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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 19/07; Petition 170-02
Session: Hundred Twenty-Seventh Session (26 February – 9 March 2007)
Title/Style of Cause: Ariomar Oliveria Rocha, Ademir Federicci and Natur de Assis Filho v. Brazil
Doc. Type: Decision
Decided by: President: Florentin Melendez;
First Vice-President: Paolo Carozza;
Commissioners: Clare K. Roberts, Freddy Gutierrez, Evelio Fernandez Arevalos.
As established under Article 17(2)(a) of the IACHR Rules of Procedure, Commissioner Paulo Sergio Pinheiro, a Brazilian national, did not participate in the decision on this petition.

Dated: 3 March 2007
Citation: Oliveria Rocha v. Brazil, Petition 170-02, Inter-Am. C.H.R., Report No. 19/07, OEA/Ser.L/V/II.130, doc. 22 rev. 1 (2007)
Represented by: APPLICANTS: Vicente Portela Pellegrino, Helio Pereira Bicudo and Claudio Grossman

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I. SUMMARY

1. On March 12, 2002, the Inter-American Commission on Human Rights (hereinafter “the Commission or “IACHR”) received a petition lodged by Nelson Vicente Portela Pellegrino, Helio Pereira Bicudo, and Claudio Grossman, (hereinafter “the petitioners”) alleging violation by the Federative Republic of Brazil (hereinafter “Brazil” or “the State”) of Articles I, II, IV, and XVIII of the American Declaration of the Rights and Duties of Man (hereinafter “the American Declaration”) and Articles 4, 7, 13, 24, and 25 of the American Convention on Human Rights (hereinafter “the American Convention”), to the detriment of the inherent rights of Ariomar Oliveria Rocha, Ademir Federicci, and Natur de Assis Filho.

2. The petition asserts that a series of murders of political leaders have gone unpunished. These include the murder of Councilman Ariomar Oliveria Rocha on July 22, 1998; the murder of Ademir Federicci, Coordinator of the Movement for the Development of the Transamazon and the Xingu in Altamira on August 25, 2001; and the murder of Councilman Natur de Assis Filho on March 9, 2001.

3. The State failed to answer the complaint despite having been properly and legally notified.

4. After examining the positions of the parties in the light of the admissibility requirements established in Articles 46 and 47 of the American Convention, the Commission decided to declare the case admissible under Articles 4, 8(1), 23 and 25 of the American Convention as they relate to the general obligations established in Article 1(1) of the Convention, and inadmissible under Articles I, II, IV, and XVIII of the American Declaration, as well as Article 7, 13 and 24 of the American Convention. Consequently, the Commission decided to notify the parties, make public this Admissibility Report, and include it in its Annual Report.

II. PROCESSING WITH THE COMMISSION

5. The original petition was received by the Commission on March 12, 2002 and filed as case number 170 of 2002. The petitioners were sent acknowledgement on March 15, 2002 that the petition had been received.

6. On March 15, 2002, the Commission sent to the State the relevant sections of the complaint and asked the State, in connection with the precautionary measures requested along with the complaint, to send the information deemed pertinent with respect to the specific cases within a period of thirty (30) days.

7. In a note dated August 7, 2002 received by the Commission on August 8, 2002, the State requested an extension of the above-mentioned deadline it had been given. This request was denied as not being well-founded in accordance with Article 30(3) of the Commission's Rules of Procedure, as was communicated to the State on November 22, 2002.

8. The State sent no information on the matter, nor has it answered the petition as of the date this report was prepared.

III. POSITIONS OF THE PARTIES

A. The petitioners

9. The complaint is formally asserted based on violations of the rights embodied in Articles I, II, IV, and XVIII of the American Declaration as well as Articles 4, 7, 13, 24, and 25 of the American Convention.

