (That is, 130,000 pesos less the 30% corresponding to the responsibility of the victim.) Both parties appealed the decision at first instance, which was confirmed in all principal aspects by the *Sala Civil y Comercial N° 1 de la Cámara de Apelaciones Nacional en lo Civil y Comercial Federal* in a decision dated November 23, 2000.

17. The petitioner notes that the judge who was in charge of the case at first instance for almost ten years, and who knew the proceedings, was replaced shortly before the case was decided by a judge from another court who decided the matter without fully understanding it. He considers that the court of second instance gave the matter insufficient attention, and failed to properly analyze the case.

18. At the time of the filing of the petition, the petitioner had not yet been able to collect on the award of damages. He reported in March of 2003 that the judgment had finally been executed. He affirms that the total award, with interest, was 165,803 pesos. While pesos were equivalent to US dollars when the judgments were issued in 2000, the national currency was devalued following the economic crisis at the end of 2001, and the petitioner alleges that the award of damages thus lost more than half of its value. Moreover, he affirms that the judgment, issued in terms of pesos, was executed in bonds only redeemable for full value in 2016. He argues that, if cashed at the time they were issued, the bonds were only worth 30% of their nominal value. He maintains that, given that the judgment was issued in terms of pesos, he should have been paid in pesos and not in bonds of lesser value. He contends that the value of the compensation as discharged is equivalent to approximately 10,000 \$US, and that this is grossly insufficient as a basis to provide the care, support and treatment his son needs throughout his life.

19. He emphasizes that this compensation was supposed to remedy damages for the past and well as compensate for the consequences in the present and future. The petitioner reiterates in his communications his concern, given the alleged insufficiency of the compensation, and that Sebastian is unable to hold a regular job, with respect to how his son will live once he is unable to provide the necessary support. In many of his communications the petitioner presents information as to awards of compensation in other cases providing higher awards for situations he considers to be less significant, and he argues that the award in the case of his son was grossly disproportionate.

20. Sebastian's father maintains that the State bears responsibility for what happened to Sebastian, not only because it was State negligence that caused the accident, but also because the excessive delay in the judicial proceedings and in the execution of the judgment deprived his son of the means necessary for a better recuperation.

21. Sebastian's father indicates that the consequences of the situation have been disastrous for Sebastian and for the members of the family. His father reports that the fact that Sebastian has the appearance of man, but the cognitive capacity of an adolescent continuously places him in difficulties and at risk. He reports, for example, that the gap between his appearance and cognitive capacity means his actions are often misunderstand, and have lead to him being harassed, getting into fights, and even being detained by police due to such misunderstandings. Medical and police reports filed by the petitioner indicate that Sebastian was the victim of attack and attempted robbery on March 1, 2003 which left him with a serious puncture wound to the lung.

22. The petitioner indicates that Sebastian is aware of the difference in his life before and after the accident, and between his situation and that of other people his age, and that this is a source of tremendous anguish. The petition recounts, without details, that Sebastian was committed to an institute for three months, in unacceptable conditions, in restraints and under heavy medication. The petitioner indicates that Sebastian has harmed himself on at least two occasions in what are described as suicide attempts. The petition recounts that the situation since the accident has been traumatic for Sebastian's immediate family as well, and led to the disintegration of his parents' marriage and psychological problems for both the parents and two siblings. In addition to the claims raised by the petitioner relative to the judicial process, he requested at various points in the processing before the Commission that the State provide Sebastian and the family with psychological attention, and provide Sebastian with a pension.

B. Position of the State

23. The State's presentations coincide with those of the petitioner as to the principal facts reported with respect to the accident, the severe injuries sustained by Sebastian Furlan, and the objective responsibility that was determined by the judiciary. The State notes that the judicial determination as to the division of responsibility between the plaintiff and the State was derived from the internal normative framework in which the general criterion is the capacity to foresee risk. The State affirms its view that this shared responsibility was appropriate, given that the 14-year old Sebastian was aware of the risk of using unknown equipment in an abandoned area, and that an evaluation of the legal responsibility of the presumed victim was necessary.

