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Title/Style of Cause: Octavio Ruben Gonzalez Acosta v. Paraguay
Doc. Type: Decision
Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioners: Robert K. Goldman, Julio Prado Vallejo.
Dated: 22 October 2003
Citation: Gonzalez Acosta v. Paraguay, Petition 12.358, Inter-Am. C.H.R., Report No. 83/03, OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)

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I. SUMMARY

1. On June 30, 1999, Mr. Guillermo González lodged a petition with the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) against the Republic of Paraguay (hereinafter “Paraguay” or “the State”).
2. The petitioner alleged that his father, Octavio Rubén González Acosta, was detained on December 3, 1975, by agents of what was then the Capital Police Investigations Department and that he subsequently disappeared.
3. The State provided information about the judicial proceedings pending at the domestic level in connection with the reported disappearance of the alleged victim.
4. Having examined the petition, the Commission decided, in accordance with Articles 46 and 47 of the American Convention, as well as with Articles 30 and 37 and related provisions of its Rules of Procedure, to declare the petition admissible as regards alleged violations of Articles I, XXV and XXVI of the American Declaration of the Rights and Duties of Man; Articles 7, 5, 4, 8, 25 and 1(1) of the American Convention on Human Rights; and Articles I, III and IV of the Inter-American Convention on the Forced Disappearance of Persons.

II. PROCESSING BY THE COMMISSION

5. On January 26, 2001 the Commission transmitted the pertinent portions of the petition to the Paraguayan State and, pursuant to its Regulations[SW1] then in force, requested it to reply within 90 days. The State replied on May 21, 2001. On July 2, 2001 the Commission requested

information from both parties on the procedural status of the domestic remedies. The State furnished additional information on October 3, 2001.

III. POSITION OF THE PARTIES

A. Position of the petitioner

6. The petitioner says that his father, Octavio Rubén González Acosta, a carpenter by trade, was arrested on December 3, 1975, by agents of what was then the Capital Police Investigations Department. He adds that Mr. González Acosta was working on the Acaray Dam and that the arrest was made at his place of work without a warrant issued by a judge in advance.

7. He says that at the time of the events Mr. González Acosta was living with his wife, Mrs. Adela Elvira Herrera de González, and their children, who were then minors, at Villa San Francisco in the city of Hernandarias.

8. The petitioners claims that after his arrest the alleged victim was taken to the headquarters of the Police Investigations Department in Asunción where he was seen by several persons.

9. The wife of the alleged victim, Mrs. Adela Elvira Herrera de González, and their children were also detained for a number of days. The petitioner adds that when she was released she went to the headquarters of the Police Investigations Department to talk to her husband and learn the reasons for his arrest, but the police authorities did not provide her with any positive information as to the whereabouts of the alleged victim.

10. The petitioner says that “reliable and qualified persons who were detained at the time at the Investigations Department say that Octavio Rubén González Acosta died under torture by agents of that department”.

11. He says that the 7th Criminal Court of First Instance of Secretariat No. 14, was processing a case concerning the disappearance of Mr. González Acosta. He adds that the wife of the alleged victim attempted a suit for “presumed death through forced disappearance of a person detained by the Public Authority”.

B. Position of the State

12. In its initial reply the State mentioned pending domestic remedies in connection with the disappearance of Mr. González Acosta. In that respect the State says,

The wife of Mr. González applied for a writ of habeas data to the “Documentation Center and Archive for the Defense oh Human Rights” on October 10, 2000; that written communication was answered on March 8, 2001. The case was processed in the Court of First Instance for Civil and Commercial Matters (...).

