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Title/Style of Cause: Jose Victor Dos Santos and Waldemar Geronimo Pinheiro v. Paraguay
Doc. Type: Decision
Decided by: Chairman: Professor Robert K. Goldman;
First Vice-Chairman: Dr. Helio Bicudo;
Second-Vice Chairman: Dean Claudio Grossman;
Members: Prof. Carlos Ayala Corao, Dr. Jean Joseph Exume, Dr. Alvaro Tirado Mejia.
Dated: 27 September 1999
Citation: Dos Santos v. Paraguay, Case 11.506, Inter-Am. C.H.R., Report No. 87/99, OEA/Ser.L/V/II.106, doc. 6 rev. (1999)

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I. SUMMARY

1. In a petition received at the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) on May 11, 1995, Mr. José Víctor Dos Santos and Mr. Waldemar Gerónimo Pinheiro (hereinafter “the petitioners”) reported that they had been incarcerated in a prison in the Republic of Paraguay (hereinafter “Paraguay,” “the Sate” or “the Paraguayan State”) for more than 10 years without ever having been convicted or sentenced. Mr. José Víctor Dos Santos alleged that he had spent five months in a hospital as a result of the torture he suffered at the time he was taken into custody. The State alleged that the domestic remedies had not been exhausted. The Commission considers that the rule requiring exhaustion of domestic remedies does not apply in the instant case and therefore decides to admit the case, to proceed with the examination of the merits and to make itself available to the parties for a friendly settlement based on respect for the human rights recognized in the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”).

II. PROCESSING WITH THE COMMISSION

2. On May 11, 1995, the Commission received the complaints that the petitioners had originally sent to the Inter-American Juridical Committee in Rio de Janeiro, Brazil, which then forwarded them to the Commission. The Commission received the petitions on May 11, 1995, opened the case on June 29, 1995, and forwarded the pertinent parts of the petitions to the Paraguayan State. The Commission asked the State to provide information relevant to the petitions within 90 days. Paraguay responded on September 14, 1995. On November 29, 1995, the Commission solicited additional information from Paraguay, which the latter supplied on

June 20, 1996. On May 12, 1999, the Commission requested that the State provide up-to-date information on the case, which it did on June 17, 1999.

III. POSITION OF THE PARTIES

A. The petitioners' position

3. In his April 4, 1995 petition, Mr. José Víctor Dos Santos stated that he had been incarcerated in Tacumbú National Penitentiary since 1985, which by then was more than 10 years, without ever having been convicted and sentenced.

4. Mr. Dos Santos stated that he was arrested on suspicion of having participated in a murder in the country's interior although, he maintained, there was no evidence that he had. Mr. Dos Santos further stated that he was tortured when taken into custody, as a result of which he became seriously ill and was hospitalized for five months.

5. Mr. Dos Santos stated that he did not know why he was incarcerated. He also stated that he did not know whether any court proceedings had been instituted against him, but that he did not have the means to defend himself as he had neither family nor financial resources. He noted that many people incarcerated in that prison were in the same predicament.

6. In his petition, also dated April 4, 1995, Mr. Waldemar Gerónimo Pinheiro stated that he had been in the Tacumbú National Penitentiary for 10 years, prosecuted on suspicion of murder. He said that there had been no evidence against him.

7. Mr. Pinheiro stated that his court file had been lost three times and that, as he had no finances he had no means to defend himself. He said he did not know what to do, as he had spent ten years in prison without ever having been convicted and sentenced.

B. The State's position

8. The Paraguayan State presented its reply on September 14, 1995, and sent the Commission a copy of a report on the case prepared by the Ministry of Justice and Labor, attached to which was another report on the case, this one prepared by the Office of the Attorney General of the Nation.

9. Regarding the case of Mr. José Víctor Dos Santos, Paraguay reported that he had been free since August 8, 1995, by virtue of an order the Supreme Court issued on a petition of habeas corpus filed on his behalf. In its reply, the State added the following:

A file on inmate JOSÉ VÍCTOR DOS SANTOS is on record at the Tacumbú National Penitentiary. He has been incarcerated there since 1988 for a double homicide. However, no case file for this person is on record with the Ciudad del Este court circuit. One JOSÉ DOS SANTOS is named as an indicted accomplice in the case of Waldemar Pinheiro, although no information on Dos Santos is recorded and no one by the name of José Víctor Dos Santos is named in Final Judgment N° 11, of March 17, 1995.

10. Paraguay forwarded to the Commission a copy of the Supreme Court's June 9, 1995 writ issued on the petition of habeas corpus filed on behalf of José Víctor Dos Santos. In that ruling, the Court held that "a review of the records finds that to date, no competent authority has issued an order to have the person in custody imprisoned." It therefore ordered that he be released.

