

Institution: Inter-American Commission on Human Rights
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Title/Style of Cause: Pedro Antonio Centurion v. Paraguay
Doc. Type: Decision
Decided by: President: Luz Patricia Mejia Guerrero;
First Vice President: Victor Abramovich;
Second Vice President: Felipe Gonzalez;
Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Paolo Carozza.
Dated: 19 March 2009
Citation: Antonio Centurion v. Paraguay, Petition 788-05, Inter-Am. C.H.R., Report No. 19/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by: APPLICANT: the Association of Relatives of Victims of Military Service
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I. SUMMARY

1. On May 12, 2005, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a petition lodged by the Association of Relatives of Victims of Military Service (hereinafter “AFAVISEM” or “the petitioners”) alleging the international responsibility of the Republic of Paraguay (hereinafter “Paraguay,” “the Paraguayan state” or “the State”). The petition alleges violations of the right to life, the right to personal integrity, of the prohibition of slavery and involuntary servitude, the right to personal liberty, the right to judicial guarantees, to the rights of children and to judicial protection, enshrined in Articles 4, 5, 6, 7, 8, 19 and 25 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), all in connection with the obligation to recognize and guarantee the rights established in Article 1.1 of the American Convention to the detriment of the minor Pedro Antonio Centurión.

2. The petitioners pointed out that Pedro Antonio Centurión, who at the time of the facts was 13 years-old, had been forcibly drafted into compulsory military service and nine months later had died under “unusual circumstances” within the confines of the “Vista Alegre” Military Cavalry Detachment. The petitioners indicated that despite the complaints lodged, the facts were never adequately investigated. The petitioners added that in the proceedings carried out under military jurisdiction, the investigation instituted to determine the facts about the death of the alleged victim was discontinued because the death “did not constitute a crime due to the fact that it had occurred for causes that could not be attributed to third parties and was the result of actions carried out in the line of duty,” while the ordinary jurisdiction determined to suspend the investigation because there was no individual identified as the responsible party.

3. For its part, the State argued that all investigative avenues under the military justice system had been exhausted and it was determined that there was no crime because there was no determination of cause for the death and it could not be attributed to third parties. With respect to ordinary jurisdiction, the State said that despite the investigation of the events that took place, it had been impossible to identify any individuals responsible for the crime and, therefore, the investigation has been archived.

4. After analyzing the positions of the parties, the Inter-American Commission concludes that it is competent to hear the complaint lodged by the petitioners and rules the petition admissible under the provisions of Article 46 of the American Convention. Therefore, the Commission decides to notify the parties, to continue with the analysis on the merits of the petition with regard to alleged violations of the American Convention, to publish this Admissibility Report and to include it in its Annual Report to the General Assembly of the OAS.

II. PROCESSING BEFORE THE COMMISSION

5. On June 21, 2005, the Inter-American Commission received a petition lodged by the Association of Relatives of Victims of Military Service (AFAVISEM) which was assigned case number 788/05. On May 26, 2006, the IACHR forwarded the petition to the Paraguayan State. On June 19, 2006, the State requested a two-month extension to respond to the petition, which was granted. On August 11 and 22, 2006, the State submitted its observations which were then forwarded to the petitioners on March 5, 2007. On July 13, 2007, the Commission sent a communication to the petitioners requesting specific information regarding this case. As of the date of this report, no response had been received.

III. POSITIONS OF THE PARTIES

A. The petitioners

6. The petitioners pointed out that in March of 2000, Pedro Antonio Centurión, a 13-year-old citizen of Argentina, was taken from his home in Paraguay by Captain Rodriguez for the purpose of conscription. The petitioners added that the child's mother, Mrs. Semproniana Centurión Benítez, was not at home when members of the Paraguayan Army had taken her child and, therefore, she decided to go looking for him at the "Vista Alegre" Military Base in order to determine his whereabouts and to inform the authorities that her son was a citizen of Argentina and under age. At the Base, where she found her son confined, she was told that her son "was old enough and was sufficiently physically developed" to be drafted into military service and that the fact that he did not have any Paraguayan identity documents would not be an impediment to do so.