13. The State said that a criminal complaint was later filed on April 24, 2001, “with the First Criminal Court, Secretariat No. 1, which has been titled ‘Alfredo Stroessner et al. concerning torture and other crimes’”, and it attached a copy of the complaint, which alleges, inter alia, that Mr. González Acosta

(...) was beaten with truncheons all over his body so severely that there was not a single square centimeter of his skin that was not bruised. He was also put in a bathtub filled with water and excrement, his hands and feet bound with rope. After several hours of torment, during which Rubén González did not once open his mouth other than to swallow excrement or to insult his torturers, he was hung upside down by his feet from a beam and beaten with iron rods until he died”.

14. In its additional communication of October 3, 2001, the State enclosed copies of the judicial records of the proceedings in the domestic courts in connection with the reported disappearance of Mr. González Acosta, in which it emerges that the record entitled “Octavio Rubén González Acosta, Lorenzo López and Diego Rodas concerning Alleged Disappearance, 1991”, which was opened on May 13, 1991 and kept by the Seventh Criminal Court, Secretariat No. 14, was closed in accordance with a certificate issued on July 24, 2001, by the Director of the General Archive of the Courts.

15. It also transpires from the information provided by the State that the record entitled “Octavio Rubén González Acosta and Lorenzo López concerning determination of disappearance with presumption of death” has apparently been lost.

16. The information supplied by the State further shows that that the UN Working Group on Forced or Involuntary Disappearances also examined the facts concerning the reported disappearance of Mr. González Acosta.

IV. ANALYSIS OF ADMISSIBILITY

A. The Commission’s competence *ratione personae*, *ratione materiae*, *ratione temporis*, *ratione loci*.

17. The petitioner is entitled under Article 44 of the American Convention and Article 23 of the Rules of the Procedure of the IACHR to lodge petitions with the Commission concerning alleged violation of rights contained in the American Convention. As to the State, Paraguay is a party to the Convention and, as such, is responsible on the international plane for violations of said instrument. The alleged victim is a natural person, in respect of whom the State undertook to ensure the rights enshrined in the Convention. Accordingly the Commission has *ratione personae* competence to examine the petition.

18. The Commission has *ratione materiae* competence to take up the petition because it alleges violation of human rights protected by the American Declaration of the Rights and Duties of Man and by the American Convention.

19. The IACHR has *ratione temporis* competence inasmuch as the duty to respect and ensure the rights recognized in the American Declaration, initially, and, subsequently, in the American Convention was in force for the State at the time when the violations alleged in the petition are said to have occurred. The Commission points out that some of the alleged violations of Mr. González Acosta's human rights commenced prior to August 24, 1989, the date on which Paraguay ratified the American Convention; as a result, in principle, the source of law applicable thereto is the American Declaration. However, the foregoing is without prejudice to the possibility that in its report on merits the Commission might determine, in respect of said violations, the existence of a situation of continuing violation of human rights, in which case it could apply both the American Declaration and the American Convention concurrently. In that respect, both the Court and the Commission have ruled that the American Declaration is a source of international obligations for OAS member states. [FN1] In that connection the IACHR has 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." [FN2]

[FN1] See: Inter-American Court of Human Rights, Advisory Opinion OC-10/89, 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, July 14, 1989, Ser. A. No. 10 (1989), paragraphs 35-45; IACHR, James Terry Roach and Jay Pinkerton vs. United States, Case 9647, Res. 3/87, September 22, 1987, Annual Report 1986-1987, paragraphs 46-49, and Rafael Ferrer-Mazorra et al. vs. United States of America, Report N° 51/01, case 9903, April 4, 2001. See also: Statute of the Inter-American Commission on Human Rights, Article 20.

[FN2] IACHR, Report N° 95/98 (Chile), December 9, 1998, Annual Report of the Inter-American Commission on Human Rights, 1998, paragraph 27. See also IACHR, Annual Report 2001, Report No. 82/01 – Anibal Miranda, Case 12.000 (Paraguay), paragraph 14. The Commission has further ruled 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, Annual Report of the Inter-American Commission on Human Rights, 1998, paragraph 13.

20. The Commission has *ratione loci* competence to hear the petition, since it alleges violations of rights protected by the American Declaration and the American Convention occurring within the territory of a state party thereto.

