

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 51/04; Petition 12.198
Session: Hundred Twenty-First Regular Session (11 – 29 October 2004)
Title/Style of Cause: Robson William da Silva Cassiano, Jorge Wellington da Silva Cassiano and Leonardo Cunha de Souza v. Brazil
Doc. Type: Decision
Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioners: Evelio Fernandez Arevalos, Paulo Sergio Pinheiro, Freddy Gutierrez Trejo, Florentin Melendez.
In keeping with Article 17(2) of the Commission’s Rules of Procedure, Commissioner Paulo Sergio Pinheiro, of Brazilian nationality, did not participate in this decision.
Dated: 13 October 2004
Citation: da Silva Cassiano v. Brazil, Petition 12.198, Inter-Am. C.H.R., Report No. 51/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 (2004)
Represented by: APPLICANT: the Projeto Legal-Centro de Defesa, Garantia e Promocao de Direitos Humanos of the Instituto Brasileiro de Inovacoes em Saude Social
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I. SUMMARY

1. On August 11, 1999, the Projeto Legal-Centro de Defesa, Garantia e Promoção de Direitos Humanos of the Instituto Brasileiro de Inovações em Saúde Social (IBISS) filed a petition with the Inter-American Commission on Human Rights (hereinafter “the IACHR” or “the Commission”) against the Federative Republic of Brazil (hereinafter “Brazil” or “the State”).

2. The petitioner organization alleged that children[FN2] Robson William da Silva Cassiano, Jorge Wellington da Silva Cassiano, and Leonardo Cunha de Souza were assassinated on August 19, 1994, in the city of Rio de Janeiro, by police agents of the state of Rio de Janeiro.

[FN2] According to the Convention on the Rights of the Child of the UN, “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier. The Brazilian Criminal Code establishes that people under eighteen years of age are criminally incompetent and are subject to special legislation. The Brazilian Statute of the Child and Adolescent establishes in its Article 2 that a child for the legal effect of that instrument are the persons as old as twelve uncompleted years and adolescents are the

persons between twelve and eighteen years of age. The Commission, following the established in the Convention on the Rights of the Child uses the word “child” in the present report, to refer to the victim, Jailton Neri da Fonseca, who was fourteen years old at the time of his murder.

3. The State reported on the internal investigation regarding the assassination of children Robson William da Silva Cassiano, Jorge Wellington da Silva Cassiano, and Leonardo Cunha de Souza, but did not controvert the admissibility of the petition.

4. After analyzing the petition, and in keeping with the provisions of Articles 46 and 47 of the American Convention on Human Rights, as well as Articles 30, 37, among others, of the Commission’s Rules of Procedure, the Commission decided to declare the petition admissible with respect to the alleged violations of Articles 7, 5, 4, 19, 8, 25, and 1(1) of the American Convention on Human Rights. The Commission also decided to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BEFORE THE COMMISSION

5. On August 31, 1999, the processing of the petition began; Brazil was asked to respond within the 90-day period provided for in the Rules of Procedure of the IACHR in force at that time. Brazil did not answer within the established period. On January 12, 2000, the IACHR reiterated its request to the State for an answer. The State responded on February 17, 2000. The petitioner submitted additional information on October 1, 2001 and July 5, 2003.

III. POSITIONS OF THE PARTIES

A. The petitioner’s position

6. The petitioner indicates that on August 19, 1994, brothers Robson William da Silva Cassiano and Jorge Wellington da Silva Cassiano, 16 and 15 years old, respectively, as well as Leonardo Cunha de Souza, a friend of theirs, were sleeping in the home of the da Silva Cassiano brothers, located in the Campo Grande neighborhood, a poor part of the municipality of Rio de Janeiro. At that time, also in the house were Mr. Alzelir Cassiano, the da Silva brothers’ father, and Bárbara Aline da Silva Cassiano, their sister.

7. According to the petitioner, at that time hooded individuals invaded the home, kidnapped Robson William da Silva Cassiano, Jorge Wellington da Silva Cassiano, and Leonardo Cunha de Souza, and forced them into a vehicle, all in the presence of the father and sister of the two brothers.

