

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 73/08; Petition 1236-06
Session: Hundred Thirty-Third Regular Session (15 – 31 October 2008)
Title/Style of Cause: Gabriel Sales Pimenta v. Brazil
Doc. Type: Decision
Decided by: Chairman: Paolo Carozza;
First Vice-Chairwoman: Luz Patricia Mejia Guerrero;
Second Vice-Chairman: Felipe Gonzalez;
Commissioners: Second Vice Chairman; Sir Clare K. Roberts, Florentin Melendez, Victor Abramovich.
Pursuant to Article 17.2.a of the Rules of Procedure of the Commission, Commissioner Paulo Sergio Pinheiro, who is Brazilian, did not participate in the deliberations or voting on this case.

Dated: 16 October 2008
Citation: Sales Pimenta v. Brazil, Petition 1236-06, Inter-Am. C.H.R., Report No. 73/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)
Represented by: APPLICANTS: the Center for Justice and International Law and the Comissao Pastoral da Terra

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I. SUMMARY

1. On November 9, 2006, the Center for Justice and International Law (CEJIL) and the Comissão Pastoral da Terra (CPT) (hereinafter “the petitioners”), lodged a petition before the Inter-American Commission on Human Rights (hereinafter “the Commission”, “the Inter-American Commission” or “the IACHR”) against the Federative Republic of Brazil (hereinafter “the State” or “Brazil”) alleging the violation of the right to life, liberty and personal security, the right to a fair trial, and the right of association, all guaranteed in Articles I, XVIII, and XXII respectively of the American Declaration of the Rights and Duties of Man (hereinafter “the Declaration” or “the American Declaration”), and the alleged violations of the rights to a fair trial and to judicial protection established respectively in Articles 8 and 25 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) all in relation to the general obligation to protect rights established in Article 1.1 of the same instrument, to the detriment of Gabriel Sales Pimenta (hereinafter “the alleged victim”).

2. The petition denounces the murder, on July 18, 1982, of the alleged victim, a human rights worker and founding partner of the National Association of Lawyers for Agricultural Workers (Asociación Nacional de Abogados de los Trabajadores de la Agricultura) who was working as a lawyer for the Marabá Rural Workers Union, in the State of Pará. According to the petitioners, the motive for the crime was Gabriel Sales Pimenta’s participation in the struggle for

the rights of rural workers in the region, and they allege that the State did not take the appropriate measures to prevent it, nor to subsequently investigate it, and as a result, the perpetrators remain unpunished.

3. On June 4, 2007, the State lodged its response to the petition and argued that it was inadmissible in accordance with the terms of Article 47.b of the Convention. The State alleged that it was not responsible for the murder of the alleged victim because this was not perpetrated by state agents and therefore the petition did not describe events which could amount to a violation of rights enshrined in the American Convention or other applicable instruments.

4. After examining the positions of the parties in the light of the requirements for admissibility established in Articles 46 and 47 of the American Convention, the Commission decided to declare the case admissible in relation to Articles I, XVIII, and XXII of the American Declaration, as well as to Articles 8.1 and 25 of the American Convention in relation to the general obligation established in Article 1.1 of the same international instrument. Consequently, the Commission decided to notify the parties, to publish the present admissibility report and to include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

5. On November 9, 2006, the Commission received a petition lodged by the petitioners, the pertinent parts of which were transmitted to the State so that the State could lodge its response within a period of 60 days from February 5, 2007. On June 4, 2007 the State lodged its response to the petition.

6. The petitioners provided the IACHR with additional information on November 17, 2006, July 20, 2007, October 19, 2007, and March 5, 2008. These communications were duly transmitted to the State.

7. Furthermore, the IACHR received information from the State on August 29, 2007, and on January 3, 2008. These communications were duly transmitted to the petitioners.

