

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 35/01; Case 11.634
Session: Hundred and Tenth Regular Session (20 February – 9 March 2001)
Title/Style of Cause: Jailton Neri da Fonseca v. Brazil
Doc. Type: Decision
Decided by: Chairman: Claudio Grossman;
First Vice-Chairman: Juan Mendez;
Second Vice-Chairman: Marta Altolaguirre;
Commissioners: Robert K. Goldman, Julio Prado Vallejo, Peter Laurie
Pursuant to Article 19(2)(a) of the Commission’s Regulations Commission member Helio Bicudo, a Brazilian national, did not participate in the discussion of this case or in the adoption of this decision.

Dated: 20 February 2001
Citation: Neri da Fonseca v. Brazil, Case 11.634, Inter-Am. C.H.R., Report No. 35/01, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)
Represented by: APPLICANT: Centro de Defesa Dom Luciano Mendes of the Associacao Beneficiente Sao Martinho

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I. SUMMARY

1. On December 7, 1995, during its visit to Brazil, the Inter-American Commission on Human Rights (hereinafter the “Commission” or “IACHR”) received a petition that the Centro de Defesa Dom Luciano Mendes of the Associação Beneficiente São Martinho [São Martinho Charitable Association] (hereinafter the “petitioner”) filed against the Federative Republic of Brazil (hereinafter called the “State” or the “Brazilian State” or “Brazil”) for the alleged extrajudicial execution of the minor Jailton Neri da Fonseca (hereinafter the “victim”) by Rio de Janeiro State military police during a police operation in the Ramos favela. If proven true, the facts alleged in the petition could constitute violations of Article 4 (right to life), Article 8 (the right to a fair trial), Article 19 (the rights of the child), and Article 25 (the right to judicial protection) of the American Convention on Human Rights (hereinafter the “American Convention” or the “Convention”).

2. Brazil reported on the internal measures in progress, including the investigations and the ruling handed down by the Military Tribunal of the State of Rio de Janeiro.

3. After examining the parties’ allegations, the Commission decided to declare this case admissible.

II. PROCESSING WITH THE COMMISSION

4. In accordance with Article 33 of the Commission's Regulations, in March 1996 the Commission asked the petitioner to complete the petition by supplying additional information. The petitioner supplied the requested information on April 19, 1996, including a copy of the ruling handed down by the Military Tribunal on March 12, 1996. On June 14, 1996, the Commission requested information from the State. The latter twice requested that the deadline for supplying that information be extended: the first time on September 18, and the second time on November 26, 1996. With no information from the State forthcoming, on July 7, 1998 the Commission again asked the Brazilian State to supply the previously requested information and advised it of the possible application of Article 42 of the Commission's Regulations. The State sent information on August 17, 1998, a copy of which was forwarded to the petitioner on September 25, 1998. The petitioner did not present final comments.

III. POSITION OF THE PARTIES

a. Position of the petitioner

5. The petitioner alleges that the minor Jailton Neri da Fonseca, age thirteen, was killed by military police during a police raid in the Ramos favela in the city of Rio de Janeiro on December 22, 1992.

6. The petitioner also alleges that the minor Jailton had been detained some days before being killed by police officers in charge of patrolling the Ramos favela. To secure Jailton's release, police had demanded that Jailton's mother pay a sum that was, at the time of the crime, Cr\$1,500,000 (one and a half million cruzeiros), which was extortion.

7. The petitioner reports that police inquiry N° 601 was instituted on December 23, 1992. In it, the Office of the State's Attorney indicted four police officers in case 96/30/95. The petitioner adds that on March 12, 1996, the Permanent Military Tribunal handed down a verdict acquitting the accused police officers, based on the maxim of the law in dubio pro reo. Its reasoning was that there were doubts as to the authorship of the crime and that any new evidence in the case was impossible.

8. The petitioner did not make clear whether an appeal was filed to challenge the acquittal, but it does report that the remedies under domestic law were exhausted when the verdict became final, at which point no appeal could be filed.

9. The petitioner adds that it is routine military police practice to intimidate witnesses in order to keep them from testifying against the police, thus ensuring that violations will go unpunished.

B. Position of the State

10. The State answered the petitioner's allegations, reporting that:

According to information received from the Office of the State's Attorney of Rio de Janeiro, Jailton Neri da Fonseca, then a teenager, was killed at the time of an operation conducted by the Rio de Janeiro military police to stop illegal drug trafficking and to apprehend those drug traffickers who hide out in Ramos Favela. The State went on to say that: Obviously the vast majority of those who live in the favelas are not criminals and are not involved in drug trafficking. But the truth is that the majority of the people used in illegal drug trafficking in Rio de Janeiro are from those favelas. Many are minors, preferably teenagers, particularly inasmuch as they are not subject to criminal indictment.

