

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 62/09; Petition 1173-05
Session: Hundred Thirty-Fifth Regular Session (3 – 8 August 2009)
Title/Style of Cause: Silas Abel da Conceicao and Augusta Tomazia Inacia v. Brazil
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, Florentin Melendez, Paolo G. Carozza.
Commission member Paulo Sergio Pinheiro, a Brazilian national, did not take part in the deliberations and vote on this report, in keeping with Article 17.2.a of the Commission’s Rules of Procedure.
Dated: 4 August 2009
Citation: Abel da Conceicao v. Brazil, Petition 1173-05, Inter-Am. C.H.R., Report No. 62/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
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I. SUMMARY

1. On October 19, 2005, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a petition lodged by Augusta Tomázia Inácia, Elcio Pacheco and Dionara Amparo dos Anjos (“the petitioners”)[FN2] against the Federal Republic of Brazil (“the State” or “Brazil”). The petition alleged violations of Articles I (right to life, liberty and personal security), II (right to equality before the law) and XVIII (right to a fair trial) of the American Declaration of the Rights and Duties of Man (“the American Declaration”), as well as violations of Articles 1.1 (obligation to respect rights) and 25 (right to judicial protection) of the American Convention on Human Rights (“the American Convention”), to the detriment of Silas Abel da Conceição and his mother, Augusta Tomázia Inácia (“the alleged victims”).

[FN2] By a communication received on March 1, 2007, the petitioners indicated that Augusta Tomázia Inácia passed away at the end of 2006, thus she would be substituted as a petitioner by her daughter, the alleged victim’s sister, Salma Luiza da Conceição. Moreover, they informed that petitioner Dionara Amparo dos Anjos no longer worked on this case.

2. The petition denounces the torture and subsequent summary execution of the alleged victim,[FN3] then 18 years old, by three members of the Civil Police of Minas Gerais, starting from his arrest in mid-September of 1988 when he was allegedly arbitrarily detained and tortured

along with Pedro de Almeida, then 20 years old. The latter was supposedly killed under torture at the Police Station of Cachoeirinha, in Belo Horizonte, capital city of the state of Minas Gerais, on September 22, 1988. Following that, police officers Onofre Maurício Vasconcelos, Fernando Costa de Souza and Álvaro José Viana allegedly put Pedro de Almeida's body in a bag, and took the alleged victim to an unknown place in the woods where they supposedly forced him to bury the body. According to the petitioners, the alleged victim was the sole eye witness to this crime. They further alleged that on October 7, 1988 police officers Onofre Maurício de Vasconcelos and Fernando Costa de Souza abducted the alleged victim and executed him with a shot in the back of his head. The petitioners point out that there has been no final judgment regarding this crime more than 20 years after the alleged victim's execution.

[FN3] When referring solely to Silas Abel da Conceição, the Commission uses the term "the alleged victim" throughout this report.

3. The State argues that the petition is inadmissible due to the lack of exhaustion of domestic remedies. In this regard, the State stresses that, in conformity with Article 46.1.a of the American Convention, the nature of the petition mechanism before the inter-American system is subsidiary; therefore, States must be previously accorded the opportunity to resolve matters through their own domestic courts. According to Brazil, the domestic authorities have effectively pursued justice and reparation with regard to the death of the alleged victim by means of the corresponding criminal action and, accordingly, on September 12, 2007 defendant Onofre Maurício Vasconcelos was convicted by a jury to twelve years in prison for that crime. In the communication of April 2008, the State alleged that this defendant presented an appeal which was pending a decision before the 2nd instance tribunal. As regards the other defendant, Fernando Costa de Souza, the State alleged that his jury trial was supposed to take place in the second semester of 2006.