10. The petition first reports the existence of a high rate of violence and a lack of public safety in the territory of Brazil, which is reflected in the high number of murders that have taken place since 1994. The victims are poor young black or mulatto males between the ages of fifteen (15) and twenty-nine (29). These facts are contained in reports from non-governmental organizations and reports from government agencies such as the National Secretariat for Public Safety, being the responsible agencies inefficient to put an end to this situation. Based on this assumption, the petition claims that there is impunity regarding the crimes committed, which encourages the commission of such crimes. According to Brazilian law, the investigation of these crimes is reportedly conducted exclusively by the civil police, and the Public Prosecutor's Office, which is charged with promoting public criminal actions, is left completely at the mercy of the former institution, which files the investigation whenever it wants and never meets the

legal deadline. The petition asserts that the Public Prosecutor's Office lacks the authority to investigate and must always rely on the police and the courts. It also asserts a total lack of organization and training among civil and military police who, as a result and given their ignorance, follow instructions from police authorities instead of fulfilling their legally imposed duties. The petitioners assert that police institutions use torture as common practice, leaving unpunished the large majority of crimes committed by police officers. The Judicial Branch contributes to this impunity because it is dysfunctional, does not administer justice on a timely basis, and shows partiality in doing so.

11. The petitioners refer to a report issued by the Human Rights Committee of the Chamber of Deputies, which is attached as evidence. This report indicates that many people are murdered and others are threatened with death. Reference is also made to similar documents issued by other organizations, but these are not attached as evidence.

12. In concrete terms, the petition is based on the accusation of three murders. The first was that of Councilman Ariomar Oliveria Rocha, who was selected by the Workers' Party and represented the municipality of Jaguarari, Bahia. He fought municipal corruption tenaciously, denouncing it in the local legislature. This earned him the hatred of Mayor Edson Luis Almeida, who did not want his administration to be investigated. Oliveria Rocha was killed on July 22, 1988, with 5 (five) shots. 5 (Five) individuals were indicated as being responsible for the crime in the course of the investigation. Their names are Manuel José Custodio, Demontiel Souza Monteiro, Wilson Coelho, Antonio Moura, and former mayor, Edson Luis Almeida, who is pointed to as the moral author of the crime. The petitioner asserts that 4 (four) years after the crime was committed and as of the filing of the petition, only one of the aforementioned suspects has been detained and the others reside in other cities, making it impossible for the court to subpoena them.

13. The second murder was that of Ademir Federicci, the Coordinator of the Movement for the Development of the Transamazon and the Xingu in Altamira. He was a charismatic leader who, in addition to environmental activities, was involved in promoting resistance movements against the dams in Xingu. He was killed at his own home in Altamira on August 25, 2001 by someone named Daniel, while another man named Julio Cesar Dos Santos waited outside. The wife of the alleged victim and a neighbor were eye witnesses to the crime. The aforementioned two persons having been identified, the investigations were started. As of the date of this petition, only the second suspect has been detained. The alleged material author of the crime has not been detained and remains at liberty. To date neither the motives for the crime nor who ordered it have been determined. This process is reportedly in the criminal investigation stage.

14. The third murder was that of Natur de Assis Filho, Councilman in Ubaira, Bahia, representing the Green Party, which occurred on March 9, 2001. He was also a fierce critic of irregularities in municipal government. On the referenced date, when the crime occurred, the alleged victim was at the home of a political leader named Ramalho, assessing along with another 48 (forty-eight) people a hearing that had been held in the City Council Chamber, in which a series of accusations were made against the administration of the former mayor, Ivan Eca de Menezes, who became angered at the discussion, went after the aforementioned Mr. Ramalho to settle accounts and was at the time greeted casually by the alleged victim. The

petition asserts that the alleged victim was then held down by Laurito Eca de Menezes, the brother of the individual who felt offended, the former mayor shot him several times and he died instantly. As a result the brothers were arrested, jailed from March to September 2001, and then released with a parole allowing freedom of movement, allegedly because of a friendship between the former mayor and the judge. The petitioner asserts that as of the filing of the petition, there has not even been an order to bring the suspects before the appropriate court and the criminal process is at a standstill.

15. In summary, the petition asserts that the Commission is competent to accept the petition, that it is impossible to exhaust domestic remedies given the unjustified delay of the competent bodies and the total impunity of those responsible for the crimes in question.

16. The petitioners allege that many human rights are violated in Brazil and that the State does not take effective measures to put an end to or prevent them. Regarding the specific situation being alleged, the petitioners assert that the right to life and the judicial guarantees of the alleged victims have been violated. With respect to 100 (one hundred) individuals, to whom should be added the entire population of Brazil, the petitioners claim violations of the right to personal freedom as well as security, the right to free thought and expression, the right to receive equal treatment and judicial guarantees, seeking the admissibility of the case given the rights alleged to have been violated.