III. POSITIONS OF THE PARTIES

A. Petitioners

8. The petitioners allege that Gabriel Sales Pimenta was a lawyer with the Marabá Rural Workers Union (Sindicato dos Trabalhadores Rurais de Marabá, hereinafter “the Union”), in the State of Pará. They report that the alleged victim played an important role representing the rural workers in the State in that he had succeeded in bringing a judicial action called a mandado de segurança which nullified the effects of a precautionary measure granted by the judge of first instance in possession restitution proceedings which had led to the eviction of 158 families from lands in the region known as Pau Seco, in the municipality of Marabá. As a result of the actions undertaken by the alleged victim, the 158 families returned to the lands in Pau Seco.

9. They claim that the alleged victim then started to receive threats from ranchers Manoel Cardoso Neto and José Pereira da Nóbrega and was told that he should cease working on behalf of the workers. The petitioners claim that it was common knowledge that Mr. Manoel Cardoso Neto had threatened to kill Gabriel Sales Pimenta and had even specified that he would do so before August 4, 1982 (the date when there was due to be a judicial hearing concerning the ownership of the Pau Seco land.)

10. The petitioners claim that on July 18, 1982, Gabriel Sales Pimenta went to a meeting of the political party to which he belonged and from there to a restaurant, and was murdered while leaving the restaurant in Marabá by gunshots at point blank range in the street. They state that the crime was committed in the presence of two of the alleged victim's friends, Edson Rodríguez Guimarães and Neuzila Cerqueira Guimarães, by a person who did not cover his face, and was obviously intent on intimidating them and demonstrating his own power.

11. The petitioners state that a police investigation (Inquérito Policial) was set up IPL No. 024/82 to look into the crime. Furthermore, this investigation collected the following evidence: statements from the suspects (Manoel Cardoso Neto, José Pereira da Nóbrega and Crescencio Oliveira de Sousa); a post mortem report dated July 20, 1982; a search of the house of Manoel Cardoso Neto; a ballistic report on the weapons dated July 21, 1982 (one seized in the house of Manoel Cardoso Neto and the other belonging to José Pereira da Nóbrega); an investigation into the purchase, by Manoel Cardoso Neto, of a vehicle similar to the one used by the murderer; and an expert technical report.

12. The petitioners state that on the basis of the evidence, the police concluded on July 22, 1982 that Manoel Cardoso Neto and José Pereira da Nóbrega were the intellectual authors of the murder. Subsequently, on September 8, 1982, the police concluded that Crescencio Oliveira de Souza had carried out the shooting. On July 20, 1982, the accused Manoel Cardoso Neto and José Pereira da Nóbrega were arrested as part of the police investigation. On July 28, 1982, the Marabá judge (Jueza de Derecho de la Comarca de Marabá) called for the preventive custody of the two accused. However, on July 31 of the same year, the Judge revoked her decision and ruled in favor of freeing the accused.

13. According to the petitioners, some days later, on August 6, 1982, on the basis of an identification by an eye witness, the Chief of Police responsible for the case urgently requested the preventive custody of the accused, because the eye witness in question, (Luzia Batista da Silva), who had identified José Pereira da Nóbrega as the person who had been driving the car which was used for the murder of the alleged victim, was a minor. The objective was to ensure the physical safety of the witness. However, the Judge did not call for preventive custody, and this was only ordered for the second time on June 20, 1984, when the accused failed to attend a hearing.

14. The allegations state that the attorney general's office (Ministerio Público), being the titular body in charge of the criminal proceedings, lodged its charge (Denúncia)[FN2] on August 19, 1983, against the three individuals identified in the report of the police investigation and attributed individual responsibility for the criminal behavior, thus launching Criminal Proceedings No. 1.130/83[FN3], one year and one month after the crime.

[FN2] The denúncia is described in Article 41 of the Brazilian Criminal Code.

[FN3] Public Prosecutor's Office charge. Initial communication from the petitioners dated November 6, 2006, appendix II.44.

15. With regard to the requirements for admissibility, the petitioners consider that the remedies available under domestic law have been exhausted because after proceedings that lasted for almost 24 years since the death of the union leader, of which 18 years have passed without the initial investigations phase of the proceedings having been completed, the judicial authorities decreed the prescription of criminal proceedings on this charge on May 8, 2006. The exhaustion through prescription, the petitioners allege, occurred because of the State's behavior or inertia in that it failed to carry out an investigation of the facts that was prompt, serious, and effective. Therefore, the petitioners argue that those responsible for the death of the alleged victim remain unpunished, and the criminal investigations and proceedings that have been launched have been unable to achieve the sanction of those responsible for the said crime.

