

The Inter-American Commission on Human Rights Admits Review of a Case Involving the Natural Judge Principle, Due Process, and Effective Judicial Protection (Argentina)

(Own Case)

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For many years, discussions surrounding human rights in Latin America were associated almost exclusively with forced disappearances, torture, or extreme forms of institutional violence. However, there is another, far more subtle and progressive form of erosion of the rule of law: the normalization of state investigations conducted without effective judicial oversight and the gradual degradation of fundamental procedural guarantees.

I am currently litigating a case before the Inter-American Commission on Human Rights (IACHR) that directly addresses those very limits.

The IACHR formally initiated international proceedings and transmitted the relevant portions of the petition to the Argentine State for response.

The legal complexity of the case is particularly significant because it does not revolve merely around a criminal prosecution itself, but rather around the manner in which certain state practices may ultimately undermine essential constitutional and conventional principles.

According to the international petition and supporting documentation submitted, the investigation allegedly began through covert surveillance operations conducted by a provincial police force in connection with a matter falling under federal jurisdiction. As presented before the Inter-American System, authorities allegedly carried out prolonged surveillance, clandestine observations, use of binoculars, photographic monitoring,

tracking of daily movements, and the production of intelligence information without prior judicial authorization and without effective judicial control.

One of the central issues raised before the Commission was the alleged violation of the natural judge principle.

The petition argued that, because the matter involved a federal offense, the proceedings should have been governed exclusively by the Argentine Federal Criminal Procedure Code and supervised by competent federal judicial authorities. Nevertheless, according to the filing before the IACHR, the police action allegedly relied upon a provincial procedural provision — Article 319 of the Criminal Procedure Code of Chaco Province — which was used to justify autonomous police investigations carried out without prior judicial authorization.

The institutional gravity of the matter lies not merely in the existence of prior police surveillance, but in the allegation that the entire subsequent criminal proceeding was built upon actions that were allegedly unlawful from their inception. The international petition asserted that all subsequent measures — including home entries, searches, seizures, and restrictions on liberty — were allegedly supported by information obtained through prior clandestine surveillance incompatible with a genuine situation of *flagrante delicto*.

In other words, the legal debate extended far beyond a merely technical procedural issue. What was placed before the Inter-American Commission was whether it is compatible with constitutional and conventional standards to allow police forces to conduct autonomous investigations targeting individuals, generate criminal intelligence without judicial authorization, and later attempt to legitimize the resulting procedures through a theory of flagrancy constructed upon months of prior surveillance activity.

The IACHR also received allegations involving potential violations of rights protected under the American Convention on Human Rights, including personal liberty, judicial guarantees, protection of privacy, inviolability of the home, equality before the law, and the right to effective judicial protection.

Another particularly delicate aspect of the case involved the subsequent functioning of the judicial system itself.

According to the international petition, the defense argued that motions challenging the legality of the original investigation were rejected without a substantive constitutional analysis. Later, the federal extraordinary appeal was allegedly denied on excessively formalistic grounds, and the Supreme Court of Argentina subsequently maintained the

related complaint proceeding unresolved for a prolonged period despite compliance with the formal requirements imposed by the Court itself.

The petition characterized that situation as an example of excessive formalism, unjustified delay, and the transformation of the extraordinary federal remedy into a merely illusory mechanism incapable of providing real and effective review of serious constitutional violations.

And this is precisely where one of the most significant dimensions of the case emerges.

The Inter-American System does not function as an automatic appellate court reviewing domestic judicial decisions. Rather, the Inter-American Commission evaluates whether there exist, *prima facie*, potential violations of rights protected under the American Convention, absence of effective judicial protection, denial of genuine access to justice, or the use of remedies that become merely apparent rather than truly effective.

The petition developed Inter-American standards relating to prior judicial control, protection against unlawful state surveillance, inviolability of the home, due process, the natural judge principle, and the State's obligation to provide effective remedies against potential arbitrariness.

The filing also incorporated Inter-American precedents concerning clandestine surveillance, protection of privacy, judicial legality review, and the prohibition of unreasonable formalism that ultimately empties the right of access to justice of its substantive content.

Regardless of the final outcome this case may eventually have — although the current procedural developments already suggest a favorable indication for the affected party — I believe the case once again raises a profoundly important structural discussion for Latin America:

What happens when early judicial oversight over law enforcement disappears?

What occurs when jurisdictional competence becomes flexible?

What institutional consequences arise when clandestine state surveillance is tolerated without effective judicial control?

And what happens when extraordinary remedies become trapped in formalism or procedural silence that prevents meaningful constitutional review?

Because when that occurs, what erodes is not merely an individual criminal case.

What begins to weaken are the very constitutional limits that separate legitimate criminal investigation from the arbitrary exercise of state power.

And that is precisely why this type of litigation continues to hold enormous importance within constitutional law, criminal law, and international human rights law.

Today, Argentina must sit before the international system and provide explanations concerning the absence of proper “Conventionality Control.”