4. After examining the positions of the parties with respect to the requirements set forth in Articles 46 and 47 of the American Convention, the Commission decides to declare this petition admissible regarding Articles I and XVIII of the American Declaration, as well as Article 25.1 of the American Convention, in relation to Article 1.1 thereof. By virtue of the principle of *iura novit curia*, it also declares the present petition admissible with respect to a possible violation of Articles XXV and XXVI of the American Declaration and Articles 5.1 and 8.1 of the American Convention. The IACHR declares this petition inadmissible with regard to the alleged violation of Article II of the American Declaration, in conformity with Article 47.b of the American Convention. Therefore, the Inter-American Commission decides to notify the parties of this decision, and to publish and include this report in its Annual Report to the General Assembly of the OAS.

II. PROCEEDINGS BEFORE THE COMMISSION

5. On October 19, 2005 the Commission received the complaint lodged by the petitioners. On May 16, 2006 the IACHR submitted the relevant parts of the petition to the State, with a

request that it provide its observations within two months. By note received on July 25, 2006, the State submitted its observations on this petition.

6. The petitioners presented additional information on August 28, 2006; May 31, 2007; October 18, 2007; February 20, 2008; and May 15, 2008. The communications dealing with additional information or arguments were duly transmitted to the State.

7. Likewise, the State presented additional information on November 17, 2006; July 23, 2007; January 3, 2008; and April 9, 2008. These were duly transmitted to the petitioners.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

8. The petitioners allege that on September 22, 1988, police officers Onofre Maurício Vasconcelos, Fernando Costa de Souza and Álvaro José Viana arrested the alleged victim, then 18 years of age, and Pedro de Almeida, then 20 years of age, in Belo Horizonte, capital city of Minas Gerais state. They argue that both individuals were then submitted to torture sessions using the technique commonly known in Brazil as pau-de-arara (“parrot’s perch”).[FN4] According to the petitioners, the police officers also violently beat Pedro de Almeida, who bled through his mouth, nose and ears. The alleged victim supposedly witnessed everything while being subjected to similar torture and beatings.

[FN4] According to the petitioner’s, pau-de-arara consists of an iron bar to which the torture victim’s wrists and knees are tied, and then the bar is placed between two tables so that the victim’s body is suspended approximately 20 to 30 centimeters from the floor.

9. The petitioners state that the alleged victim survived the torture and beatings, but Pedro de Almeida’s lifeless body was placed in a black plastic bag. The police officers then supposedly took Pedro de Almeida’s body and the alleged victim to an unknown location in the woods, where they forced the alleged victim to dig a hole to bury Pedro de Almeida’s body. According to the petitioners, while burying the body, the alleged victim realized that Pedro de Almeida was still alive, moving and breathing; nevertheless, his body was thrown inside the grave and buried.

10. The petitioners assert that the alleged victim was the sole eye witness to Pedro de Almeida’s torture, killing and the hiding of his corpse, and that the former was threatened to remain silent about such facts. According to the petitioners, a few days later the alleged victim was released from prison by means of a writ of habeas corpus. Pedro de Almeida’s mother, the alleged victim’s neighbor, insistently asked him about the fate of her son, but the alleged victim kept silent at first, due to fear of reprisals. Nevertheless, later on the alleged victim ended up telling his own mother, Augusta Tomázia Inácia, everything that was described supra.

11. The petitioners allege that on October 7, 1988, police officers Onofre Maurício Vasconcelos and Fernando Costa de Souza abducted the alleged victim and took him to the

beltway of road BR-262, where one of the police officers executed him with a shot in the back of his head.

12. The petitioners observe that on April 3, 1989 the Public Prosecutor's Office (Ministério Público) charged police officers Onofre Maurício Vasconcelos and Fernando Costa de Souza with the arbitrary arrest, torture and homicide of the alleged victim. Nevertheless, more than twenty years after the crime occurred in 1988, there has been no final judgment, which in their opinion demonstrates that there has been unwarranted delay in rendering a final judgment under domestic remedies. According to the petitioners, since her son's death in 1988, Augusta Tomázia Inácia relentlessly claimed for justice until she died from cancer at the end of 2006, after suffering for eighteen years due to her son's execution and the failure of the authorities to punish those responsible.