16. In short, the petitioners allege that the State did not prevent the murder of the alleged victim in spite of the public warnings that it would happen, the breakdown of law and order and the ensuing violence in the Pau Seco area. Furthermore, they add that the murder of the alleged victim was motivated by his active participation in fighting for the rights of rural workers, which would be a violation of the right of free association. Lastly, they also point out that no one has been punished for what took place, nor have the family members of the alleged victim received any civil compensation, thus infringing their rights to due process of law and of access to justice.

B. State

17. The State lodged its allegations concerning the petition brought on June 4, 2007. It stated at that time that no violation of the American Convention had taken place because the murder of the alleged victim was not perpetrated by state agents and because Brazil possesses a juridical system which comprises laws that are designed to penalize these kinds of criminal behavior. By the same token, the State argues that in spite of the allegations that the alleged victim had been threatened before his murder, there is no record of statements being given to the state authorities and therefore the State had no means to protect his life and physical safety because it had not been informed of the threats to the life of the alleged victim.

18. Furthermore, the State points out that the accusations relating to the violation of judicial rights would be inadmissible because the delay in the proceedings came about through circumstances beyond the state's control, such as the disappearance of the accused and the impossibility of violating the basic procedural guarantees of the accused (the right of all parties to be heard - contradictorio, broad defense, and prescription).

IV. ANALYSIS

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

19. In accordance with Article 44 of the American Convention and 23 of the Rules of Procedure of the Commission, the petitioners, as legally recognized non-governmental entities are empowered to lodge petitions before the IACHR concerning alleged violations of the American Convention. With regard to the State, the Commission observes that Brazil, as a member state of the Organization of American States,[FN4] has obligations that are enshrined in the American Declaration; that it is also a State Party to the American Convention, having ratified it on September 25, 1992. The Commission finds that the petition refers to the alleged victim as Gabriel Sales Pimenta, an individual whose rights -- as established in the American Declaration and the American Convention -- Brazil is committed to respect and protect. Therefore, the Commission has competence *ratione personae* to examine the petition.

[FN4] Brazil is a founding member of the Organization of American States, signed the OAS Charter in 1948 and deposited its instrument of ratification in 1950.

20. With regard to competence *ratione temporis*, the Commission is competent to examine possible violations of human rights protected by the Declaration and by the Convention in accordance with Articles 1.2.b and 20 of its Statute. The fact that Brazil ratified the Convention on September 25, 1992, does not exempt it from its duty to respect human rights prior to that ratification since the aforementioned rights are protected by the American Declaration, which constitutes a source of obligation under international law.[FN5] In this respect, the Inter-American Court of Human Rights (hereinafter “the Court”, “the Inter-American Court”, or “the Tribunal”) explicitly recognized the binding nature of the American Declaration by stating that “Articles 1(2)(b) and 20 of the Commission’s Statute define the competence of that body with respect to the human rights enunciated in the Declaration, with the result that to this extent the American Declaration is for these States a source of international obligations related to the Charter of the Organization.”[FN6]

[FN5] IACHR, Report No. 19/98, Case 11,516, Ovelário Tames, Brazil, February 21, 1998, paragraph 15; Report No. 33/01, Case 11,552, Guerilla de Araguaia, Jukoa Gomes Lund et al., Brazil, March 6, 2001, paragraph 38; Report No 17/98, Cases 11,407 Galrival Xavier Coutrim, 11,406, Celso Bonfim de Lima, 11,416, Marcos Almeida Ferreira, 11,413, Delton Gomes da Mota, 11,417, Marcos de Assis Ruben, 11,412, Wanderley Galati, 11,414, Ozeas Antonia dos Santos, 11,415, Carlos Eduardo Gomes Ribeiro, 11,286, Aluísio Cavalcanti Júnior and Cláudio Aparecido de Moraes, Brazil, February 21, 1998, paragraph 163.

