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| Institution: | Inter-American Commission on Human Rights |
| File Number(s): | Report No. 19/98; Case 11.516 |
| Session: | Ninty-Eighth Regular Session (17 February – 6 March 1998) |
| Title/Style of Cause: | Ovelario Tames v. Brazil |
| Doc. Type: | Decision |
| Decided by: | Chairman: Carlos Ayala Corao; First Vice Chairman: Robert K. Goldman; Second Vice Chairman: Jean Joseph Exume. Commissioner Helio Bicudo, a Brazilian national, did not participate in the consideration and vote on this report, pursuant of Article 19(2)(a) of the Commission's Regulations. |
| Dated: | 21 February 1998 |
| Citation: | Tames v. Brazil, Case 11.516, Inter-Am. C.H.R., Report No. 19/98, OEA/Ser.L/V/II.102, doc. 6 rev. (1998) |
| Represented by: | APPLICANT: Council for the Protection of Human Rights |
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1. In June 1995, the Inter-American Commission on Human Rights, the “Commission”, received a petition against the Federal Republic of Brazil, “Brazil” or “the State of Brazil” according to which, Ovelário Tames, a Macuxi Indian, was beaten to death by civil police officers inside the Normandia Police Station in the state of Roraima. The petition also stated that the murder and the absence of justice in relation to it were violations of rights guaranteed in Article I (right to life, liberty and personal security) of the American Declaration of the Rights and Duties of Man, the “Declaration”, and in articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights, the “Convention”, and of Article 1(1) thereof (obligation to respect and ensure the rights recognized in the Convention). The Commission analyzed the case and decided to declare it admissible.

I. BACKGROUND

2. The petition alleged that Ovelário Tames was arrested by state civil police officers in the early hours of October 23, 1988, and then found dead in a cell in Normandia, in the state of Roraima, the following morning. It stated that Civil Inquiry No. 16/88 was instituted on October 25, in the very same police station where Ovelário died. The Civil Police Inquest ended up indicting only one of the two [CHECK SPANISH] police officers.

3. The petition further reported that, concomitantly, Inquiry No.79/88 was conducted by the Federal Police to which the conclusion of the civil inquiry was annexed. The Civil Police Inquest concluded on May 24, 1989 with indictment of all six police officers on charges of aggravated homicide, the aggravating circumstances being willful negligence and conspiracy (Article 121

and Articles 13 and 29 of the Brazilian Penal Code). However, the public prosecutor's office charged them only with the crime of grievous bodily harm leading to death [CHECK], which carries a lesser sentence than aggravated homicide. Case No. 9,684/88 was instituted upon the indictment.

4. On September 21, 1989, all six police officers were summoned to be questioned under oath. Police officer Roger Afonso de Souza Cruz did not appear. On October 16, the judge ordered that he be summoned again. Roger Afonso, who at the time was working in the prison system, did not appear for questioning, nor did he explain his absence. On November 9, 1990, the judge ordered that Afonso's summons be posted publicly. However, the summons was not posted until February 13, 1995, more than four years after it was ordered and more than six years after the crime. The defendant has still not appeared and was declared in contempt of court in April, 1995. At the time the petition was lodged, the proceedings were still moving slowly.

5. The petitioners argued that the mere fact that the proceedings were still in the preliminary phase -the phase when the judge, upon receiving the complaint, sets the date and time for the questioning and orders the defendant summoned- constituted the "unwarranted delay" referred to in Article 46(2)(c) of the Convention, thus providing grounds for an exception to the rule requiring exhaustion of the remedies under domestic law. Finally, they asked that the Commission condemn the State of Brazil for violation of Article I of the American Declaration, and Articles 8 and 25 of the American Convention on Human Rights, as well as Article 1.1 thereof. They also petitioned the Commission to order that the State make effective arrangements to conclude the judicial proceedings to convict those responsible for the crime committed.

II. PROCEEDINGS BEFORE THE COMMISSION

6. The Commission received the petition in June 1995 after various extensions and requests. In June 1996, the Government replied that according to the Council for the Protection of Human Rights (CDDPH) of the Ministry of Justice, the police inquiry to investigate the circumstances of the death of Ovelário Tames ended with the indictment of six persons, on charges of grievous bodily harm followed by death.