B. The State

17. The State did not answer the complaint despite having been duly and legally requested on March 15, 2002 to submit information on the case at hand.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence *rationae personae*, *rationae loci*, *rationae temporis*, and *rationae materiae* of the Commission

18. The petitioners are authorized by Article 44 of the Convention to lodge complaints with the IACHR. The petition indicates as alleged victims Ariomar Oliveria Rocha, Ademir Federicci, and Natur de Assis Filho, who are citizens of Brazil. The Commission thus has competence *rationae personae* to examine the petition. Brazil ratified the American Convention on September 25, 1992.

19. The Commission has competence *rationae loci* to hear the petition, in that it alleges violations of rights protected under the American Convention and the American Declaration of the Rights and Duties of Man, violations that allegedly occurred within the territory of a State Party to those instruments.

20. The Commission is competent *rationae temporis* in that the obligation to respect and guarantee internationally protected rights was already in effect in Brazil under the American Convention on the date when the events alleged in the petition would have occurred. The Commission specifies that the actions that allegedly violated the human rights of Ariomar

Oliveria Rocha, Ademir Federicci, and Natur de Assis Filho, took place after the date on which Brazil ratified the American Convention. Accordingly, said allegations must be analyzed as they relate to this instrument, which gives the Commission competence *rationae materiae*, and not with reference to the American Declaration, as is requested. The IACHR has consistently affirmed that "...once the American Convention entered into effect (...) 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 and does not involve a continuing situation ...,"[FN2] for which reason the allegations relating to rights protected under the American Convention should be declared inadmissible so that they, specifically the rights to life, freedom, personal security, freedom of thought and expression, and the right to equality and justice will be studied under the American Convention.

[FN2] IACHR, Report No. 38/99 (Argentina), 11 March 1999, IACHR 1998 Annual Report, para. 13.

B. Admissibility Requirements

1. Preliminary considerations

21. The case history of the system indicates that "... silence of the accused or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations, so long as the contrary is not indicated by the record or is not compelled as a matter of law ...".[FN3] Consequently, the State is required to cooperate with the bodies of the Inter-American system of human rights so that it can fulfill its functions in the area of protecting human rights.

[FN3] I/A Court H.R., Velásquez Rodríguez Case. Judgment of July 29, 1988. Series C, No. 4, para. 138. IACHR, Report No. 28/96, Case 11.297, Juan Hernández (Guatemala), October 16, 1996, para. 45.

2. Exhaustion of domestic remedies

22. Article 46(1) of the American Convention establishes that in order for a complaint to be admissible, remedies available in the domestic jurisdiction of the State must be exhausted in accordance with the generally recognized principles of international law.

23. Point 2 of the same Article establishes that provisions relating to the exhaustion of remedies under domestic jurisdiction shall not apply when:

a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have been allegedly violated;

- b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; and
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

24. The petitioners have stated that the complaint is based on the murder of 3 (three) Brazilian citizens. These murders have to date gone unpunished, the police investigation phase has not even been completed, and most of those responsible for the crimes remain free without any accusation having been made against them. The families of the alleged victims have been unable to move the process toward any conclusion due to the obstacles existing in the legal system. This gives the police exclusive power to advance the investigation, rendering totally ineffective the work of other agencies such as the Public Prosecutor's Office, which is responsible for indicting the suspects, and the courts, which are responsible for trying them.

25. The State did not answer the petition despite having been legally and properly notified. Thus, it did not file an objection regarding a failure to exhaust domestic remedies. The Inter-American Court has repeatedly established that "...the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed ..." [FN4] There is sufficient evidence in the file to credibly determine that all the events that make up the petition took place and no indication of a resolution has been provided, which must be held to be true, attending that the Court has maintained in its case law that: "...when the State does not specifically contest the application, the facts on which it remains silent are presumed to be true, provided that the existing evidence leads to conclusions consistent with those facts." [FN5]