[FN6] Inter-American Court of Human Rights. 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, Advisory Opinion OC-10/89, dated July 14, 1989, Series A, paragraph 45.

21. The events described in the petition have taken place since 1982, when the State had not ratified the American Convention. On these grounds, the Commission has competence *ratione temporis* to establish whether in the period prior to September 25, 1992, the date on which the State ratified the Convention, violations of the human rights established in the American Declaration took place. Similarly, the Commission has competence *ratione temporis* in relation to the alleged violations of the rights and freedoms protected in the American Convention with respect to the events that took place following the ratification of the aforementioned Treaty.

22. The present petition denounces violations of rights protected in the American Declaration and the American Convention. In accordance with the foregoing, the Commission has competence *ratione materiae* to examine the petition.

23. Finally, the Commission has competence *ratione loci* to examine this petition because it alleges violations of rights established in the American Declaration and the American Convention which took place in the territory of a State Party to said instruments.

B. Other requirements

1. Exhaustion of remedies under domestic law

24. Article 46.1.a of the American Convention states that one requirement for a petition to be admissible is the prior exhaustion of the remedies available under domestic law.

25. In this regard, the IACHR observes that according to the information lodged by both parties, it is an uncontested fact that the alleged victim was murdered in the city of Marabá, on July 18, 1982. A police investigation (IPL No. 024/82) was opened and this established circumstantial evidence implicating three persons, Manoel Cardoso Neto, José Pereira da Nóbrega, and Crescencio Oliveira de Souza. The attorney general's office filed a criminal charge against the three persons referred to on August 19, 1983.

26. In this regard, the Commission notes that in accordance with the documents lodged by the parties, the Judge received the criminal accusation on August 23, 1983. The initial investigative stage of the proceedings, regarding the questioning of the accused, lasted five years, from 1983 until 1988, when the last defendant, Manoel Cardos Neto was questioned by the judicial authorities on April 29, 1988. According to the file lodged with the IACHR, the following stage of the proceedings, concerning witness statements, lasted from 1988 until 1991. During this period several hearings were scheduled but many of them were postponed. Similarly, the stage for the presentation of final submissions from the parties lasted seven years, from 1991 to 1998.

27. According to the file lodged with the IACHR, the attorney general's office lodged final allegations which called for the Pronúncia[FN7] of Manoel Cardoso Neto and José Pereira da Nóbrega, and the Impronúncia of Crescencio Oliveira de Souza. Two years later the judge in the criminal proceedings on August 31, 2000 issued a Pronúncia against Manoel Cardoso Neto and called for him to be tried before the Tribunal de Jurados (Tribunal do Jún).[FN8] The Judge

considered that there was no evidence against Crescencio Oliveria de Souza and declared extinct the punishability of the defendant José Pereira da Nóbrega due to his death on August 1, 1999.

[FN7] For crimes within the competence of the Tribunal de Jurados, once probable cause proceedings have been opened, the judge must examine the book of evidence (acervo probatorio) in the criminal proceedings in order to verify whether or not it is possible to show the probable existence of a culpable homicide, as well as the respective and alleged perpetrator. Consequently, the Magistrate produces the Pronúncia decision, in which he confirms the existence of evidence that would indicate the materiality and perpetrator of the crime and determines the legal disposition and related sanctions he understands apply to the prisoner. Regarding the Pronuncia see Article 408 of the Brazilian Penal Code. In addition, if the indications noted supra are not present in the file, the judge must pronounce the Impronúncia of the prisoners.

[FN8] In accordance with Article 5, sub-paragraph XXXVIII of the Brazilian Federal Constitution of 1998, the Tribunal de Jurados is competent to try murder cases.

28. A sitting was immediately called in the Tribunal de Jurados in order to bring the defendant Manoel Cardoso Neto to trial on May 23, 2002. The defendant did not appear. A new sitting in the Tribunal de Jurados was called for February 15, 2006 but, the defendant did not appear. On April 3, 2006, the accused was found and taken prisoner by the Federal Police in the state of Minas Gerais.

