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File Number(s): Report No. 73/03; Petition 12.213
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Title/Style of Cause: Aristeu Guida da Silva v. Brazil
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: Guida da Silva v. Brazil, Petition 12.213, Inter-Am. C.H.R., Report No. 73/03, OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)
Represented by: APPLICANT: the Inter-American Press Association
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I. SUMMARY

1. On September 23, 1999, the Inter-American Press Association (IAPA) lodged a petition with the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) against the Federative Republic of Brazil (hereinafter “Brazil” or “the State”).
2. The petitioner claimed that Mr. Aristeu Guida da Silva, a journalist by profession, was murdered on May 12, 1995, for reasons associated with the exercise of his professional activities.
3. The State provided information about the judicial proceedings pending at the domestic level in connection with the murder of Mr. Aristeu Guida da Silva.
4. Having examined the petition, the Commission decided, in accordance with Articles 46 and 47 of the American Convention, and with Articles 30, 37 and related articles of its Rules of Procedure, to declare the petition admissible as regards alleged violations of Articles 4, 13, 8, 25 and 1(1) of the American Convention on Human Rights.

II. PROCESSING BY THE COMMISSION

5. On September 29, 1999 the Commission transmitted the pertinent portions of the petition to the State and, in accordance with its Regulations then in force, requested it to reply within 90 days. The State replied on February 17, 2000. The petitioner submitted comments on the reply of the State on May 19, 2000. On February 12, 2002, the petitioner presented additional information. On May 2, 2003, the IACHR requested both parties to provide within 30 days

updated information on the status of domestic remedies in connection with the investigation of the death of the alleged victim. The petitioner replied on June 3, 2003.

III. POSITION OF THE PARTIES

A. Position of the petitioner

6. The petitioner says that the journalist Aristeu Guida da Silva, owner and director of the *Gazeta de Sao Fidelis*, which he founded in 1991 and published fortnightly in Sao Fidelis, a city in the State of Rio de Janeiro, 180 kilometers from the city of Rio de Janeiro, was murdered in public in Sao Fidelis on May 12, 1995.

7. The petitioner says that the journalist Guida da Silva published in the *Gazeta de Sao Fidelis* articles that criticized corruption in the public administration and, in particular, several members of the Sao Fidelis Municipal Council, whom he alleged to be connected with the theft of automobiles and a local death squad known as “Cero1”.

8. The petitioner alleges that on May 4, 1995, a few days before his demise, Mr. Guida da Silva was publicly insulted at a meeting of the Sao Fidelis Municipal Council in response to an article he had published some days earlier, in which he accused or criticized a number of council members, among them Council Member Juárez Carlos Rodrigues Silva. The petitioner further says that the journalist Guida da Silva allegedly told Council Member Rodrigues Silva that in the next edition he would publish article on all his unlawful business activities.

9. The petitioner says that the following day the Municipal Council published a resolution of repudiation in which it stated that the publication of the journalist Guida da Silva was “a media outlet that engaged in irresponsible, biased, unreliable and largely mercenary journalism.” It added that “human nature will only tolerate so much outside interference. There are times, when we feel our privacy invaded, that we may resort to irrational acts...”.

10. The petitioner says that on May 12, 1995, at approximately 8 o’clock at night, the journalist Guida da Silva was on Faria Serra street in the city of Sao Fidelis, talking with a friend. He was holding a briefcase containing all the photographs, articles and other information he planned to include in an article to be published in the coming edition of the *Gazeta de Sao Fidelis*. In the aforesaid article, the journalist would say that Council Member Rodrigues Silva, his attorney José Estefan, and other persons were involved in a complicated automobile theft network. That article would also mention all the leaders of the “Cero1” death squad.

11. The petitioner adds that at that moment a hooded man approached the journalist Guida da Silva from behind and shot him in the back. The petitioner adds that next two hooded men rode up on a motorcycle and one of them finished off the journalist by shooting him several more times. The petitioner says that one of the three attackers took Guida da Silva’s briefcase and fled.

12. The petitioner says that after a careful initial investigation, the prosecutor in charge of the case brought criminal charges against Council Member Juárez Carlos Rodrigues Silva, who was alleged to have planned and paid for the murder; and against Carlos Márques de Pinho, Isael dos

Santos Rosa, and Wladimir Raienieri Pereira Sobrosa, who were alleged to have carried out the crime. The petitioner adds that an arrest warrant was issued and served on the foregoing persons.