24. The State considers that the presumed victim had access, through the proceedings instituted by his father, to two instances of judicial review. The judicial process in question in fact produced a sentence in Sebastian's favor. The State maintains that the courts acted with full observance of the guarantees of due process, and that there was no undue delay in the process.

25. The State affirms that the petitioner filed his petition before the Commission without having fully exhausted domestic remedies. The State accordingly considers that the petition is inadmissible for failing to meet the requirements of Article 46 of the American Convention. In this regard, the State indicates that the petitioner failed to present an extraordinary appeal (*recurso extraordinario*) before the Supreme Court as contemplated in Article 14 of Law 48. The State notes that, according to the applicable legal regime, if Mr. Furlan had considered the decision at second instance to be arbitrary to the point of presenting a federal question, he could have interposed such an appeal within 10 days of notification of that decision. Had that been denied, he could have then filed a direct appeal (*recurso de queja*) before the high court. Because he declined to do so, he thus consented to the decision and the amount and conditions of compensation set forth therein.

26. The State notes that, having consented to the decision issued, what remained was only the process of execution, which, at the time of its initial response, was underway and following the steps prior to payment. The State indicates that, while it recognizes that the presumed victim and his family have suffered, an award of compensation concerns only the direct and the indirect victims. The State considers that a number of the claims raised by Mr. Furlan before the Commission did not fall within the scope of the national compensation regime.

27. By note of February 27, 2003, the Foreign Ministry reported that the debt in favor of Sebastian Furlan resulting from the judicial process had been cancelled by the accreditation of consolidation bonds authorized by note of December 17, 2002. The State notes that, following the economic emergency, bonds were used to pay all debts in which the State was the debtor, and affirms that this was not incompatible with the National Constitution or the American Convention.

28. Additionally, the State contests the admissibility of the present petition on the basis of the so-called "fourth instance" doctrine. In this regard, the State notes that international systems for the protection of human rights are subsidiary to national systems, which must be allowed to put their commitments into practice and resolve conflicts at the domestic level. Only if such conflicts cannot be resolved internally in accordance with those commitments would the international system be competent to intervene and issue a determination. The State quotes case law of the Commission to the effect that the latter is not competent to review sentences issued by national tribunals acting in the sphere of their competence and applying due judicial guarantees unless it can identify a potential violation of an international obligation. The State affirms that, according to this doctrine, the Commission cannot act as another instance of appeal, and that a disagreement with the outcome of judicial proceedings – in the present case with the amount of compensation -- is not sufficient to provide a basis for the Commission to exercise its jurisdiction.

29. The State maintains that the petitioner exercised his right to be heard, with due guarantees, before the national judiciary, and that a petition questioning the amount of compensation awarded is inadmissible. The State considers that the petitioner has provided no element of fact or law to demonstrate a possible violation of the American Convention.

IV. ANALYSIS OF ADMISSIBILITY

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

30. The petitioner has standing to file a petition with the Commission pursuant to the terms of Article 44 of the American Convention. The petition names as alleged victims individuals with respect to whom the State undertook to respect and ensure the rights enshrined in the American Convention. As to the State, the Commission notes that Argentina has been a State party to the Convention since September 5, 1984, the date on which it deposited its instrument of ratification. Therefore, the Commission has the competence *ratione personae* to examine the petition.

31. The Commission has competence *ratione loci* to consider the petition, since it alleges violations of rights protected by the American Convention occurring within the territory of a state party thereto. The IACHR has temporal competence insofar as the duty to respect and ensure the rights protected in the American Convention was in force for the State at the time the violations alleged in the petition are said to have occurred. Finally the Commission has competence *ratione materiae* because the petition alleges violations of human rights protected by the American Convention.

B. Other requirements for the admissibility of the petition

1. Exhaustion of domestic remedies

32. Article 46 of the American Convention specifies that, in order for a case to be admitted, "remedies under domestic law [must] have been pursued and exhausted in accordance with generally recognized principles of international law." This requirement exists to ensure the state concerned the opportunity to resolve disputes within its own legal framework.