7. The Government said that criminal proceedings had been instituted in the 38th Criminal Court of Boa Vista, Rondônia, in Case No. 9,684/88 against José Felipe da Silva Neto, Jairo Pinto de Souza, Agnaldo da Silva Vieira, Nazareno Oliveira de Lima, Leônidas Nestor Pacheco and Roger Afonso de Souza Cruz Filho. Except for De Souza Cruz Filho, who was declared in contempt of court, all the defendants were questioned. The Government added that criminal proceedings were in the investigation phase. Deposition of the prosecution's witnesses was scheduled for September 2, 1996. Because the proceedings appeared to be moving slowly, the Council for the Protection of Human Rights (CDDPH) would have to urge the Roraima courts to act more quickly.

8. The Government also said that given the lack of any information concerning civil damages, the CDDPH would have to arrange to have a suit filed and, to that end, establish contact with the victim's next-of-kin. For all these reasons, the Government argued that the

remedies under domestic law had not been exhausted; the additional phases of the proceedings required by law to judge and sentence those eventually found guilty, had not been completed.

9. In August the petitioners sent their observations stating that in its reply the Government of Brazil confirmed that the criminal proceedings were still in the investigation phase and that deposition of the prosecution's witnesses was set for September 2, 1996. Eight years after the fact, the Judge of the third Criminal Court of Roraima (and not the 38th Court of Rondônia, as the Government erroneously states) issued a directive that postponed the hearings that were slated to begin on July 8, 1996, until October 8, 1996, in view of the backlog of court business.

10. The petitioners said that while the Government claimed that the Council for the Protection of Human Rights would have to urge the courts to speed up the proceedings, nothing of that nature had been done. Nor have the victim's next-of-kin been contacted with a proposal for civil damages, as the Government reported.

11. According to petitioners, the Government in its reply admitted that the legal proceedings were moving slowly. Based on all this and the fact that eight years after the crime the investigative phase of the proceedings had still not concluded, the petitioners asked that the petition be admitted based on application of Article 46(2)(c) of the Convention, which refers to an "unwarranted delay" in rendering a final judgment under the remedies of domestic law.

12. The petitioners argued that the delay in the legal proceedings was more than sufficient grounds for the exception to the rule requiring exhaustion of domestic remedies; it was also a violation of the rights to access to the courts, guaranteed in both the Declaration and the American Convention. Far from denying the delay, the Government acknowledged it, which made these flagrant violations for which it must be condemned.

13. On October 29, 1996, the Commission forwarded the petitioners' observations to the Government and gave it 30 days in which to make its final observations.

III. FRIENDLY SETTLEMENT

14. On November 19, 1996, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter. However, no reply was forthcoming.

IV. CONSIDERATIONS REGARDING ADMISSIBILITY

15. The petitioners alleged violations of rights guaranteed in Article I (right to life, liberty and personal security) of the American Declaration of the Rights and Duties of Man, and in articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights. The Commission is competent to analyze possible violations to human rights which are protected by the Declaration and by the Convention, in accordance to articles 1.2b and 20, of its statute. The fact that Brazil has ratified the Convention on September 25, 1992, does not exempt its responsibility for violations of human rights occurred prior to that ratification, rights guaranteed in the Declaration, which has a binding character.

16. The Inter-American Court of Human Rights recognized the binding force of the Declaration stating that “Articles 1(2)(b) and 20 of the Commission’s Statute define...the competence of that body with respect to the human rights enunciated in the Declaration. To this extent both the American Declaration and the Convention constitute, for the States which have ratified the Protocol of Buenos Aires, in pertinent matters and in relation to the Charter of the Organization”[FN1], a source of international obligations.

[FN1] Advisory Opinion of the Inter-American Court of Human Rights, paragraph 45, July 14, 1989, on the “Interpretation of the American Declaration of the Rights and Duties of Man within the framework of Article 64 of the American Convention on Human Rights.”

17. The facts recounted by the petitioner describe possible violations of human rights, which will be examined when the merits of the case are analyzed at the appropriate point of the proceedings. The Commission will now examine the formal requirements for the petition to be admitted.

