

PERSONHOOD

III. JURISPRUDENCE

ICCPR

- *Mónaco v. Argentina* (400/1990), ICCPR, A/50/40 vol. II (3 April 1995) 10 (CCPR/C/53/D/400/1990) at paras. 2.1-2.4 and 10.3.

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2.1 On 5 February 1977, Ximena Vicario's mother was taken with the then nine-month-old child to the Headquarters of the Federal Police (*Departamento Central de la Policía Federal*) in Buenos Aires. Her father was apprehended in the city of Rosario on the following day. The parents subsequently disappeared, and although the National Commission on Disappeared Persons investigated their case after December 1983, their whereabouts were never established. Investigations initiated by the author herself finally led, in 1984, to locating Ximena Vicario, who was then residing in the home of a nurse, S.S., who claimed to have been taking care of the child after her birth. Genetic blood tests (*histocompatibilidad*) revealed that the child was, with a probability of 99.82 per cent, the author's granddaughter.

2.2 In the light of the above, the prosecutor ordered the preventive detention of S.S., on the ground that she was suspected of having committed the offences of concealing the whereabouts of a minor (*ocultamiento de menor*) and forgery of documents...

2.3 On 2 January 1989, the author was granted "provisional" guardianship of the child; S.S., however, immediately applied for visiting rights, which were granted by order of the Supreme Court on 5 September 1989. In this decision, the Supreme Court also held that the author had no standing in the proceedings about the child's guardianship since, under article 19 of Law 10.903, only the parents and the legal guardian have standing and may directly participate in the proceedings.

2.4 On 23 September 1989, the author, basing herself on psychiatric reports concerning the effects of the visits of S.S. on Ximena Vicario, requested the court to rule that such visits should be discontinued. Her action was dismissed on account of lack of standing. On appeal, this decision was upheld on 29 December 1989 by the *Cámara Nacional de Apelaciones en lo Criminal y Correccional Federal of Buenos Aires*...

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10.3 As to Darwinia Rosa Mónaco de Gallicchio's claim that her right to recognition as a person before the law was violated, the Committee notes that, although her standing to represent her granddaughter in the proceedings about the child's guardianship was denied in 1989, the courts did recognize her standing to represent her granddaughter in a number

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of proceedings, including her suit to declare the nullity of the adoption, and that she was granted guardianship over Ximena Vicario. While these circumstances do not raise an issue under article 16 of the Covenant, the initial denial of Mrs. Mónaco's standing effectively left Ximena Vicario without adequate representation, thereby depriving her of the protection to which she was entitled as a minor. Taken together with the circumstances mentioned in paragraph 10.5 below, the denial of Mrs. Mónaco's standing constituted a violation of article 24 of the Covenant.