7. In the complaint, the petitioners indicated that Pedro Antonio Centurión had been taken to the "Fortín Cano" base, where "he had allegedly lived under precarious conditions and had, therefore, tried to flee from the base." [FN1] The petitioners added that, later on, the military authorities had sent him back to the "Vista Alegre" base where he died under "unusual circumstances" on September 12, 2000. The petitioners pointed out that, according to the

autopsy, Pedro Antonio Centurión had died from the impact of a shot fired with a long barrel firearm.[FN2]

[FN1] The petitioners make reference to the testimony Semproniana Centurión Benítez gave at the Argentinean Consulate in Paraguay, where she indicated that when Pedro Antonio Centurión was taken to the Fortín Cano military base, he had tried to flee together with other conscripts but that “they had been caught 40Km. from the base.” Consulate of Argentina in Paraguay. Affidavit No. 70. September 15, 2000.

[FN2] National Police, Crime Investigation Department, ballistics unit. Report of Investigation. Fourth (IV) Conclusion. Page 6.

8. The petitioners pointed out that in order for Pedro Antonio Centurión to be drafted into military service, members of the military had to forge his identity document[FN3] to show that he was old enough to be drafted and that he also was a citizen of Paraguay. The petitioners underscored the fact that then Colonel Raúl Ortiz, Unit Commander and Recruitment Chief No. 17 of Villa Hayes and Colonel Julio César Cardozo, who at the time the petition was lodged was the Commander of the 2nd Infantry Division, were both sentenced to three months in confinement for forging documents.

[FN3] According to official communication N.D.G.R.E.C.N. No. 88/2000, dated October 2, 2000, the Director General of the Civil Registry, Edgar Rodas Vega, informed the Office of the Attorney General of Paraguay that “After examining the Registry of Births for the year 2000, we were able to determine that the birth certificate used by the Armed Forces to draft the minor Pedro Antonio Centurión into service is not valid given that the certificate is not recorded in the appropriate book and that the individual signing the certificate, Carlos Ayala, is not an official authorized to issue those certificates [...]”

9. With respect to legal remedies filed, the petitioners alleged that they had lodged a complaint in ordinary court on September 12, 2000, which had been presumably archived in the Criminal Unit No. 3 of the Public Ministry since 2001 due to the fact that authorities had been unable to identify those responsible for the death. Likewise, an investigation of the matter being conducted under military jurisdiction was discontinued due to the fact that the death “had not constituted a crime because it had occurred for causes not attributable to third parties and in the line of duty.”

B. The State

10. The Paraguayan state responded to the complaint lodged by the petitioners stating that all investigative avenues had been exhausted both under military jurisdiction and under ordinary law. The State pointed out that the following investigations had been conducted under military jurisdiction: a) death investigation of the alleged victim; and b) document forgery. With respect to the investigation of the death of the alleged victim the 2nd Military Criminal Court of First

Instance decided on November 23, 2000, “to discontinue the investigation instituted on the death of the alleged victim because the proven fact did not constitute a crime because it occurred due to causes not attributable to third parties and as a result of actions carried out in the line of duty.”[FN4]

[FN4] Observations submitted by State to the IACHR on August 11, 2006. Page 1.

11. With respect to the alleged forgery of documents, the State alleged that the 3rd Military Examining Magistrate Court initiated a preliminary investigation of the facts. On April 9, 2001, the Supreme Court of Military Justice characterized the forgery of documents as “offenses against military discipline[FN5]” and named responsible parties “Colonel DEM Raúl Ortiz Ross and Colonel DEM Julio Cardozo, as authors or responsible individuals, who were then sentenced to 90 days in confinement,[FN6] a sentence since compurgated.”[FN7]

[FN5] Observations submitted by the State to the IACHR on August 11, 2006. Page 2.

[FN6] Supreme Court of Military Justice. Case Judgment “To Colonel DEM Raúl Ortiz Ross and Colonel DEM Dem Julio Cardozo for the alleged offenses against Compulsory Military Service and Forgery”, operative part. April 9, 2001.

[FN7] Observations submitted by the State to the IACHR on August 11, 2006. Page 2.