33. The State argues in this regard that the petition is inadmissible because the petitioner failed to file and exhaust an extraordinary federal appeal before the Supreme Court of Justice of the Nation. The petitioner, for his part, indicates that he exhausted the necessary remedies and considers that the invocation of further remedies would have further delayed the proceedings and been futile. He notes that, when he consulted his attorney as to the possibility of filing an extraordinary appeal before the Supreme Court, the latter informed him that an appeal contesting the amount of compensation awarded would be dismissed as falling outside the scope of the federal remedy.

34. The requirement of prior exhaustion of domestic remedies is not absolute; its application depends on the circumstances of the particular matter. Article 46.2 of the Convention provides that the requirement may be excused: if the legislation of the state concerned fails to afford due process for the protection of the right allegedly violated; if the party alleging violation has been hindered in his or her access to domestic remedies; or if there has been unwarranted delay in the issuance of a final judgment. The system requires that petitioners exhaust only those remedies that are shown to be adequate and effective to remedy the situation denounced. 2

35. In terms of the burden of proof with respect to the requirements of Article 46, it should be noted that, when a petitioner alleges that he or she is unable to prove exhaustion, Article 31 of the Commission's Rules of Procedure establishes that the burden then shifts to the State to demonstrate which specific domestic remedies remain to be exhausted and offer effective relief for the harm alleged.³ Where the State then makes a showing that a certain remedy should have been used, the burden shifts back to the petitioner to show that it was exhausted or that one of the exceptions under Article 46.2 applies.

36. As noted, the petitioner essentially argues that he exhausted remedies to the extent required, and that the invocation of further remedies would not have provided an adequate or effective remedy. His principal claim in this regard is that the ordinary remedies he had exhausted were

2 The existence of the remedies must be sufficiently certain not only in theory, but also in practice. All domestic systems have multiple remedies, but not all are applicable in all circumstances. If, in a specific case, the remedy is not appropriate, then obviously it need not be exhausted. See I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4, para. 63; see also IACHR, Report No. 68/01, Case 12.117, Admissibility, Santos Soto Ramírez *et al.*, Mexico, June 14, 2001, para. 14; and Report No. 83/01, Admissibility, Case 11.581, Zulema Tarazona Arriate *et al.*, Peru, October 10, 2001, para. 24.

3 See also, e.g., I/A Court H.R., *Durand and Ugarte Case. Preliminary Objections*. Judgment of May 28, 1999. Series C No. 50, para. 33, citing the extensive line of cases in which the Court has confirmed that, once a petitioner makes a showing that an exception to the requirement applies, it is for the State to indicate which remedies must be exhausted and to demonstrate that those would be effective

subject to unjustified delay. The State maintains that the petitioners should have interposed and exhausted an extraordinary federal appeal before the Supreme Court of Justice of the Nation. The State argues that, had the petitioner considered the sentence at second instance arbitrary, and thus raising a sufficient federal question, this remedy was available and effective.

37. Claims such as those raised by the petitioner to the effect that domestic remedies are inadequate because of delay are evaluated on a case by case basis according to the circumstances.⁴ The record before the Commission indicates that the petitioner exhausted the ordinary remedies of the legal system, namely a civil claim and appeal, prior to filing his petition. That civil claim, filed on Sebastian Furlan's behalf in 1990, was decided at first instance in 2000. Pursuant to appeals filed by both parties, the decision was confirmed in its substantive aspects later that same year. At the time the Commission initiated processing of petition 531/01 in December of 2002, the petitioner had not yet been able to obtain the execution of the judgment. The sentence was executed in March of 2003. Consequently, the Commission takes into account that approximately 13 years elapsed between the filing of the judicial action and the execution of the resulting judgment. The Commission observes that the sentences of first and second instance reflect that this was not a complex proceeding, and apart from asserting that there was no undue delay, the State has provided no information concerning the duration of the proceedings.