B. Position of the State

13. The State argues that the petition is inadmissible due to the lack of exhaustion of domestic remedies. In this regard, the State stresses that, in conformity with Article 46.1.a of the American Convention, the nature of the petition mechanism before the inter-American system is subsidiary; therefore, States must be previously accorded the opportunity to resolve matters through their own domestic courts. According to Brazil, with regard to the death of the alleged victim, the domestic authorities have effectively pursued justice and reparation by means of the corresponding criminal action.

14. Indeed, the State stresses that, on November 25, 2005, defendant Onofre Maurício Vasconcelos was convicted by a jury to fourteen years in prison for the death of the alleged victim. According to the State, the defendant appealed against this decision. In April 2008, the State informed that on September 12, 2007 police officer Onofre Maurício Vasconcelos was convicted by another jury trial to twelve years in prison for the death of the alleged victim. According to the State, this defendant presented an appeal which was pending a decision before the 2nd instance tribunal.

15. As regards the other defendant, Fernando Costa de Souza, the State alleged that his jury trial was supposed to take place on December 14, 2006. In its more recent communications, the State makes no reference to the criminal procedure against the second defendant.

16. In light of the foregoing, the State argues that the domestic remedies related to the alleged victim's death have not been exhausted, and that the criminal action has followed its normal course with due respect to the right of defendants to appeal the judgment to a higher court, as recognized in Article 8.2.h of the American Convention. Therefore, the State requests that the Inter-American Commission declare this petition inadmissible, in conformity with Articles 46.1.a and 47.a of the American Convention.

IV. ANALYSIS OF ADMISSIBILITY

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

17. Under Article 44 of the American Convention and Article 23 of the Inter-American Commission's Rules of Procedure, the petitioners have locus standi to file petitions with the IACHR. Brazil, as a Member State of the Organization of American States,[FN5] has the obligations and duties set forth in the American Declaration and the OAS Charter. Brazil is also a State Party to the American Convention, which it ratified on September 25, 1992. The Inter-American Commission finds that the alleged victims named in the petition are Silas Abel da Conceição and Augusta Tomázia Inácia, individuals whose rights under the American Declaration and the American Convention the State undertook to respect and guarantee. The Commission therefore has jurisdiction *ratione personae* to examine this petition.

[FN5] Brazil is a founding member of the Organization of American States, having signed the OAS Charter in 1948 and having deposited its instrument of ratification in 1950.

18. Under Articles 1.2.b and 20 of its Statute, the IACHR has jurisdiction *ratione temporis* to examine possible violations of human rights protected by the American Declaration and the American Convention. The Commission takes note that the facts described in the petition began in 1988, at a time when the State had not yet ratified the American Convention. The Commission has jurisdiction *ratione temporis* to determine whether, in the period prior to September 25, 1992, there was any violation of the rights protected by the American Declaration. The Inter-American Court of Human Rights ("the Inter-American Court") explicitly recognized the binding force of the American Declaration when it wrote 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]

[FN6] I/A Court H.R., 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 of July 14, 1989, Series A No. 10, para. 45. See also IACHR, Report No. 19/98, Admissibility, Case 11.516, Ovelário Tames, Brazil, February 21, 1998, para. 15; Report No. 33/01, Admissibility, Case 11.552, Guerrilla de Araguaia, Julia Gomes Lund et al, Brazil, March 6, 2001, para. 38; Report No. 17/98, , Admissibility Cases 11.407 Clarival 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 Antônio dos Santos, 11.415, Carlos Eduardo Gomes Ribeiro, 11.286, Aluísio Cavalcanti Júnior and Cláudio Aparecido de Moraes, Brazil, February 21, 1998, para. 163.

19. Likewise, the Commission has jurisdiction *ratione temporis* with regard to alleged violations of rights protected by the American Convention, with respect to events that occurred after the State's ratification thereof.

20. The petition denounces violations of rights protected by the American Declaration and the American Convention. The Commission therefore has jurisdiction *ratione materiae* to

examine the petition. Lastly, the IACHR has jurisdiction *ratione loci* to examine this petition inasmuch as it alleges violations of rights protected by the American Declaration and the American Convention, which allegedly took place within the territory of a State Party to those instruments.