12. With regard to the actions under ordinary jurisdiction relating to the death of the alleged victim, the State argued that in resolution No. 197, dated November 21, 2001, the Office of the Public Prosecutor stated that “despite the investigations conducted by the prosecutors it had not been possible to identify a suspect in the case and, therefore, it had decided to suspend the investigation.”[FN8]

[FN8] Article 313 of the Code of Criminal Procedure of Paraguay establishes:

SUSPENSION OF INVESTIGATION. If the individual responsible has not been identified, the Office of the Public Prosecutor, with sufficient grounds, may, on its own, resolve to suspend the investigation. The investigation may be reopened at any time and the deadline for filing charges will be calculated from the date the case is reopened.

The victim or the person who has filed the complaint and has requested notification of actions taken will be notified of the decision, and that person may file an objection to the action with the criminal judge, requesting that the investigation be expanded, indicating what evidence gathering methods may be followed or identifying the perpetrator.

If the objection is declared admissible, the judge will order the responsible authorities to proceed with the investigation.

13. The State also pointed out that it had carried out the following reparation measures: 1) promoted the alleged victim to the rank of Staff Sergeant posthumously[FN9] and 2) allowed the

family of the alleged victim to collect pension benefits. The State also pointed out the progress being made in Paraguay's legislation in reference to the bill that would amend Law No. 569/75 regulating Compulsory Military Service and Law 123/52 regulating the Center for Military Instruction and Reserve Officers Training (CIMEFOR). This bill would prohibit the recruitment of individuals younger than 18 years of age into military service.[FN10] In that respect, the State indicated that the Commander of the Armed Forces had issued Special Order No. 42 on March 3, 2006, whereby, in accordance with the pronouncements of the Paraguayan government, the recruitment of individuals younger than 18 years of age into military service was absolutely prohibited.

[FN9] Presidency of the Republic of Paraguay, Ministry of National Defense Decree No. 11289, dated November 22, 2000.

[FN10] In that respect, the Commission notes that on November 2, 2007, Law 3.360 was approved, which repeals Article 10 and amends Article 5 of Law 569/75 "Compulsory Military Service," establishing that the minimum age for compulsory military service in Paraguay will be 18 years.

IV. ANALYSIS OF ADMISSIBILITY

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

14. Article 44 of the American Convention provides that "Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party." Therefore, the petitioners are authorized to lodge a petition with the Inter-American Commission. Thus, the IACHR is competent *ratione personae* to examine the petition.

15. Paraguay is a State Party to the American Convention since August 24, 1989, having deposited its instrument of ratification on that date. For their part, the petitioners allege violations of rights enshrined in the American Convention. Hence, for the case sub examine the IACHR has competence *ratione materiae*.

16. The Inter-American Commission is competent *ratione loci*, because the alleged violations of human rights occurred within the territory of a State Party to the American Convention. Likewise, the Commission is competent *ratione temporis* because at the time in which the alleged facts occurred, the American Convention was already in force in Paraguay.

B. Other requirements for the admissibility of the petition

1. Exhaustion of domestic remedies

17. Article 46.1(a) of the American Convention provides that, for a complaint lodged before the Inter-American Commission in accordance with Article 44 of the Convention to be admissible, it is necessary that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. This requirement is recognized by the Commission as a procedural requirement in order to allow domestic authorities to hear about the alleged violation of a right protected under the provisions of the American Convention and, if appropriate, to provide a solution before it is heard in an international venue.

18. The Convention also establishes that the requirement of prior exhaustion is not applicable when, for reasons of law or fact, domestic remedies are not available. Specifically, Article 46.2 of the Convention establishes exceptions to the general requirement of exhaustion of domestic remedies: (a) when domestic legislation does not afford due process of law for the protection of the rights that have allegedly been violated; (b) if the alleged victim has been denied access to the remedies available under domestic law; (c) or if there has been unwarranted delay in rendering a final judgment on the matter in question.

19. Article 31.3 of the Rules of Procedure of the Commission also establishes that when a petitioner claims one of the exceptions to the exhaustion of domestic remedies requirement, it is up to the State to prove that domestic remedies have not been previously exhausted; to indicate which are the appropriate remedies to repair the harm done and to prove that they are effective. [FN11] In this case, the State has not indicated any other remedies available to the petitioners that had to be exhausted.