B. Admissibility requirements for the petition

a. Exhaustion of domestic remedies

21. The Commission notes that at the time the alleged violations occurred there was an absence of due process guarantees for investigation and punishment of human rights violations in Paraguay. On this matter, at that time, the IACHR examined the connection between the state of

emergency that was in force for many years in the country and its consequences as regards domestic remedies, and said that

Emphasis was placed earlier on the importance of the precept in Article 79 of the Constitution, whereby the existence of the state of siege “shall not interrupt the functioning of the powers of the state nor affect the exercise of its prerogatives.” Despite this express constitutional stipulation, the courts of justice have expressly refused to receive and process writs of habeas corpus when cognizance of the measures decreed by the executive branch under the state of siege is at issue. This—with few exceptions—has been the norm. The gravity of such conduct by the branches of the Paraguayan state cannot be overemphasized, for in practice it leaves individuals utterly defenseless in the face of a president’s omnipotence, destroying the balance of powers that characterizes the democratic system of government recognized by the Paraguayan Constitution itself.

The absence of justification for imposition of the state of siege, the continued existence of such a draconian measure for almost thirty-three years, the infringement of rights of which the Constitution does not authorize the suspension or restriction, and the lack of judicial recourse for individuals in the face of the presidential powers—all of these elements allow the Commission to conclude that the state of siege in Paraguay has not been an instrument for meeting exceptional situations, but a tool in the service of a dictatorship, in overt conflict with the constitutional provisions and international instruments applicable to that country.[FN3]

[FN3] IACHR, Report on the Situation of Human Rights in Paraguay, 1987, Chapter I (B) (3).

22. In light of the aforementioned situation, the petitioner was exempt from the requirement to attempt and exhaust domestic remedies while the de facto regime was in force in Paraguay.

23. The petition under review concerns alleged acts of arbitrary detention, torture and forced disappearance committed by agents of the Paraguayan State to the detriment of Mr. Octavio Rubén González Acosta. In that connection, the Inter-American Commission has indicated that whenever a prosecutable offense is committed, the State has the obligation to promote and advance the criminal proceedings through to the end and that, [FN4] in these cases, this is the ideal way to clarify events, determine whereabouts, judge those responsible, and establish the corresponding criminal sanctions, as well as allow for other modes of pecuniary reparations.

[FN4] See, for example, IACHR, 1997 Annual Report, Report N° 52/97 - Arges Sequeira Mangas, Case 11.218, (Nicaragua), paragraphs 96 and 97. See in the same connection IACHR, 2001 Annual Report, Report No. 83/01, Zulema Tarazona Arriate et al. Case 11.581 (Peru), paragraph 25.

24. In situations like the one in the petition under examination, which includes allegations of torture and forced disappearance--which in domestic law are prosecutable offenses--the domestic

remedies that must be taken into account for the purposes of determining the petition's admissibility are those related to investigating and punishing the perpetrators.

25. In that regards, the Commission notes that on May 13, 1991 the State opened an investigation under the record entitled "Octavio Rubén González Acosta, Lorenzo López and Diego Rodas concerning Alleged Disappearance, 1991", through the Seventh Criminal Court, Secretariat No. 14. The record was subsequently closed in accordance with a certificate issued on July 24, 2001, by the Director of the General Archive of the Courts of Paraguay.

26. The IACHR further notes that on April 24, 2001, Mrs. Adela Elvira Herrera de González filed a criminal complaint with the First Criminal Court, Secretariat No. 1, which was entitled "Alfredo Stroessner et al. concerning torture and other crimes" at the First Criminal Court, Secretariat No. 1". According to the information available, that complaint would also appear, to date, to have failed to produce any results in terms of investigation and punishment of those responsible for the alleged violations.