8. The petitioner then indicates that the father of the da Silva Cassiano brothers observed when, once they were already in the vehicle in which the children were kidnapped, the kidnapers removed their hoods, and he was able to identify them as a police agent known as “Cabo Sá” and another individual by the name of Jorge, alias “Bufo-Bufo,” both known in the region for their participation in death squads.

9. The petitioner states that the three children were assassinated by firearms, and that their bodies were found the next day, at Praia da Brisa, located in Pedra de Guaratiba, municipality of Rio de Janeiro.

10. The petitioner notes that the father of the da Silva Cassiano children is not aware of any facts that may have somehow brought on the extrajudicial execution of his sons. He adds that the only reason that occurs to him is that it was said that his sons may have collaborated with the perpetrators in a minor robbery that occurred months earlier at the residents' association (Associação de Moradores) in the Ana Gonzaga district (Loteamento Ana Gonzaga). In this respect, petitioner indicates that the father of the da Silva Cassiano children spoke with Mr. Ailton de Mattos Ferreira, President of that association, offering to compensate him for any harm his sons may have caused him, but that Mr. de Mattos Ferreira subsequently denied that such a conversation had taken place, in his police statement on the facts, and he also indicated in that statement that he knew both "Cabo Sá" and Jorge "Bufo-Bufo," and that he had even sought out the first of them to accompany him, in due course, to the police station to report the robbery of the association he presided over.

11. Petitioner mentions that the same day as the kidnapping of the alleged victims, the father of the da Silva Cassiano brothers spoke with members of the police who were in a patrol car, but they did not pay any attention to him. Petitioner adds that on the same date as the victims' father went to a police station to file the complaint, but that the version of the facts drawn up by the police was totally different from what he stated when filing the complaint.

12. Petitioner states that on August 19, 1994, the 35th Police Station of Rio de Janeiro opened an inquiry (inquérito) into the facts, which was later sent to the homicide unit of the Secretariat of the Civil Police as case number 043/95. It indicates that some witnesses were heard in that investigation, but that no steps have been taken to investigate further, and that even though under Brazilian legislation the police investigation must conclude within no more than 30 days, that investigation had been ongoing for almost nine years (as of July 2003), without the police having concluded it, and without any progress, nor resulting in any investigation into the murder of the children William da Silva Cassiano, Jorge Wellington da Silva Cassiano, and Leonardo Cunha de Souza.

13. Petitioner alleges that there is an unwarranted delay in the investigation into the facts, which is the basis for invoking the exception to the requirement of prior exhaustion of domestic remedies provided for at Article 46(2)(c) of the American Convention on Human Rights.

B. The State's position

14. In its answer of February 17, 2000, which is reproduced in its entirety, and which is the only submission the State has made in this proceeding, the Brazilian State said:

With respect to the homicide of William da Silva Cassiano, Jorge Wellington da Silva Cassiano, and Leonardo Cunha de Souza (Case 12,198), in Pedra de Guaratiba, Campo Grande (RJ), on August 16, 1994, the MP [Public Ministry] of Rio de Janeiro reported that the investigation into the facts is being carried out through Inquérito Policial no. 043/95 of the 35th Police Station,

with the appropriate accompaniment of the Public Ministry. The identities of the perpetrators of the crimes remain unknown to date.

IV. ANALYSIS OF ADMISSIBILITY

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

15. According to Article 44 of the American Convention and Article 23 of the IACHR's Rules of Procedure, the petitioner has standing to submit petitions before the Commission regarding alleged violations of the rights established in the American Convention. As for the State, Brazil is a party to the Convention, and, therefore, answers internationally for violations of that instrument. The alleged victims are individuals with respect to whom the State undertook to ensure the rights enshrined in the Convention. Accordingly, the Commission is competent *ratione personae* to examine the complaint.

16. The Commission is competent *ratione materiae* since the complaint refers to alleged violations of human rights protected by the American Convention.

17. The IACHR is competent *ratione temporis* insofar as the obligation to respect and ensure the rights protected in the American Convention was already in force for the State on the date of the events alleged in the complaint, since Brazil ratified the American Convention on September 25, 1992.