18. Article 46 of the Convention establishes the requirements that must be met for a petition to be admitted:

- a. that, the remedies under domestic law have been pursued and exhausted;
- b. that, the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment;
- c. that, the subject of the petition or communication is not pending in another international proceeding for settlement; and,
- d. that, in the case of Article 44, the petition contains the name, nationality, profession, domicile, and signature of the person, or persons, or legal representative, of the entity lodging the petition.

19. In the petition filed in June 1995, the petitioners reported that six years after the crime, and despite the fact that individuals had been indicted, the proceedings were still in the initial investigation phase. For its part, in its reply of June 1996, the Government admitted that the judicial proceedings were moving slowly; for that reason, the Government, through the CDDPH, was going to urge the courts to move more swiftly with the proceedings. However, in August 1996 the petitioners reported that nothing of the kind had been done. The Government did not deny this; instead, it refrained from replying to the requests made by the Commission in October and November 1996.

20. In its reply, the Government argued that the remedies under domestic law had not been exhausted, since the additional phases of the proceedings required by law to convict and sentence those eventually found guilty had not yet concluded. In August 1996, the petitioner reported that the proceedings were still in the investigation phase, eight years after the crime being prosecuted was committed. The petitioner requested the exception to the rule requiring exhaustion of domestic remedies before a petition could be admitted, as stipulated in Article 46(2)(c) of the Convention.

21. Article 46(2)(c) states that the provisions of paragraphs (1)(a) (exhaustion of domestic remedies) and (1)(b) (deadline for submitting a petition) shall not apply when there has been an unwarranted delay in rendering judgment under the aforementioned remedies. The same is stated by Article 37(2)(c), of the Regulations of the Commission[FN2].

[FN2] Inter-American Court of Human Rights, Cases: Velásquez Rodríguez, Judgment of July 29, 1988, para. 62-66 and 72, Series C, No. 4; Fairén Garbi and Solís Corrales, Preliminary Exceptions of March 15, 1989, para. 86-90 and 97; Godínez Cruz, Judgment of January 20, 1989, para. 65-69 and 75, and Preliminary Exceptions of June 26, 1987, para. 95.

22. The petitioners alleged that the preliminary phase of the proceedings to summon the defendants, took seven years to complete, with the last defendant summoned by a posted warrant in April 1995, all of which constituted a delay in rendering judgment. The latest information reported by the petitioners concerning the judicial proceedings was that the hearing set for September 2, 1996, to hear the prosecution's witnesses, had been postponed because the judge had too much on his hands. The Government did not deny this assertion and did not reply to the Commission's requests, sent in October and November 1996. The Commission considers that the investigation phase should have long been completed. Since an explanation of the facts and judgment of those eventually found guilty are nowhere in sight, it grants the exception to the rule requiring exhaustion of the remedies under domestic law, according to Articles 46(2)(c) of the Convention and 37(2)(c) of its Regulations.

23. The Commission considers that the exception envisaged in Articles 46(2)(c) of the Convention and 37 (2)(c) of the Regulations applies and that the petition was lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment. The information received from the petitioner, dated August 1996, alleged that the hearing to take testimony from the prosecution's witnesses had been postponed. Eight years after the crime was committed, the investigation phase had not yet been completed. The delay in rendering a final judgment was patently obvious. The Commission considers that the exception provided for in Article 46(2)(c) of the Convention therefore applies and that the petition was presented within the reasonable time period stipulated in Article 38(2) of the Commission's Regulations, which says:

In the circumstances set forth in Article 37,(2) of these Regulations, the deadline for presentation of a petition to the Commission 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.

24. The Commission has no knowledge that this case is pending an international settlement, nor did the Government make such a claim. The petitioner observed the formal requirements of Article 44 (2).

CONCLUSIONS

25. The Commission considers that it is competent to hear this case and that it is admissible pursuant to the requirements established in Articles 46 and 47 of the American Convention.

On the basis of the factual and legal grounds set forth above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

26. To declare the present case admissible.

27. To send this report on admissibility to the Government of the Federal Republic of Brazil and the petitioners.

28. To continue to examine the pertinent issues in order to decide the merits of the case.

29. To publish this report in its Annual Report to the OAS General Assembly.