27. The Commission concludes that while the domestic judicial remedies have not been exhausted, there is a ground for waiving the requirement to exhaust said remedies, namely the "unwarranted delay in rendering a final judgment under the aforementioned remedies" referred to in Article 46(2)(c) of the American Convention.

28. All that remains to be noted is that invoking the exceptions to the prior exhaustion requirement of Article 46(2) of the Convention is closely linked to the determination of the possible violation of certain rights set forth therein, such as the guarantees of access to justice. Nonetheless, Article 46(2), by its nature and purpose, is a rule that stands autonomously from the substantive provisions of the Convention. Therefore, the determination as to whether the exceptions to the rule of prior exhaustion of domestic remedies provided for at Article 46(2) are applicable to the case in question should be made prior to and separate from the analysis of the merits, since it depends on a different standard of appreciation from that used to determine violations of Articles 8, and 25 of the Convention. It should be clarified that the causes and effects that have impeded the exhaustion of domestic remedies in the instant case will be analyzed, as relevant, in the Report the Commission adopts on the merits of the dispute, to determine if violations of the American Convention have indeed taken place.

b. Deadline for lodging the petition

29. Article 32 of the Rules of Procedure of the IACHR provides that in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission, bearing in mind the date of the alleged violation and the circumstances of each case.

30. In respect of the foregoing, taking into account the date of the alleged violations, the possible existence of a situation of continuing violation of human rights, and the status of the various domestic remedies in Paraguay, the Commission finds that the petition under analysis was submitted within a reasonable period of time.

c. Duplication of proceedings and res judicata

31. It emerges from the information provided by the State that the Working Group on Forced or Involuntary Disappearances examined the facts concerning the reported disappearance of Mr. González Acosta. In that connection, the Commission ratifies its previous findings in the sense that the proceeding before that agency is not capable of yielding an international settlement in the terms required under Article 46(1)(c) of the Convention.[FN5] Accordingly, the requirements arising from Articles 46(1)(c) and 47(1)(d) of the Convention are also met.

[FN5] On this point, see, for example, IACHR, Report N° 17/88 (Peru), Annual Report 1987-1988 considering section beginning with item (c). See also IACHR, Annual Report 1998, Report No. 53/99 – David Palomino Morales et al., Cases 10.551 et al. (Peru), paragraph 67.

d. Nature of the alleged violations

32. The Commission finds that the arguments presented by the petitioner concern facts that, if proven, could constitute a violation of the rights to liberty and life, to protection from arbitrary arrest, and to due process of law contained in Articles I, XXV and XXVI of the American Declaration of the Rights and Duties of Man; of the rights to personal liberty, humane treatment, life, a fair trial, and judicial protection, enshrined in Articles 7, 5, 4, 8, and 25 of the American Convention; and of the obligation to respect rights mentioned in Article 1(1) of said treaty. The aforesaid facts could also constitute violation of Articles I, III, and IV of the Inter-American Convention on the Forced Disappearance of Persons.

V. CONCLUSION

33. The Commission concludes that it is competent to take up this petition and that it is admissible in accordance with Articles 46 and 47 of the American Convention, as well as with Articles 30 and 37 and related provisions of its Rules of Procedure.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare, without prejudging the merits of the matter, that the petition is admissible as with respect to the alleged violations of Articles I (right to freedom and to life), XXV (right of protection against arbitrary arrest), and XXVI (right to due process of law) of the American Declaration of the Rights and Duties of Man; of Articles 7 (right to personal liberty), 5 (right to humane treatment), 4 (right to life), 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention; and of the obligation to respect rights mentioned in Article 1(1) of said treaty. The Commission further declares that the petition is admissible as regards Articles I, III, and IV of the Inter-American Convention on the Forced Disappearance of Persons.

2. To transmit the instant report to the State and the petitioner.

3. To publish this decision and include it in its 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 22nd day of the month of October, 2003. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Robert K. Goldman and Julio Prado Vallejo, Commissioners.