11. As for Mr. Gerónimo Waldemar Pinheiro, Paraguay stated that since June 6, 1985, he had been in prison "in the Tacumbú National Penitentiary for the crime of murder committed for the purpose of robbery" and that his final sentence of 30 years' imprisonment was delivered on March 17, 1995. It pointed out that the case file had been lost and had been reconstructed for purposes of sentencing. It added that the court record of Mr. Pinheiro's case was in the Appeals Chamber, which meant that domestic remedies had not been exhausted.

12. On May 23, 1996, Paraguay supplied the Commission with background information, documents and rulings related to both petitioners. There, the Commission ascertained the following:

a. On July 1, 1985, the Police Chief of the Colonia General Patricio Colmán prepared a police report stating that on June 6, 1985, Mr. Cledirio Teleken, Mrs. Alice de Teleken and their children Nelci and Nerio Teleken had been murdered. According to the report, the inquiries carried out indicated that the suspects in the murders were Mr. Waldemar Gerónimo Pineiro, Mr. José Mairoso Dos Santos and a third person by the name of "Joasinho." The report stated that the first two were in custody at the police station.

b. On July 5, 1985, the Police Chief presented the police report to the Criminal Court Judge of First Instance for Ciudad Presidente Strossner and informed him that Mr. Waldemar Gerónimo Pineiro and Mr. José Mairoso Dos Santos were then in preventive custody.

c. Because the case file labeled "Waldemar Pinheiro and José Mairoso Dos Santos /Murder in Santa Lucia" had been lost, on November 10, 1987 the Criminal Court of First Instance for Ciudad Presidente Strossner, with Dr. Artemio Benitez Vásquez presiding, ordered that the file be reconstructed and agreed to recommend to a court in the capital that statements be taken from the two men. On February 28, 1988, the same court ordered that the preventive custody was to be changed to preventive imprisonment and that the two men were to remain incarcerated in the Asuncion General Penitentiary.

d. On July 10, 1988, the same court delivered a ruling admitting a motion filed by Mr. José Mairoso Dos Santos to have the order for his imprisonment revoked. The court also decided to instruct the Asuncion General Penitentiary to execute the court ruling.

e. On May 16, 1990, the court in question delivered A.I. N° 451, wherein it established that a review of the court's case files conducted when a new judge, Dr. Ruben Candia Amarilla, took office, found that the case file in question was missing. In view of the foregoing, the court decided to conduct new preliminary proceedings, to confirm the preventive detention of Mr. Waldemar Gerónimo Pineiro, to convene a hearing for Pineiro to make a statement, and to issue

an arrest warrant for José Marioso Dos Santos. The judge ordered that the Asuncion and regional police be instructed accordingly.

f. On May 19, 1990, the court convened at the Tacumbú National Penitentiary and took Mr. Pinheiro's statement. The record for the hearing indicated that Mr. Pinheiro was not in a position to make a statement, but did not give the reason.

g. On May 21, 1990, Mr. Pinheiro designated two defense attorneys. On May 22, 1990, the Court decided to change the preventive custody to preventive imprisonment and ordered that Mr. Pinheiro was to remain in prison.

h. On August 27, 1991, the Court, with a new judge, Dr. Juan G. Arguello, presiding, responded to a request from the Criminal Prosecutor and designated the Public Defender for Indigent Prisoners to serve as Waldemar Pinheiro's defense counsel.

i. At a hearing on September 21, 1991, Mr. Pinheiro made his preliminary statement, wherein he said he was innocent of the crime with which he was charged. He stated that on June 6, 1985, he had traveled overland from Brazil to Paraguay, to work on a property that his father had leased. When he stopped at a police station to ask directions, he was taken into custody, tortured and forced to confess to the crimes for which he was on trial.

j. The respective case file was missing from September 1992 to September 1994. On September 27, 1994, the Court, with Dr. Justo Salvador Reyes Riveroo presiding, closed the preliminary inquiry and the process moved into the trial phase.

k. On December 14, 1993, Mr. Pinheiro designated Dr. Jorge Valder Bavera, Public Defender for Indigent, Absent and Disabled Prisoners to serve as his defense attorney.

l. On March 17, 1995, the Court hearing the case, known then as the First Criminal and Second Juvenile Correctional Court of the Circuit of the Alto Paraná and Canindeyú, with Judge Justo Salvador Reyes Riveroo presiding, handed down the final judgment, sentencing Mr. Waldemar Gerónimo Pinheiro to 30 years' imprisonment for the crimes with which he was charged.

m. On May 22, 1995, Dr. Jorge Valdés Savera, Defense Attorney for Indigent, Absent, and Disabled Prisoners and Mr. Pinheiro's defense counsel, received notification of the sentence and filed an appeal with the Appellate Court that same day. The brief filed stated the grounds for the appeal. There, the defense attorney argued that there had been absolutely no proof in the case against Mr. Pinheiro, since the "only valid evidence in the case files is the preliminary statement made by my defendant," flatly denying any part in the events under investigation.

n. On April 12, 1996, the Civil, Commercial, Labor, Criminal, Custodial, and Juvenile Correctional Appellate Court of the First Chamber in the Alto Paraná and Canindeyú Circuit issued the Decision and Judgment N° 3, wherein it nullified Final Judgment N° 11, of March 17, 1995. In that ruling, the Superior Court held that the judgment of the court of first instance was delivered without the prosecution's case and the defense's rebuttal being argued. This meant that

“technically speaking, there was no trial, since without prosecution and defense arguments, there was no basis for any finding.”