[FN4] The Inter.-American Court has stated: "the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at any early stage in the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed." See: I/A Court H.R., Velásquez Rodríguez Case. Preliminary Objections. Judgment of June 26, 1987. Series C, No. 1, para. 88; I/A Court H.R., Fairén Garbí and Solís Corrales Case. Preliminary Exceptions. Judgment of June 26, 1987. Series C, No. 2, para. 87; I/A Court H.R., Godínez Cruz Case. Preliminary Objections. Judgment of June 26, 1987, Series C, No. 3, para. 90; I/A Court H.R., Gangaram Panday Case. Preliminary Objections. Judgment of December 4, 1991, Series C, No. 12, para. 38; Neira Alegría et al. Case. Preliminary Objections. Judgment of December 11, 1991. Series C, No. 13, para. 30; I/A Court H.R., Castillo Páez Case. Preliminary Objections. Judgment of January 30, 1996. Series C, No. 24, para. 40; I/A Court H.R., Loayza Tamayo Case. Preliminary Objections. Judgment of January 31, 1996. Series C, No. 25, para. 40.

[FN5] I/A Court H.R., Hilaire, Constantine, and Benjamin et al. Case. Judgment of June 21, 2002. Series C, No. 94, para. 67. I/A Court H.R., I/A Court H.R., Godínez Cruz Case. Judgment of January 20, 1989. Series C, No. 5. para. 144.

26. The Commission also notes that to date domestic remedies have not been exhausted with respect to the murders of the alleged victims. Nonetheless, these murders took place on July 22, 1998, August 25, 2001, and March 9, 2001, so that more than 8 (eight) years have passed since

the first murder and more than 5 (five) years have passed since the other two murders with no conclusion having been reached in the domestic process established to determine who was responsible for those murders. In this regard, the IACHR concludes that although domestic judicial remedies have not been exhausted, there are grounds for the exception to the exhaustion of those remedies, consisting of an “unwarranted delay in rendering a final judgment under the aforementioned remedies,” as indicated in Article 46(2)(c) of the American Convention.

27. It only remains to point out that invocation of the exceptions to the rule of exhaustion of domestic remedies as provided in Article 46(2) of the Convention is closely linked to the determination of possible violations of certain rights enshrined therein, such as the guarantees on access to justice. However, given its nature and purpose, Article 46(2) of the American Convention is a rule the content of which is autonomous vis-à-vis the substantive rules of the Convention. Therefore, the determination as to whether the exceptions to the rule of exhaustion of domestic remedies provided in that rule are applicable to the instant case must be made prior to and separate from analysis of the merits of the case, since it rests on a standard of evaluation different from that used to determine a violation of Articles 8 and 25 of the Convention. It should be noted that the causes and effects that have impeded the exhaustion of the domestic remedies in the instant case shall be analyzed, as relevant, in the report the Commission adopts on the merits of the dispute, in order to determine whether they in fact constitute violations of the American Convention.

3. Time period for submission of the petition

28. Article 32 of the Rules of Procedure of the IACHR establishes that in cases where exceptions to the requirement of exhaustion of domestic remedies are applicable, the petition must be submitted within a period of time deemed reasonable in the judgment of the Commission, taking into account the date of the alleged violations and the circumstances in each case.

29. In this regard, taking into account the dates, indicated above, on which the alleged violations are claimed to have taken place and the domestic remedies situation in Brazil, an allegation that must be presumed to be true according to the case law already cited, with respect to the specific facts submitted for review by the IACHR in this matter, the Commission must deem that the petition under review was submitted within a reasonable period of time.

4. Duplication of procedures and international res iudicata

30. The file does not indicate that the subject of the petition is pending in any other international proceeding, nor does it reproduce a petition already examined by this or any other international body. Therefore, the requirements established in Articles 46(1)(c) and 47(d) of the Convention must be considered to have been met.

5. Characterization of the alleged facts

31. For purposes of admissibility, the IACHR must decide whether the facts presented could establish a violation as indicated in Article 47(b) of the American Convention and whether the

petition is “manifestly groundless” or “obviously out of order” as indicated in paragraph (c) of the same article.

32. The standard for assessing these points is different from that required to decide on the merits of the complaint. The IACHR must do a prima facie evaluation to examine whether the complaint supports an apparent or potential violation of a right guaranteed by the Convention and not to establish the actual existence of a violation. This examination is a summary analysis that does not involve prejudgment or a preliminary opinion on the merits.[FN6]

[FN6] IACHR, Report No. 21/04, Petition 12.190, Admissibility, José Luis Tapia González et al., Chile, February 24, 2004, para. 33.