38. An assessment of delay in the resolution of domestic remedies must also take into account the purpose of the judicial action. In this regard, the Commission takes due note that the proceedings were initiated to seek compensation for severe and permanent injuries. The Commission also takes note that the petitioner considers that the duration of the proceedings was particularly prejudicial to the rights of his son because that compensation was necessary to provide care, treatment and therapy. The petitioner argues that Sebastian's chances for a better recovery were irreversibly diminished by the fact that the family could not obtain the compensation necessary to seek better treatment in a timely way.⁵

39. The Commission also takes note that the appeal the State argues as having been necessary is an extraordinary remedy. This exercise of jurisdiction by the Supreme Court is exceptional and discretionary.⁶ Full exhaustion of the remedy may require two procedures. An extraordinary appeal is first filed before the court whose sentence is being challenged. If that court admits the appeal, the Supreme Court then reviews whether it finds the grounds for jurisdiction satisfied. Alternatively, if the court whose decision is being challenged rejects the appeal, it may then be filed directly before the Supreme Court itself, which will review its admissibility. The applicable legislation provides no time limits for the issuance of these decisions.

40. In light of the foregoing analysis, the Commission finds that the petitioner invoked and exhausted the ordinary remedies provided within the State's legal system, and that the State was consequently placed on full notice of the claims that gave rise to the present petition. While the matter was not particularly complex, thirteen years elapsed between the filing of the claim and the execution of the judgment. Considering the duration of the ordinary proceedings and that their objective was to compensate severe injuries and pay for treatment, and given that the remedy the State invokes as necessary is subject to discretion as to its exercise and duration, it would not be reasonable to have required the petitioner to exhaust an extraordinary appeal as a condition of admissibility. As the Inter-American Court has indicated: "The rule of prior exhaustion

4 See, *inter alia*, IACHR, Report N° 10/05, Petition 380/03, Admissibility, Rafael Ignacio Cuesta Caputi, Ecuador, February 23, 2005, para. 48.

5 The petitioner affirms that it was he and the family who, in great measure, cared for Sebastian and helped him re-learn, to the extent they were able, such basic functions as walking and talking, because they lacked the resources to seek the specialized rehabilitation he needed.

6 Article 14 of Law 48 confers jurisdiction, in pertinent part, where a federal question is presented, including on the basis that the sentence being challenged is arbitrary. Pursuant to Article 280 of Law 23.174, the Supreme Court is competent to exercise its discretion to reject *in limine* any claim which it considers does not present a question sufficient to require the exercise of federal jurisdiction.

must never lead to a halt or delay that would render international action in support of the victim ... ineffective.”⁷

41. Thus, without prejudice to the future disposition of the Commission on the merits of the case, the Commission finds that there has been an unwarranted delay in the judicial proceedings, thereby excusing the invocation of additional exceptional remedies. It must be noted that, while the application of this exception is closely linked to questions concerning timely access to judicial protection and guarantees, the former is decided under the admissibility criteria of the system, which are distinct from those applied at the merits stage. The causes that impeded the timely exhaustion of domestic remedies, and any eventual consequences shall be analyzed to the extent appropriate when the Commission examines the merits of this case.

2. Time period for submission of the petition

42. In accordance with Article 46.1.b of the Convention, a petition must be presented in a timely manner to be admitted, namely, within six months from the date on which the complaining party was notified of the final judgment at the domestic level. The six months rule ensures legal certainty and stability once a decision has been taken.

43. Article 32 of the Commission’s Rules of Procedure sets forth the foregoing principle, and indicates that this rule does not apply in matters “in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable.” In such an instance, Article 32 of the Rules establishes that the deadline for presentation shall be “within a reasonable period of time, in the Commission’s judgment, as from the date on which the alleged violation of rights has occurred, considering the circumstances of each specific case.”

44. In the present case, the decision at second instance was issued on November 23, 2000, and subsequently notified to the petitioner. The Commission has determined that the exhaustion of additional extraordinary remedies was excused due to prolonged duration of the ordinary proceedings. The petition was filed at the National Office of the OAS in Buenos Aires on July 18, 2001. The sentence was not executed in March of 2003, subsequent to the filing of the petition and the initiation of its processing. Under those circumstances, the Commission deems that the petition was filed within a reasonable time, and that the requirements of Article 46.1.b have been met.

3. Duplication of proceedings and *res judicata*

45. Article 46.1.c sets forth that admission of a petition is subject to the requirement that the subject “is not pending in another international proceeding for settlement,” and Article 47.d of the Convention stipulates that the Commission shall not admit a petition which “is substantially the same as one previously studied by” it “or by another international organization.” In the present case, the parties have not claimed and the proceedings do not indicate the existence of either of these circumstances of inadmissibility.