B. Admissibility of the petition

1. Exhaustion of domestic remedies

21. Under Article 46.1.a of the American Convention, the remedies under domestic law must have been pursued and exhausted in order for a petition to be admissible. Under Article 46.2.c of the same instrument, the rule requiring exhaustion of the remedies under domestic law shall not apply when “there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.”

22. In this regard, the Inter-American Commission emphasizes that the rule requiring prior exhaustion of domestic remedies was established to ensure that the State has an opportunity to resolve disputes within its own legal system. On the other hand, the exceptions provided in Article 46.2 of the American Convention seek to ensure that the inter-American system can intervene when the remedies under domestic jurisdiction and the judicial system itself are not effective in guaranteeing respect for the victim’s human rights.

23. The IACHR observes that it received the complaint on October 19, 2005, before the remedies under the domestic legal system had been exhausted. The petitioners have maintained throughout the proceedings before the IACHR that there has been unwarranted delay in rendering a final judgment. On the other hand, the State has alleged that the petition is inadmissible due to the lack of exhaustion of domestic remedies.

24. The information and documents presented by the parties show that, with regard to the alleged victim’s death on October 7, 1988, a criminal action was instituted by means of charges presented against two police officers on April 3, 1989 for arbitrary arrest, torture and homicide. The State has alleged that one of the defendants was convicted on September 12, 2007 to twelve years in prison for the death of the alleged victim, but that there was an appeal pending a decision before the 2nd instance tribunal. The State also indicated that the second defendant would have been submitted to a jury trial on December 14, 2006.

25. The petitioners, for their part, presented documents that indicate that the criminal action regarding both defendants is pending appeals before the 2nd instance tribunal. Indeed, according to a document presented by the petitioners on February 20, 2008, the file regarding defendant Onofre Maurício de Vasconcelos was submitted to the 2nd instance tribunal on December 20, 2007 and was still pending a decision. Likewise, the file regarding defendant Fernando Costa de Souza was submitted to the 2nd instance tribunal on April 20, 2007 and was still pending a decision.

26. In conclusion, the Inter-American Commission observes that it is undisputed that there has been no final judgment regarding the crimes supposedly committed against the alleged

victim, notwithstanding the fact that over twenty years have elapsed since the alleged victim's death. The IACHR stresses that the State has not presented detailed information that might justify a delay of more than twenty years in rendering a final judgment. Therefore, the Inter-American Commission decides that the present petition is admissible, in conformity with Article 46.2.c of the American Convention.

2. Deadline for lodging a petition

27. Article 32.2 of the IACHR's Rules of Procedure states:

In cases in which the exceptions to the prior exhaustion requirement are applicable, the petition must be presented within what the Commission deems to be a reasonable period of time. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

28. The Inter-American Commission has already determined supra (para. 26) that an exception to the rule requiring the prior exhaustion of domestic remedies is applicable in this case. Consequently, the IACHR must determine whether or not the petition was lodged within a reasonable time, as required by Article 32.2 of its Rules of Procedure. In this regard, the Commission notes that the petition was lodged with the IACHR on October 19, 2005. It is undisputed that as of that date, the criminal process remained open, although without a final judgment having been issued. Given that these proceedings remain pending on appeal, and that the petitioners are complaining precisely about undue delay and denial of justice, the IACHR concludes that the petition was lodged within a reasonable time.

3. Duplication of proceedings and res judicata

29. Nothing in the record suggests that the subject of this petition is pending in another international proceeding for settlement or that it is substantially the same as another petition previously studied by the Commission or by another international organization, as stipulated in Articles 46.1.c and 47.d, respectively.

