



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



ORGANIZATION OF AMERICAN STATES
WASHINGTON, D.C. 20006 USA

April 13, 2011

Ref.: Case No. 11.618
Oscar Alberto Mohamed
Argentina

Dear Mr. Secretary:

I am writing to you on behalf of the Inter-American Commission on Human Rights for the purpose of submitting to the jurisdiction of the Inter-American Court of Human Rights Case No. 11.618, *Oscar Alberto Mohamed* v. the Republic of Argentina (hereinafter the "State," "Argentine State" or "Argentina"). The case involves the prosecution and criminal conviction of Oscar Alberto Mohamed for the crime of negligent homicide as a result of a traffic accident that occurred on March 16, 1992. After being acquitted in the first instance, Mr. Mohamed was convicted for the first time in a second instance proceeding. In that proceeding, a series of guarantees were ignored, among them the principle of legality and non-retroactivity and the right to a defense. In addition, given that Mr. Mohamed's right to appeal the conviction was not guaranteed as provided in the Convention, he additionally did not have an effective remedy for rectifying those violations.

The State of Argentina ratified the American Convention on Human Rights (hereinafter "the American Convention," "Convention," or "ACHR") and accepted the contentious jurisdiction of the Inter-American Court on September 5, 1984.

The Commission has appointed Commissioner Luz Patricia Mejía and IACHR Executive Secretary Santiago A. Canton as its delegates. In addition, Elizabeth Abi-Mershed, Assistant Executive Secretary, María Claudia Pulido, Silvia Serrano Guzmán, and Marisol Blanchard will act as legal advisors.

Pursuant to Article 35 of the Rules of Procedure of the Inter-America Court, the Commission attaches hereto a copy of Report 173/10 prepared in accordance with Article 50 of the Convention, as well as copy of the entire case file before the Inter-American Commission (Appendix I) and the annexes used in preparing Report 173/10 (Annexes). The State of Argentina was informed of said report on the merits in a communication dated December 13, 2010, in which it was granted a period of two months to report on its compliance with the recommendations. In response to the State's request for an extension to submit that information, the IACHR granted a one-month extension in a decision adopted on March 9, 2011. On April 1, 2011 the State submitted a report presenting information on some recommendations.

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

Annexes

The Commission is submitting the case to the jurisdiction of the Inter-American Court based on the need to obtain justice for the victim given the State of Argentina's failure to make substantial progress in complying with the recommendations.

With respect to the recommendation to **"provide the measures necessary so that Oscar Alberto Mohamed can promptly file an appeal so as to obtain a full review of the conviction, in accordance with Article 8.2. h. of the American Convention"** the State referred to a Draft Law reforming Argentina's Code of Criminal Procedure that was submitted by the Ministry of Justice and Human Rights in order to add a new grounds for the admissibility of a review in cases where the Inter-American Commission or Court issue decisions with respect to the Argentine State. The State referred to the "favorable opinion" of the legal divisions of various ministries and offices, as well as the unfavorable opinion of the Treasury Counsel. The Inter-American Commission notes first that the draft law referred to by the State is still under consideration by the legislature. In addition, the State did not provide information explaining how that remedy would satisfy the requirements of Article 8.2.h of the Convention, nor whether, if the Code of Criminal Procedure were reformed, the new legislation would be retroactively applicable to the victim in the instant case. In summary, the IACHR feels that to date Oscar Alberto Mohamed has not had a remedy with which to obtain a full review of the conviction against him.

With respect to the recommendation to **"provide legislative and other measures to ensure the effective fulfillment of the right enshrined in Article 8.2.h of the American Convention in accordance with the standards described"** in the report on the merits, the State indicated that the Executive Branch is currently reviewing a draft law related to Article 8.2.h of the Convention. This draft law was submitted by a group of petitioners in the context of a petition now before the IACHR. The information provided by the State does not indicate that Argentine authorities have adopted concrete measures designed to adapt its domestic legislation to the provisions of Article 8.2.h of the Convention. In particular, the State did not report on legislative and other measures to ensure that individuals convicted for the first time in a second instance decision, as in Mr. Mohamed's case, have a remedy consistent with the terms of the referenced standard under the Convention.

With respect to the recommendation to **"adopt the measures necessary so that Oscar Alberto Mohamed will receive adequate and timely reparation for the human rights violations established"** in the report on the merits, the State indicated that the Secretariat of Human Rights and the Legal Office of the Ministry of Justice suggested forming an Arbitration Panel to establish the "headings" and "amounts" that should be recognized and paid for violations found by the IACHR. In this regard, the Commission notes that no progress has been made on implementing that proposal and that, according to the information available, the victim has not yet been contacted by the State. To date, Oscar Alberto Mohamed continues to be uncompensated for the violations committed against him.

Based on the above considerations, the Commission feels that the State of Argentina has not made progress on complying with the recommendations made in the report on the merits. Accordingly, the IACHR deems it appropriate to submit this case to the jurisdiction of the Court.

The Inter-American Commission submits to the jurisdiction of the Court all the facts and human rights violations described in report on the merits 173/10. As a result, the IACHR asks the Court to conclude and declare that:

- a) The State of Argentina violated the principle of legality and non-retroactivity, the right to a defense, the right to appeal the decision, and the right to judicial protection enshrined in Articles 9, 8.2 c), 8.2 h), and 25.1 of the American Convention as they relate to the obligations established in Articles 1.1 and 2 of the same instrument, to the detriment of Oscar Alberto Mohamed.