11. The State reported that criminal case N° 9630/95 was instituted with the judge advocate's office because the military courts have jurisdiction in homicide cases involving military police. It also reported that the probable-cause proceedings are adversarial proceedings, where the accused have full guarantees of self-defense. The State added that on March 12, 1996, the Military Tribunal unanimously decided to acquit the military police accused of the murder of Jailton Neri da Fonseca and of the crime of extortion they were alleged to have committed against the victim's mother. The State points out that the verdict became final, and thus no longer subject to any type of legal challenge.

12. Lastly, the State reports that in the matter of damages for unlawful acts committed by police officers, under the Brazilian legal system the State does not have the authority to take the initiative in this regard, and that some judicial or legislative measure directly related to the victims or their next of kin was needed. In the instant case, where the offenses were criminal in nature, the accused would have to be convicted. It added that in this specific case, the suit seeking damages on behalf of the victim and his next of kin was brought in the civil courts of the state of Rio de Janeiro, and that damages were contingent upon the outcome of the case brought in the state's criminal justice system.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence *ratione materiae*, *personae*, *temporis* and *loci*

13. The Commission has competence *ratione personae* to examine the complaint because the petition names as the alleged victim a person whose Convention-recognized rights the Brazilian State undertook to respect and guarantee. The facts alleged involve actions of agents of the state of Rio de Janeiro. Under Article 28 of the Convention, where a State Party is constituted as a federal state, as in Brazil's case, the federal government will be answerable at the international level for acts committed by agents of the federation's units.

14. The Commission has competence *ratione materiae* because the case involves allegations that, if proved true, would constitute violations of rights recognized in the Convention, namely: the right to life (Article 4), the right to a fair trial (Article 8), the rights of the child (Article 19), and the right to judicial protection (Article 25).

15. The Commission has competence *ratione temporis* given that the facts alleged date back to December 22, 1992, when the obligation to respect and guarantee the rights recognized in the

Convention was already binding upon the Brazilian State, which ratified the Convention on September 25, 1992.

16. The Commission has competence *ratione loci* because the facts alleged occurred in the city of Rio de Janeiro, within the territory of the Federative Republic of Brazil, a State that ratified the American Convention.

B. Requirements for the petition's admissibility

17. Under Article 46 of the American Convention, admission by the Commission of a petition or communication will be subject to the following requirements:

- a) that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law;
- 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.

18. The Commission will now examine each of the requirements listed above.

1. Exhaustion of remedies under domestic law

19. In the instant case, based on the information supplied by the parties, the only inquiry was the one conducted by the military justice system.[FN1] The Commission has repeatedly held that prosecution of human rights violations by military courts was not an effective recourse. Hence, the petitioner is not required to exhaust it. Also, the Commission considers that the remedies under domestic law were exhausted once the Military Tribunal's March 12, 1996 verdict became final.

[FN1] IACHR, Report on the situation of human rights in Brazil, 1997, Chapter III, paragraphs 77 to 79; IACHR, Annual Report 1999; Report N° 34/00, Case 11.291- Carandirú (Brazil), par. 80. See also: IACHR, Annual Report 1999, Report 7/00, case 10.337 (Colombia); paragraphs 53 to 58; IACHR, Third report on the situation of human rights in Colombia (1999), p. 175.

2. Deadline for filing the petition

20. While the exception to the rule requiring exhaustion of domestic remedies applies, so does the rule stipulated in Article 46(1)(b) of the Convention, which requires that the petition be submitted within six months of notification of the final judgment. The Commission considers that the petition was submitted within a reasonable period of time, that it was basically complete when submitted and fully complete with the additional information requested by the Commission and supplied by the petitioner on time, that is to say, just one month after notification of the March 12, 1996 verdict.

3. Duplication of proceedings or res judicata

21. The Commission has no information to indicate that the subject of the petition is pending in another international proceeding for settlement or that it is substantially the same as one previously studied by the Commission or by another international organization. Hence, the Commission finds that the requirements stipulated in Articles 46(1)(c) and 47(d) are met.

4. Characterization of the facts

22. If the facts alleged by the petitioner are proved true, they could constitute violations of rights protected by the American Convention.

IV. CONCLUSIONS

23. The Commission concludes that it is competent to consider the present case and that the petition satisfies the admissibility requirements set forth in articles 46 and 47 of the American Convention.

24. Based on the foregoing arguments of fact and of law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the case admissible with regard to the facts alleged which, if proven true, would constitute violations of Articles 4, 8, 19 and 25 of the American Convention.
2. To notify the Brazilian State and the petitioners of this decision.
3. To proceed with its analysis of the merits of the case.
4. 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 twentieth day of February, 2001. (Signed): Claudio Grossman, Chairman; Juan Méndez, First Vice-Chairman; Marta Altolaguirre, Second Vice-Chair; Commissioners: Robert K. Goldman, Julio Prado Vallejo and Peter Laurie.