29. With the defendant in prison, a new hearing was called for April 27, 2006. The IACHR notes that almost twenty years after the death of the alleged victim and without the case appearing in the first instance, on April 10, 2006, the defendant's lawyers lodged a finding of habeas corpus in his favor and alleged that the criminal action had prescribed. On May 8, 2006, the Pará Court of Justice declared extinct the punishability of the defendant by virtue of its prescription, and resolved his immediate release.

30. The IACHR observes that it is an uncontested fact that on May 8, 2006, the criminal prosecution by the State was declared prescribed in a finding made by the Pará Court of Justice.

31. In order for the Commission to decide whether or not all remedies available under domestic law have been exhausted, the State, which is the party alleging the non-exhaustion, must prove that there remain remedies under domestic law that have not been pursued and that are available and effective. In the present case, the State does not argue that there remain remedies under domestic law to be exhausted in relation to the criminal proceedings, and the petitioners have alleged that the remedies tried have proved ineffective. Having examined the information and the allegations lodged by the two parties, the IACHR concludes that the previous exhaustion requisite described in Article 46.1.2 was complied with, since the criminal action prescribed according to a final judgment of the Pará Court of Justice of May 8, 2006.

2. Deadline for lodging a petition

32. Article 46.1.b of the Convention demands that the petition be “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.”

33. In accordance with what is stated supra (paragraph 30), the judicial decision which declared the prescription of the criminal proceedings concerning the murder of the alleged victim was issued on May 8, 2006. According to the allegations of the petitioners, which were not challenged by the State, the alleged victim’s next-of-kin learned of that decision on May 18, 2006. Therefore, the Commission observes that the petition – presented on November 9, 2006 – complies with the requisite of Article 46.1.b of the American Convention.

3. Duplication of procedures and res judicata

34. It is not evident from the petition lodged with the Inter-American Commission that the subject is currently pending in another international proceedings for settlement or that the petition or communication is substantially the same as one previously studied by the Commission or by another international organization as described in Articles 46.1.c and 47.d of the Convention respectively.

4. Characterization of the alleged facts

35. Article 47.b of the Convention states that the Commission consider inadmissible a petition or communication that “does not state facts that tend to establish a violation of the rights guaranteed by this Convention”. The criterion for evaluating these requirements differs from that used to decide on the merits of a petition. In effect, the examination carried out by the Commission is oriented towards determining prima facie whether the petition describes the circumstances of a violation, either possible or potential, of a right protected by the Convention, and not towards proving the effective existence of a violation of rights. In other words, this resolution provides a primary examination which implies no prejudgment of the merits of the case.

36. In accordance with the events described and the judicial remedies pursued in this case and, in particular, taking into account the alleged failure to prevent the loss of life of the alleged victim, which was allegedly motivated by his work as a union leader, and the alleged lack of diligence on the part of the State in investigating effectively the events surrounding the case and punishing those responsible for the crime, the Commission considers that, if these are true, the events which are the subject of the petition could amount to possible violations of rights established in Articles 8 and 25 of the American Convention, in agreement with Article 1.1 of the same instrument, for the events subsequent to the ratification of the Treaty by the Brazilian State. Furthermore, the Commission understands that if these were proved, the events which took place before September 25, 1992, could amount to violations of Articles I (Right to life, liberty and personal safety), XVIII (Right to a fair trial), and XXII (Right of association) of the American Declaration.

37. In view of the foregoing, the IACHR concludes that the petition is admissible on this point in accordance with the clauses of Article 47(b).

V. CONCLUSIONS

38. The Commission concludes that it has competence to examine the petition and that this complies with the requirements on admissibility, in accordance with Articles 46 and 47 of the American Convention. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare that the present petition is admissible in relation to the alleged violations of rights protected by Articles I, XVIII, and XXII of the American Declaration, as well as Articles 8 and 25 of the American Convention in relation to Article 1.1 of the same instrument.
2. To notify the State and the petitioners of this decision.
3. To begin the process to examine the merits of the matter..
4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 16th day of the month of October, 2008.
(Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice Chairwoman, Felipe González, Second Vice Chairman; Sir Clare K. Roberts, Florentín Meléndez, and Víctor Abramovich, members of the Commission.