13. The petitioner mentions that witnesses were pressured and threatened and many of them retracted their initial statements. It adds the even the family of the journalist Guida da Silva was not interested in pursuing the case and that several of his relatives refused to talk to the petitioner.

14. The petitioner says that Council Member Rodrigues da Silva was released via a writ of habeas corpus, and that he was murdered on August 16, 1998; that Carlos Márques de Pinho, another of the accused, broke out of jail, and that another of the accused, Wladimir Raienieri Pereira Sobrosa, was transferred to a prison in Sao Fidelis, even though a judge asked that he be held in prison in the city of R o de Janeiro. The petitioner adds that, as a result, only one of the accused, Israel dos Santos Rosa, was in jail and that as of May 1999 the case of the murder of the journalist Guida da Silva was at the sentencing stage before a jury court.

15. The petitioner mentions in its supplementary brief of February 12, 2002, and on June 3, 2003, that the investigation was at a virtual standstill and that the family of the journalist Guida da Silva has kept out of the murder investigation.

16. The petitioner claims that the alleged facts entail violation by the Brazilian State of Articles 13 (right to freedom of thought and expression), 4 (right to life), and 1(1) (obligation to respect and ensure rights) of the American Convention on Human Rights.

B. Position of the State

17. In its reply of February 17, 2000, which is transcribed in full, the Brazilian State literally says the following:

I have the honor to inform that, according to the Office of the Attorney General for the State of Rio de Janeiro, a criminal proceeding is under way to determine responsibility for the murder of the journalist Aristeu Guida da Silva (Case 12.213) on May 12, 1995, in the Municipality of Sao Fidelis. There are four defendants in the case: one has died, one is in default; and two are awaiting sentencing by the Court of the Region.

IV. ANALYSIS OF ADMISSIBILITY

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

18. 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 IACHR concerning alleged violation of rights contained in the American Convention. As to the State, Brazil 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.

19. The Commission has *ratione materiae* competence to take up the petition because it alleges violations of human rights protected by the American Convention.

20. The IACHR has *ratione temporis* competence inasmuch as the duty to respect and ensure the rights protected 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, given that Brazil ratified the American Convention on September 25, 1992.

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

B. Admissibility requirements for the petition

a. Exhaustion of domestic remedies

22. Above all, it should be pointed out that, although the State mentioned the status of some domestic remedies, it did not raise the exhaustion of domestic remedies objection, which, according to the jurisprudence of the Inter-American Court of Human Rights, would be sufficient grounds for concluding that the State tacitly refrained from invoking failure to exhaust domestic remedies.[FN1]

[FN1] I/A Court H.R., Castillo Páez Case, Preliminary Objections, Judgment of January 30, 1996, paragraphs 41-43; and the Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996, paragraphs 41-43.

23. The Commission notes also that at the date of the instant report the domestic remedies concerning the murder of the alleged victim have not been exhausted. However, the IACHR further notes that said murder occurred on May 12, 1995, and that, to date, more than eight years have passed, yet the domestic procedure initiated to determine responsibilities in connection with that murder has not concluded. 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.

24. 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) of the American Convention, 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 in said provision 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

25. 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.

26. In respect of the foregoing, taking into account the date of the alleged violations and the status of the domestic remedies in Brazil with respect to the specific allegations submitted for examination by the IACHR in this matter, the Commission finds that the petition under analysis was lodged within a reasonable period of time.

c. Duplication of proceedings and res judicata

27. The Commission sees no indication in the record that the petition presented is pending in another international proceeding, and it has received no information indicating that such a situation exists. Furthermore, it does not consider that it is the same as a petition or communication previously examined by the IACHR. Accordingly, the Commission finds that the requirements contained in Articles 46(1)(c) and 47(d) of the Convention have been met.

d. Nature of the alleged violations

28. The Commission finds that the arguments presented by the petitioner concern facts that, if proven, could constitute violation of the rights to life, freedom of expression, a fair trial, and judicial protection, enshrined in Articles 4, 13, 8, and 25, respectively of the American Convention.

V. CONCLUSION

29. 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 with respect to the alleged violation of Articles 4 (right to life), 13 (freedom of thought and

expression); 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.

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 22 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.