

Maqueda v. Argentina

ABSTRACT¹

This case is about the arrest, trial and detention of a university student who had been accused of having participated in an attack against an army barrack. Although some members of the student organization he belonged to had carried out the attack, he did not participate. The Court dismissed the case before it decided on its merits, as the parties had reached a friendly settlement agreement providing for the release of Mr. Maqueda.

I. FACTS

A. Chronology of Events

Beginning of 1987: Mr. Guillermo Maqueda is a student majoring in sociology at the University of Buenos Aires.² He begins participating in the All for the Fatherland Movement (*Movimiento Todos por la Patria*; “MTP”), a leftist political organization.³ During the early years of Argentina’s transition to democracy, MTP was formed to promote and spread democratic values of justice and citizens’ participation in society.⁴

January 22, 1989: Mr. Maqueda is informed by MTP leader Mr. Francisco Provenzano that a military uprising may occur at the military barracks in La Tablada, Buenos Aires.⁵ Mr. Maqueda and other MTP members are persuaded that a coup threatening the democratic government will take place.⁶ They devise a plan to peacefully protest outside the

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² Maqueda v. Argentina, Petition to the Court, Inter-Am. Ct. H.R. (ser. C) No. 18, “II. Statement of the Facts” ¶¶ 1, 6 (May 25, 1994).

³ *Id.* “II. Statement of the Facts” ¶ 1.

⁴ Maqueda v. Argentina, Preliminary Objections, Inter-Am Ct. H.R. (ser. C) No. 18, “II. Statement of the Facts” ¶ 1 (Jan. 17, 1995).

⁵ *Id.* “II. Statement of the Facts” ¶ 2.

⁶ *Id.* “II. Statement of the Facts” ¶ 3.

barracks to encourage and defend democratic ideals.⁷ With this understanding, Mr. Maqueda decides to partake in the protest.⁸

January 23, 1989: Mr. Maqueda joins MTP members in La Tablada, with the intent to conduct a peaceful protest at the nearby military barracks.⁹ Soon after their arrival, they hear gunshots.¹⁰ To their surprise, a violent confrontation takes place.¹¹ The confrontation is initiated by a group of people attempting to take over the La Tablada barracks.¹² Involved in this attack are some members and leaders of the MTP who are heavily armed.¹³ As a result, a large number of people die during the attack.¹⁴ Meanwhile on the outskirts of the La Tablada barracks, this unexpected occurrence prevents MTP members and Mr. Maqueda from executing their planned peaceful mobilization.¹⁵ After a few hours, they leave the area without engaging in any of their plans.¹⁶

After January 23, 1989: As a result of the violent confrontation at the military barracks in La Tablada, participants of the attack are arrested.¹⁷ Meanwhile, Mr. Maqueda continues to attend the University and publicly participates in the MTP activities.¹⁸

May 19, 1989: Police officers arrive at Mr. Maqueda's residence to place him under arrest for his supposed association with the attack on the La Tablada barracks.¹⁹ Mr. Maqueda's father, Dr. Ernesto Maqueda, cooperatively informs the police of Mr. Maqueda's whereabouts and accompanies them to the University of Buenos Aires where Mr. Maqueda is located.²⁰ The police officers arrest Mr. Maqueda on campus.²¹

⁷ *Maqueda v. Argentina*, Preliminary Objections, "II. Statement of the Facts" ¶ 2.

⁸ *Id.*

⁹ *Id.* "II. Statement of the Facts" ¶ 3.

¹⁰ *Maqueda v. Argentina*, Petition to the Court, "II. Statement of the Facts" ¶ 3.

¹¹ *Id.* "II. Statement of the Facts" ¶ 4.

¹² *Id.* "II. Statement of the Facts" ¶ 5.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* "II. Statement of the Facts" ¶ 4.

¹⁶ *Maqueda v. Argentina*, Petition to the Court, "II. Statement of the Facts" ¶ 4.

¹⁷ *Id.* "II. Statement of the Facts" ¶ 5.

¹⁸ *Id.* "II. Statement of the Facts" ¶ 6.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* "II. Statement of the Facts" ¶ 6.

August 9, 1984: Mr. Maqueda is tried pursuant to the “Law of Defense of Democracy,” the procedural provision of Law 23.077.²² The law sets forth only one recourse to appeal a sentence, which is by way of a special appeal before the Supreme Court of Justice of the Argentine Nation.²³

June 11, 1990: The Federal Chamber of San Martín sentences Mr. Maqueda to ten years in prison for: 1) acting as an accessory in an unlawful crime; and 2) being an accomplice in a rebellion, seizure, robbery, kidnapping, unlawful imprisonment, attempted double homicides, and serious and minor injuries.²⁴

Between June 11, 1990 and October 25, 1990: Due to the provisions of Law 23.077, Mr. Maqueda is barred from directly appealing the judgment, and therefore files a special appeal with the Supreme Court of Justice.²⁵

October 25, 1990: The San Martín Federal Chamber of Appeals rejects Mr. Maqueda’s special appeal.²⁶

Between October 25, 1990 and March 17, 1992: In response to the decision rendered by the Federal Chamber of Appeal, Mr. Maqueda files a complaint with the Supreme Court of Justice, requesting that the Court reconsider his appeal.²⁷

March 17, 1992: The Supreme Court of Justice rejects Mr. Maqueda’s appeal of the Federal Chamber of Appeal’s decision.²⁸

B. Other Relevant Facts

[None]

²² Maqueda v. Argentina, Petition to the Court, “III. Depletion of Internal Resources” ¶ 1; Maqueda v. Argentina, Preliminary Objections, ¶ 6.