18. The Commission is competent *ratione loci* to take cognizance of the complaint, insofar as it alleges violations of rights protected in the American Convention said to have taken place in the territory of a State party to that instrument.

B. Admissibility requirements

1. Exhaustion of domestic remedies

19. The State, though it mentioned the situation of domestic remedies, did not expressly object to the exception invoked to the exhaustion of domestic remedies requirement. According to the case-law of the Inter-American Court of Human Rights, this would be sufficient to conclude that the State tacitly waived its right to invoke failure to exhaust domestic remedies.[FN3]

[FN3] I/A Court H.R., Castillo Páez Case, Preliminary Objections, Judgment of January 30, 1996, paras. 41-43; and Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996, paras. 41-43.

20. The Commission observes, moreover, that to date no domestic remedies have been exhausted in relation to the murder of the alleged victims. Nonetheless, the IACHR also observes that the murder occurred on August 19, 1994, and that to this date more than 10 years have

elapsed without the police investigation into that assassination having been concluded. In this respect, the IACHR concludes that although domestic judicial remedies have not been exhausted, one of the objections to the requirement to do so applies, namely the “unwarranted delay in rendering a final judgment” referred to at Article 46(2)(c) of the American Convention.

21. It should be noted that invoking the exceptions to the rule on domestic remedies provided for at Article 46(2) of the Convention is closely linked to the determination of possible violations of certain rights enshrined therein, such as the guarantees of access to justice. Nonetheless, Article 46(2) of the American Convention, by its nature and purpose, is a provision with autonomous content in relation to the substantive provisions of the Convention. Therefore, the determination as to whether the exceptions to the rule on exhaustion of domestic remedies 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 standard of appreciation distinct from that used to determine whether there has been a violation of Articles 8 and 25 of the Convention. The causes and effects that have impeded the exhaustion of domestic remedies in this case will be analyzed, as relevant, in the report the Commission adopts on the matter in dispute, so as to determine whether there have actually been violations of the American Convention.

2. Time period for submitting the petition

22. Article 32 of the IACHR’s Rules of Procedure provides that in cases in which the exceptions to the prior exhaustion requirement are applicable, the petition must be submitted within a time that is reasonable, in the Commission’s judgment, mindful of the date of the alleged violation and the circumstances of each case.

23. In this respect, taking into account the date of the facts alleged and the situation of domestic remedies in Brazil with respect to the specific facts submitted to the IACHR in the instant matter, and that the State did not submit information on the conclusion of the domestic criminal procedure, the Commission considers that the petition under examination was submitted within a reasonable time.

3. Duplication of procedures and res judicata

24. The Commission considers that from the record it does not appear that the complaint filed is pending before another international procedure, and it did not receive any information that points to the existence of a situation of that sort. Moreover, it does not reproduce a petition or communication previously examined by the Commission, accordingly, it satisfies the requirements of Article 46(1)(c) and 47(d) of the Convention.

4. Characterization of the facts

25. The Commission considers that the petitioner’s presentation refers to facts which, if proven, would tend to characterize a violation of the rights to personal liberty, humane treatment, life, protection of children, a fair trial, and judicial protection, enshrined, respectively, in Articles 7, 5, 4, 19, 8, and 25 of the American Convention, all in conjunction with Article 1(1) of the same treaty.

V. CONCLUSION

26. The Commission concludes that it is competent to take cognizance of this petition and that it meets the admissibility requirements, as set forth in Articles 46 and 47 of the American Convention and Articles 30, 37, and others of its Rules of Procedure.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare, without prejudging on the merits of the present complaint, that the petition is admissible in relation to the facts alleged and with respect to Articles 7 (right to personal liberty); 5 (right to humane treatment); 4 (right to life); 19 (right to special protection for children); 8 (right to a fair trial), and 25 (right to judicial protection) of the American Convention, as well as with respect to the obligation to respect and ensure the rights, referred to in Article 1(1) of that treaty.
2. To forward the present report to the State and the petitioner.
3. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C. on the 13th day of October, 2004. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice -President; Commissioners Evelio Fernández Arévalos, Paulo Sergio Pinheiro, Freddy Gutierrez Trejo and Florentín Meléndez.