[FN11] IACHR, Report N° 55/06, petition 12.380, Admissibility, Members of José Avélar Restrepo Lawyers' Collective, Colombia, July 20, 2006, para. 36; Report N° 32/05, petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral and other persons affected by HIV/AIDS, Guatemala, March 7, 2005, paragraphs 33-35; I/A Court H.R., Case of the Mayagna Community (Sumo) Awas Tingni. Preliminary Exceptions, supra note 3, para. 53; Case Durand and Ugarte. Preliminary Exceptions. Judgment dated May 28, 1999. Series C No. 50, para. 33; and Case Cantoral Benavides. Preliminary Exceptions. Judgment dated September 3, 1998. Series C No. 40, para. 31.

20. In this case, the petitioners have argued that they should be exempt from the exhaustion of domestic remedies requirement as established in Article 46.2.(c) of the American Convention, due to the unwarranted delay in investigating the facts and punishing those who may have been found responsible. The petitioners also allege that there was neither an adequate nor a sufficient investigation of the facts.

21. The Commission takes note that the relatives of the alleged victim lodged the complaint in ordinary jurisdiction on the same day of his death, that is, on September 12, 2000, and on November 2001, that investigation was suspended. According to the information available, the Office of the Public Prosecutor can decide to stop an investigation "if it has not been possible to identify the person responsible for the crime." The petitioners' complaint is precisely that the

authorities never conducted an investigation aimed at shedding light on the circumstances of the young man's death or finding those responsible for it. The decision of the Public Ministry is not judicial in nature and it is not final. On the other hand, the Commission does not have any information to indicate that, after suspending the proceedings, the State had moved forward with the investigation of the death of Pedro Antonio Centurión and, in effect, as of the date of this report, the state has not established the facts about the death of Pedro Antonio Centurión or who may have been responsible for it. The Commission points out that according to its doctrine,

...any time a crime in persecuted ex officio, the State has the obligation to encourage and pursue the criminal process to its ultimate consequences ...

...in cases of crimes requiring public prosecution – and even in those dependent on active private participation – it is not valid to demand of the victim or of the relatives the exhaustion of domestic remedies, for the State has a duty to maintain public order and, therefore, it has an obligation to set the criminal law system in motion and to process the matter until the end.[FN12]

[FN12] Report N° 52/97, Case 11.218, Arges Cerqueira Mangas, IACHR Annual Report 1997, paragraphs 96 and 97. See also Report No. 55/97, paragraph 392 and 51/07, Marco Javier Zambrano and Javier José Rada vs Ecuador, paragraph 33.

22. In light of the preceding, the Commission concludes that the petition falls within the parameters of the exception to the exhaustion of domestic remedies established in Article 42.2(c) of the Convention since there has been an unwarranted delay in the resolution of this case.

2. Deadline to submit the petition

23. Article 46.1(b) of the Convention provides that for a petition to be admissible it must be lodged within a period of six months from the date on which the plaintiff was notified of the final judgment in the domestic jurisdiction. However, in accordance with Article 46.2 of the Convention and Article 32.2 of the Rules of Procedure of the IACHR, “This rule does not apply when it has not been possible to exhaust domestic remedies because domestic legislation does not afford due process of law, the party alleging violation of his rights has been denied access to the remedies or there has been an unwarranted delay in rendering a final judgment [...]. This rule does not apply either when the complaint reports a continuous situation, in other words, when it is alleged that the victim's rights are being violated uninterruptedly.” [FN13]

[FN13] See IACHR, Report N° 72/03 (Admissibility), Petition 12.159, Gabriel Egisto Santillán, para. 60; Report N° 33/99 (Admissibility), Case 11.763, Plan de Sánchez Massacre, Guatemala, April 16, 1999, paragraphs 29 and 30.

24. The Commission concludes that, in this case, the requirement established in Article 46.1(b) does not apply given the unwarranted delay in the investigations aimed at identifying the person or persons responsible for the death and their subsequent punishment. The Commission therefore considers that the petition was lodged within a reasonable period of time in accordance with the provisions of Article 32.2 of the Commission's Rules of Procedure.