²³ Maqueda v. Argentina, Petition to the Court, “III. Depletion of Internal Resources” ¶ 1.

²⁴ Maqueda v. Argentina, Preliminary Objections, ¶ 6.

²⁵ Maqueda v. Argentina, Petition to the Court, “III. Depletion of Internal Resources” ¶ 4.

²⁶ *Id.* “III. Depletion of Internal Resources” ¶ 5.

²⁷ *Id.*

²⁸ *Id.*

II. PROCEDURAL HISTORY

A. Before the Commission

September 15, 1992: Mr. Maqueda's parents, Dr. Ernesto Maqueda and Licia M. Quiroga de Maqueda, along with Human Rights Watch/Americas ("Americas Watch"), and the Center for Justice and International Law ("CEJIL") submit a petition on behalf of Mr. Maqueda to the Inter-American Commission on Human Rights ("Commission").²⁹

May 12, 1993: The State claims that Mr. Maqueda's petition is inadmissible because neither Mr. Maqueda's right to the presumption of innocence nor Mr. Maqueda's right to appeal were violated.³⁰ However, the State proposes a solution under Article 86 of the Argentine Constitution.³¹ Under Article 86 of the Constitution, the President of Argentina has the authority and the sole discretion to grant a pardon or a commutation of a criminal sentence.³² The State informs the Commission that Argentina's Ministry of Justice has already begun to gather court and prison records to proceed in this route.³³

August 9, 1993: Petitioner submits a response, objecting to the State's assertion that his rights were not violated.³⁴ However, petitioner agrees with the State's proposal to resolve the matter under Article 86 of the Constitution.³⁵

October 1993: The Commission holds its 84th sessions.³⁶ At the session, State representatives indicate that Mr. Maqueda may be eligible for a pardon or a commutation of sentence.³⁷ In light of the State's update of a possible friendly settlement, the Commission stays the proceedings in Mr. Maqueda's case.³⁸

Before November 11, 1993: In light of the parties' agreement to enter into a friendly settlement in accordance with Article 48 of the American

²⁹ Maqueda v. Argentina, Preliminary Objections, ¶ 7.

³⁰ *Id.* "IV. Processing Before the Committee" ¶ 5.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.* "IV. Processing Before the Committee" ¶ 7.

³⁵ Maqueda v. Argentina, Petition to the Court, "IV. Processing Before the Committee" ¶ 7

³⁶ *Id.* "IV. Processing Before the Committee" ¶ 9.

³⁷ *Id.*

³⁸ *Id.*

Convention on Human Rights, the Commission designates Professor Michael Reisman as the Rapporteur to oversee this process for the Commission.³⁹

November 11, 1993: Representatives for Americas Watch and CEJIL meet with State representatives to discuss the process of Mr. Maqueda's potential release.⁴⁰ State representatives inform the Petitioners that Mr. Maqueda's file is before the Argentine Minister of Justice, Dr. Jorge Maiorano, for his approval and signature.⁴¹

November 12, 1993: At a meeting regarding Mr. Maqueda's case, Undersecretary of Justice Dr. Francisco Martinez informs the representatives of CEJIL and Americas Watch that the State is considering three different alternatives: 1) a partial forgiveness of Mr. Maqueda's sentence, which will allow Mr. Maqueda to be placed on parole; 2) a commutation of Mr. Maqueda's sentence by four months; or 3) a pardon.⁴²

November 24, 1993: In a meeting between the representatives of the petitioner and officials of the Ministry of Foreign Relations, the officials of Ministry of Foreign Relations inform the Petitioners that Mr. Maqueda's case is likely to resolve in an early resolution.⁴³

Early December 1993: At a meeting between the members of the Commission and Argentine Minister of Justice Dr. Maiorano, the Minister indicates that a resolution by way of commutation of Mr. Maqueda's sentence or a pardon is currently not feasible.⁴⁴

December 22, 1993: The representatives of the petitioner are informed that the decree regarding Mr. Maqueda's sentence is before the Minister of Justice.⁴⁵ Decree N° 1680/94 reduces Mr. Maqueda's sentence by six months, and allows Mr. Maqueda to elect for conditional freedom within a year and a half.⁴⁶ Disappointed by this update, the representatives of the petitioner submit a written note to the Commission objecting

³⁹ Maqueda v. Argentina, Petition to the Court, "V. Management in the Friendly Settlement Process" ¶ Intro.