4. Characterization of the facts alleged

46. Article 47.b of the American Convention provides that allegations which do not state facts tending to establish a violation shall not be admitted. It is not necessary for a petitioner to identify specific articles of the Convention in his or her pleadings; Article 28 of the Commission’s Rules of

⁷ I/A Court H.R., *Velásquez Rodríguez Case. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, para. 93; *Godínez Cruz Case. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 3, para. 93. As the Commission has indicated, remedies which are unduly delayed essentially lose their efficacy. See, for example, IACHR, Report N° 27/99, Admissibility, Case 11.697, Ramón Mauricio García-Prieto Giralt, El Salvador, 9 March 1999, para. 47

procedures requires only that he or she provide an account of the situation denounced as violative of the Convention.

47. The State challenges the admissibility of the present petition on the basis that what it essentially presents is a disagreement with the terms of the sentence issued at the national level, and therefore falls within the so-called fourth instance doctrine. As the State correctly recalls in its submissions, the Commission is not competent to act as a fourth instance or to review the findings of national courts acting within the sphere of their competence and in accordance with due process. However, the Commission is competent to review claims that would tend, if in accordance with other requirements and shown to be true, to characterize a violation of the American Convention.

48. The Commission observes in this regard that a disagreement as to the quantity of compensation awarded by national courts acting in accordance with due process and within the sphere of their competence would not, in and of itself, provide a sufficient basis for an exercise of jurisdiction at the international level. The quantity of compensation awarded would, in principle, normally be a question for the judiciary of the state concerned.⁸

49. The present petition raises additional claims which could, if proven, tend to characterize possible violations of the American Convention. In this regard, the information and arguments presented with respect to the approximately 13 years that elapsed between the filing of the judicial action and its execution could, if proven, tend to characterize the violation of Article 8 of the American Convention, insofar as the claimant had a right to be heard in the determination of a claim within a reasonable time, and Article 25, insofar as he had a right to prompt access to judicial protection. Additionally, the Commission will analyze the compatibility of the execution of the court judgment in bonds presently redeemable for substantially less than face value with the terms of Article 25.2.c of the Convention, which sets forth that States have a duty to ensure that judicial decisions are enforced.

50. The Commission is also competent to analyze the situation denounced in light of the terms of Article 19 of the American Convention, given that Sebastian Furlan was 14 years old at the time of the accident and thus had the right to the special measures of protection required on behalf of children. In this regard, the Commission will examine the facts alleged in relation to the State's duties of prevention and protection under Article 19, and Sebastian's right to personal integrity under Article 5. The Commission may also be called upon to examine the compatibility of the standards that were applied in the adjudication of the duty of care by the national courts in light of the special duties of protection required for minors under the American Convention.

51. Accordingly, the Commission finds in the present case that the petitioners have stated claims which, if consistent with other requirements and shown to be true, could tend to establish the violation of rights protected under the American Convention, more specifically, of Articles 5 (right to personal integrity), 8 (right to judicial guarantees), 19 (rights of the child), 25 (right to judicial protection) and 1.1 (obligation to respect and ensure rights).

V. CONCLUSIONS

52. The Commission concludes that it is competent to take cognizance of the instant case and that the petition is admissible, pursuant to Articles 46 and 47 of the American Convention.

⁸ See, for example, IACHR, Report N° 39/96, Case 11.673, Argentina, Santiago Marzioni, October 15, 1996, paras. 48-71. In that case, the Commission determined that a petition questioning the presumed differential in the amount of compensation established under one jurisprudential approach and the higher amount awarded pursuant to a change in the jurisprudence was a question of "fourth instance" that related exclusively to the application of domestic law without raising a cognizable question under the American Convention.

53. Based on the factual and legal arguments set forth above, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present case admissible with respect to the alleged violation of the rights recognized in Articles 5, 8, 19, 25 and 1.1 of the American Convention.
2. To notify the parties of this decision.
3. To continue with the analysis of the merits of the case.
4. To make this report public, and publish it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 2nd day of the month of March, 2006. (Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-President; Clare K. Roberts, Freddy Gutiérrez, and Paolo G. Carozza Commissioner