3. Duplication of proceedings and international res judicata

25. Article 46.1(b) establishes that for a petition to be admissible, the subject of such petition "must not be pending in another international proceeding for settlement" and Article 47 of the Convention establishes that the Commission will not admit a petition that "is substantially the same as one previously studied by the Commission or by another international organization." In the instant case, the parties have not indicated the existence of either of those circumstances and it is not evident from the record that they exist.

4. Characterization of the alleged facts

26. Article 47(b) of the American Convention provides that the Inter-American Commission shall determine whether, if proven, the facts described in the petition could constitute a violation of the rights enshrined in the American Convention, or if, as established in Article 47(c) the petition must be rejected as "manifestly groundless" or "obviously out of order." In this procedural stage, the IACHR must carry out a prima facie evaluation not for the purpose of establishing presumed violations of the Convention but to determine if the petition describes facts that could potentially constitute violations of rights guaranteed by the American Convention. This analysis does not prejudge nor does it advance an opinion on the merits of the petition.

27. With respect to Article 4, the Commission notes that the main allegation of the petitioners is that the death of the Pedro Antonio Centurión occurred while he was under the custody of the Paraguayan state; and that he could have died at the hands of an agent of the same State. The Commission also notes that, to this date, the death of the alleged victim remains unsolved.

28. With regard to alleged violations of Article 5 of the American Convention, the petitioners have argued that the forced recruitment of the Pedro Antonio Centurión had a negative impact on his psychic integrity given that he was an individual in full growth process, and the conditions of confinement impaired his physical integrity. If the allegations made by the petitioners are proven, the facts could constitute a violation of Article 5 of the Convention.

29. With regard to the petitioners' allegations relating to the forced recruitment of Pedro Antonio Centurión, the IACHR considers that, if proven, the facts could constitute a form of forced labor since it affects a child and, furthermore, it is a case where the child does not seem to have expressed his will freely and independently. This could constitute a violation of the right protected under the provisions of Article 6 of the American Convention. Moreover, if the allegations are proven accurate, it could constitute a violation of the right recognized in Article 7 of the American Convention.

30. The petitioners claim that at the time of his forced recruitment, Pedro Antonio Centurión was 13 years-old and therefore, the provisions of Article 19 of the American Convention regarding the rights of children would have been violated. In addition, the petition alleges that there was no serious, impartial and effective investigation of the cause of death which could constitute a violation of the provisions of Article 8 and Article 25 of the American Convention. It is also alleged that the denial of access to justice affected the personal integrity of the relatives of the alleged victim under the provisions of Article 5 of the Convention.[FN14]

[FN14] I/A Court H.R., Case Vargas Areco. Judgment dated September 26, 2006. Series C No. 155, para. 97.

31. Therefore, in the present case, the Commission concludes that the petitioners have filed complaints which, if compatible with other requirements and if proven true, could tend to establish the violation of rights protected by the American Convention; more precisely, rights protected under the provisions of Articles 4, 5, 6, 7, 8, 19 and 25, with relation to Article 1.1 of the American Convention.

V. CONCLUSION

32. The Commission concludes that the petition is admissible and that it is competent to hear the complaint lodged by the petitioners with regard to the alleged violation of the rights recognized in Articles 4, 5, 6, 7, 8, 19 and 25 of the American Convention, all in relation to the obligations established in Article 1.1 of the same international instrument.

33. Based on the preceding arguments of fact and of law and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible with regard to the rights enshrined in Articles 4, 5, 6, 7, 8, 19 and 25 of the American Convention, in relation to the obligations established in Article 1.1 of the same treaty.
2. To forward this report to the petitioners and to the State.
3. To proceed with the analysis on the merits of the petition.
4. To publish this report and to include it in the Annual Report of the Commission to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on March 19, 2009. (Signed): Luz Patricia Mejía Guerrero, President; Víctor E. Abramovich, First Vice-president; Felipe González, Second Vice-president; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Paolo Carozza, Members of the Commission.