⁴⁰ *Id.* "V. Management in the Friendly Settlement Process" ¶ 1.

⁴¹ *Id.*

⁴² *Id.* "V. Management in the Friendly Settlement Process" ¶ 2.

⁴³ *Id.* "V. Management in the Friendly Settlement Process" ¶ 3.

⁴⁴ *Id.* "IV. Processing Before the Committee" ¶ 10.

⁴⁵ Maqueda v. Argentina, Petition to the Court, "V. Management in the Friendly Settlement Process" ¶ 4.

⁴⁶ *Id.* "V. Management in the Friendly Settlement Process" ¶ 4.

to the inadequate solution.⁴⁷ They further point out that the State's solution betrays its obligations to the Commission.⁴⁸

January 1994: The representatives of the petitioner inform the Commission that the time to reach a friendly settlement has passed and request that the Commission advance Mr. Maqueda's case.⁴⁹

February 9, 1994: The Commission sends the Report containing the Commission's conclusions and recommendations to the State.⁵⁰ The Report provides the State a sixty-day period to remedy the violation of Mr. Maqueda's human rights before the case is submitted to the Court.⁵¹

B. Before the Court

February 24, 1994: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁵²

September 20, 1994: The State and the petitioner conclude a settlement agreement.⁵³ The State agrees to reduce Mr. Maqueda's sentence and release Mr. Maqueda on a conditional release pursuant to Argentine law within ten days of the signed agreement.⁵⁴ In exchange, the Petitioners will request the Commission to discontinue their Petition, and will relinquish any requests for financial compensation including court costs and attorney's fees.⁵⁵ The Commission's President, Prof. Michael Riesman, approves of the parties' agreement and, upon the State's compliance, agrees to petition the Court to dismiss the case.⁵⁶

October 4, 1994: The Commission notifies the Court that the Commission will cease to proceed on Mr. Maqueda's case based on the parties' agreement, which satisfies all parties' interests and abides with the mission of the American Convention.⁵⁷ The Court is also informed that the

⁴⁷ Maqueda v. Argentina, Petition to the Court, "V. Management in the Friendly Settlement Process."

⁴⁸ *Id.* "IV. Processing Before the Committee" ¶ 11.

⁴⁹ *Id.* "IV. Processing Before the Committee" ¶ 13.

⁵⁰ *Id.* "IV. Processing Before the Committee" ¶ 14.

⁵¹ *Id.*

⁵² Maqueda v. Argentina, Preliminary Objections, ¶ 1.

⁵³ *Id.* ¶ 18.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* ¶ 19.

⁵⁷ *Id.* ¶ 16.

agreement has been complied with and the State has executed the appropriate actions in accordance with the agreement.⁵⁸

November 1, 1994: The Secretariat requests for the Commission to provide all the relevant documents to the termination of this action including the following documents: a copy of the parties' agreement entered into on September 20, 1994; Mr. Maqueda and his parents' responses; and Decree N° 1680/94 granting Mr. Maqueda conditional freedom, which was published in the Official Bulletin N° 27.895, Section 1.⁵⁹

December 5, 1994: CEJIL and Americas Watch, representing Mr. Maqueda's, agree to terminate the case and inform the Court that Mr. Maqueda was released with his conditional sentence to end in April 1997.⁶⁰

December 12, 1994: The State also states its agreement with the Commission's decision to terminate this case.⁶¹

January 17, 1995: In a unanimous decision, the Court granted the Commission's petition to dismiss Mr. Maqueda's case,⁶² and retained jurisdiction to reopen the case in the instance an issue would arise pertaining to the agreement.⁶³

C. *Dissenting and Concurring Opinions*

[None]

III. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

⁵⁸ Maqueda v. Argentina, Preliminary Objections, ¶ 16.

⁵⁹ *Id.* ¶¶ 17, 18.

⁶⁰ *Id.* ¶ 21.

⁶¹ *Id.* ¶ 22.

⁶² *Id.* ¶ 27.

⁶³ *Id.*

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Release Mr. Maqueda on Conditional Release

B. Compensation

[None]

1. Pecuniary Damages

[None]

2. Non-Pecuniary Damages

[None]

3. Costs and Expenses

[None]

4. Total Compensation (including Costs and Expenses ordered):

[None]

C. Deadlines

[None]

IV. INTERPRETATION AND REVISION OF JUDGMENT

[None]

V. COMPLIANCE AND FOLLOW-UP

[None]

LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

Maqueda v. Argentina, Preliminary Objections, Judgment, Inter-Am Ct. H.R. (ser. C) No.18 (Jan. 17, 1995).

2. Decisions on Merits, Reparations and Costs

[None]

3. Provisional Measures

[None]

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[None]

2. Report on Admissibility

[None]

3. Provisional Measures

[None]

4. Report on Merits

[None]

5. Application to the Court

Maqueda v. Argentina, Petition to the Court, Inter-Am. Ct. H.R. (ser. C) No. 18 (May 25, 1994).

VI. BIBLIOGRAPHY

[None]