33. The Commission does not find that the petition is “manifestly groundless” or “obviously out of order.”

34. Now, Article 7 of the American Convention establishes protection for the right to personal liberty and security. Since the 3 (three) alleged victims in the instant case have died, the common sense employed by this body leads to a determination, based on the factual description of the situation, that the potential violation of the right to personal liberty and security is subsumed under the alleged violation of Article 4 of the American Convention [right to life] so that the allegation as to Article 7 must be ruled inadmissible.

35. Article 23 of the Convention establishes the rights that allow a direct participation in the direction of public affairs, to vote, to be elected and to have access to public functions, the ones who must be guaranteed by the State in conditions of equality[FN7]. It is indispensable that the State creates the optimal conditions and mechanisms to enable these rights to be exercised in an effective way, respecting the principles of equality and no discrimination[FN8]. The political participation may include broad and diverse activities that people may develop individually or organized, with the purpose of taking part in the designation of whom will govern a State, or the ones who will handle the direction of public affairs, as well as to influence in the formation of State policies, through direct participation mechanisms.[FN9]

[FN7] I/A Court H.R., Case of Yatama. Judgment of June 23, 2005. C Series. No. 127. Para. 194.

[FN8] I/A Court H.R., Case of Yatama. Judgment of June 23, 2005. C Series. No. 127. Para. 195.

[FN9] I/A Court H.R., Case of Yatama. Judgment of June 23, 2005. C Series. No. 127. Para. 196.

36. Evaluating the facts denounced in the petition, it has to be taken in account that the 3 (three) presumed victims were subjects that used to participate actively in the political life of their communities. In virtue of that, the de facto situation described in the present case, takes to believe that a violation of the rights described could be characterized if the allegations made by the petitioners regarding to the issue that claims the killings would have taken place as a reprisal to the political activity of the presumed victims are proved, that is why applying the principle

iura novit curiae the Commission *ex officio* enables itself to study a potential violation of the right contained in Article 23 of the Convention. With the same end, an officious study of a possible violation to Article 8(1) of the American Convention must be taken up, as the right to enjoyment of judicial guarantees may have been violated in relation to the relatives of the alleged victims.

37. In relation to a potential violation of Article 24 of the American Convention, the Commission, according to the *de facto* situation described, understands that it is subsumed by the guarantee contained in Article 23 of the same instrument, issue that configures enough merits to determine the inadmissibility of the study of the first referred norm. Equally, the Commission understands that the described facts do not materialize a violation of Article 13 of the Convention, reason because its inadmissibility has to be declared.

38. Consequently, IACHR deems that, *prima facie*, the petitioners have demonstrated the points required under Article 47, paragraphs (b) and (c) of the Convention.

39. In view of the foregoing, the Inter-American Commission feels that, should the facts presented with respect to the violation of the inherent rights to life, to participate in Government and the right to both judicial guarantees and protection of Ariomar Oliveria Rocha, Ademir Federicci, and Natur de Assis Filho be proven, there could be a finding that Articles 4, 8, 23, and 25 of the American Convention have been violated, as they relate to the general obligations contained in Articles 1(1) and 2 of the same instrument.

V. CONCLUSIONS

40. Based on the legal and factual considerations set forth and without prejudging the merits of the matter, the Commission concludes that the instant case satisfies the admissibility requirements established in Articles 46 and 47 of the American Convention. [Accordingly,]

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare admissible the complaint submitted in petition 170-2002, in accordance with Articles 4, 8, 23 and 25 of the American Convention as they relate to the general obligation contained in Article 1(1) of the same instrument.
2. To declare inadmissible the complaint submitted in case 170-2002 regarding alleged violations with respect to Articles I, II, IV, and XVIII of the American Declaration as well as Article 7, 13 and 24 of the American Convention.
3. To forward this report to the State and to the petitioners.
4. To continue with a consideration of the substantive issues raised in the instant case.
5. To publish this report in the Annual Report to the General Assembly of the OAS.

Done and signed by the Inter-American Commission on Human Rights in Washington, D.C., on the 3rd day of the month of March 2007. (Signed) Florentín Meléndez, President; Paolo Carozza,

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First Vice-President; Clare K. Roberts, Freddy Gutiérrez, and Evelio Fernández Arévalos, members of the Commission.