13. On June 17, 1999, the Paraguayan State argued that on September 3, 1996, the Medical Department of the Tacumbú Penitentiary ordered that Mr. Waldemar Gerónimo Pinheiro be hospitalized at the Juan Max Boettner Treatment Center, because he was suffering from T.B.C. pneumonia. While hospitalized, Mr. Pinheiro escaped from the Treatment Center on October 27, 1996. The State also reported that on November 1, 1996, the Court issued a nationwide arrest warrant for Mr. Pinheiro.

IV. ANALYSIS

14. The Commission will now examine the requirements stipulated in the American Convention for a petition’s admissibility.

A. Jurisdiction *ratione materiae*, *ratione personae* and *ratione temporis* of the Commission

15. The Commission is competent to hear the complaint of the petitioners. The acts alleged therein have affected natural persons subject to the jurisdiction of the State, according, initially, to the applicability in Paraguay of the American Declaration of the Rights and Duties of Man and, subsequently, to the applicability of the American Convention. The Commission therefore is proceeding to examine whether this case meets the requirements established in Articles 46 and 47 of the American Convention.[FN1]

[FN1] Paraguay ratified the American Convention on Human Rights on August 24, 1989. The Commission wishes to clarify that even though the acts in question--the allegedly arbitrary imprisonment of Mr. Dos Santos, the preventive detention or imprisonment of Mr. Pinheiro for an amount of time alleged to be unreasonable, and the reported submission of both individuals to judicial proceedings that allegedly exceeded a reasonable period of time--began in 1985, before Paraguay's ratification (in 1989) of the American Convention, those acts could constitute a continuing violation, since it is argued that their effects continued after Paraguay had ratified the Convention. In that connection, the IACHR recently confirmed “its practice of extending the scope of application of the American Convention to facts of a continuing nature that violate human rights prior to its ratification, but whose effects remain after its entry into force.” IACHR, Report N° 95/98 (Chile), December 9, 1998, in Annual Report of the Inter-American Commission on Human Rights, 1998, para. 27. Similarly, the Commission has established that “once the American Convention entered into force ... , the Convention and not the Declaration became the source of legal norms for application by the Commission insofar as the petition alleges violations of substantially identical rights set forth in both instruments and those claimed violations do not involve a continuing situation (IACHR, Report N° 38/99 (Argentina), March 11, 1999, in Annual Report of the Inter-American Commission on Human Rights, 1998, para. 13).

B. Requirements for the petition’s admissibility

a. Exhaustion of domestic remedies

16. Since more than 14 years have elapsed since the judicial proceedings were initiated, the Commission finds, *prima facie*--and without ruling on the substantive issues, which it will do in due course--that there has been an unjustified delay in those judicial proceedings, and, therefore, in accordance with Article 46(2)(c) of the Convention, the petitioners are exempt from meeting that requirement.

b. Timeliness of the petition's presentation

17. As to the requirement stipulated under Article 46(1)(b) of the Convention, to the effect that the petition must be 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 Commission observes that this is another requirement that does not apply in the instant case. As the exception to the rule requiring exhaustion of local remedies, provided for in Article 46(2)(a) of the Convention, has been allowed, as explained in the preceding paragraph, an exception to the time period for lodging petitions is also called for by virtue of Article 46(2).

c. Concurrency of legal actions and *res judicata*

18. The Commission understands that the subject of the petition is not pending in another international proceeding for settlement and is not substantially the same as one previously studied by the Commission or by another international organization. Therefore, the requirements stipulated in articles 46(1)(c) and 47(d) have been met.

d. Nature of the facts alleged

19. The Commission is of the view that the statements of the petitioners and of the State do not indicate that the petition is manifestly groundless or obviously out of order, wherefore the requirement stipulated in Article 47(c) of the Convention has also been met.

V. CONCLUSIONS

20. The Commission finds, therefore, that it has jurisdiction to hear the present case and that, as herein explained, is admissible in accordance with the requirements established in articles 46 and 47 of the American Convention.

21. Based on the arguments of fact and of law explained above and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible.

2. To notify the petitioners and the State of this decision.
3. To proceed with the analysis of the merits of the case.
4. To make itself available to the parties for the purpose of reaching a friendly settlement based on respect for the rights recognized in the American Convention, and to invite the parties to express their views on this possibility.
5. To publish this decision and include it in the Commission's Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 27th day of the month of September, 1999. (Signed): Robert Goldman, Chairman; Hélio Bicudo, First Vice-Chairman; Claudio Grossman, Second Vice-Chairman; Commissioners: Alvaro Tirado Mejía, Carlos Ayala Corao and Jean Joseph Exumé.