4. Characterization of the alleged facts

30. Article 47.b of the Convention provides that the Commission shall declare any petition inadmissible if it "does not state facts that tend to establish a violation of the rights guaranteed by this Convention." The standard for assessing admissibility is different from the one used to decide on the merits of a case, since the former simply requires the Commission to make a prima facie analysis to determine whether the complaint establishes the apparent or potential violation of a right guaranteed by the Declaration or the Convention. In other words, the admissibility examination is a summary analysis that does not imply any prejudgment or preliminary opinion on the merits.

31. Based on the facts denounced by the petitioners with regard to the alleged victim's arbitrary arrest, both in September and in October of 1988; followed by his torture and threat to personal security, during the same period; and ultimately, his execution supposedly perpetrated

by State agents who were members of the Civil Police of Minas Gerais on October 7, 1988, the Inter-American Commission declares that this petition is admissible regarding Articles I (right to life, liberty and personal security), XXV (right of protection from arbitrary arrest) and XXVI (right to due process of law and “not to receive cruel, infamous or unusual punishment”) of the American Declaration. The IACHR determines the admissibility of Articles XXV and XXVI on the basis of the principle of *iura novit curia*, since they were not alleged by the petitioners.

32. Based on the legal remedies attempted within the domestic courts, and the alleged violations of due process and unwarranted delay in rendering a final judgment under those remedies, to the detriment of Augusta Tomázia Inácia and the alleged victim’s next-of-kin, the Commission determines that the facts denounced could tend to establish violations of the rights protected by Articles 8.1 and 25.1 of the American Convention, in relation to Article 1.1 thereof, for events that occurred subsequent to the ratification of this international instrument by Brazil. As regards the facts that allegedly took place prior to September 25, 1992, the IACHR decides that they could tend to establish violations of Articles XVIII (right to a fair trial) and XXVI (right to due process of law) of the American Declaration. The Inter-American Commission determines the admissibility of Article 8.1 of the American Convention and Article XXVI of the American Declaration on the basis of the principle of *iura novit curia*, since they were not alleged by the petitioners. Likewise, on the basis of the principle of *iura novit curia*, the IACHR determines the admissibility of Article 5.1 of the Convention, in relation to Article 1.1 of the same instrument, due to the suffering supposedly caused by the alleged denial of justice, to the detriment of Augusta Tomázia Inácia and the alleged victim’s next-of-kin.

33. Lastly, the petition alleges a violation of Article II (right to equality before the law). Nevertheless, the IACHR observes that the petitioners have not adequately substantiated why or how such provision might have been violated, and it is not apparent from the description of the facts that these could tend to establish a violation of such right. Therefore, with respect to this argument, the Inter-American Commission declares this petition inadmissible, in conformity with Article 47.b of the American Convention.

34. The IACHR thus concludes that the petition is admissible regarding Articles I, XVIII, XXV and XXVI of the American Declaration, as well as Articles 5.1, 8.1 and 25.1 of the American Convention, in relation to Article 1.1 thereof, in accordance with Article 47.b of the same instrument.

V. CONCLUSIONS

35. The Inter-American Commission concludes that it has jurisdiction to examine this petition and that it meets the admissibility requirements set forth in Articles 46 and 47 of the American Convention. Therefore, based on the aforementioned 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 petition admissible with respect to the alleged violations of Articles I and XVIII of the American Declaration, as well as Article 25.1 of the American Convention, in relation to Article 1.1 thereof. By virtue of the principle of *iura novit curia*, it also declares the present petition admissible for a possible violation of Articles XXV and XXVI of the Declaration and Articles 5.1 and 8.1 of the American Convention;
2. To declare this petition inadmissible with regard to the alleged violation of Article II of the American Declaration, in accordance with Article 47.b of the American Convention;
3. To notify the State and the petitioner of this decision and continue with the analysis of the merits of the case;
4. To publish this decision and include it in the Commission's Annual Report to the OAS General Assembly.

Done and signed on the 4th day of the month of August, 2009. (Signed): Luz Patricia Mejía Guerrero, President; Víctor E. Abramovich, First Vice-president; Felipe González, Second Vice-president; Sir Clare K. Roberts, Florentín Meléndez, and Paolo G. Carozza, members of the Commission.