

| | |
|-----------------------|---|
| Institution: | Inter-American Commission on Human Rights |
| File Number(s): | Report No. 94/09; Petition 462-01 |
| Session: | Hundred Thirty-Fifth Regular Session (3 – 8 August 2009) |
| Title/Style of Cause: | Francisco de Assis Ferreira 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. Commissioner Paulo Sergio Pinheiro, a Brazilian national, did not participate in the deliberations or the decision regarding this petition, in accordance with the provisions of Article 17.2.a of the Commission’s Rules of Procedure. |
| Dated: | 7 August 2009 |
| Citation: | de Assis Ferreira v. Brazil, Petition 462-01, Inter-Am. C.H.R., Report No. 94/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009) |
| Represented by: | APPLICANTS: the Sociedade Maranhense de Direitos Humanos and the Centro de Justicia Global |
| Terms of Use: | Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm |

I. SUMMARY

1. On July 19, 2001, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a petition alleging international responsibility on the part of the Federal Republic of Brazil (“the State” or “Brazil”) for failing to prevent and allowing impunity for the murder of Francisco de Assis Ferreira (“the alleged victim”), allegedly committed by the gunmen João Felício de Oliveira and Francisco de Sousa Lobão, who had been hired by Natal José de Sousa and the farmer Jonas da Cruz Rocha. The petition was submitted by the Sociedade Maranhense de Direitos Humanos and the Centro de Justiça Global (jointly “the petitioners”).

2. The petitioners claim that the alleged victim was murdered with two shots from a firearm during an ambush on November 5, 1991. The petitioners argue that the State has still not properly punished those responsible through a final judgment. As a result, they maintain that Brazil has violated Article I (right to life), and Article XVIII (right to justice) of the American Declaration of the Rights and Duties of Man (“the American Declaration” or “the Declaration”); as well as Articles 4 (right to life), 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention on Human Rights (“the American Convention”) and that it has also failed to meet its general obligations as provided in Article 1.1 of the same instrument.

3. The State has not answered the complaint, despite having been duly notified on August 2, 2001.

4. Without prejudging the merits of the case, and in accordance with the provisions of Articles 46 and 47 of the American Convention, the Inter-American Commission decides to declare the petition admissible with respect to the alleged violation of Articles I and XVIII of the American Declaration, as well as Articles 8.1 and 25.1 of the American Convention, in relation to the general obligations provided in Article 1.1 of said international instrument. On the other hand, the Inter-American Commission declares that it is not competent *ratione temporis* to analyze the alleged violation of Article 4 of the American Convention. The Commission also decides to publish this report and include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

5. The complaint was received on July 19, 2001. On August 2, 2001, the IACHR forwarded the relevant sections of the petition to the State and gave it a period of two months to present its observations. To date, the State has not submitted any response regarding this petition.

6. In view of the foregoing, on January 14, 2009 the IACHR reiterated to the State its request for observations and also requested updated information from the petitioners. On February 16, 2009 the petitioners requested a one-month extension to submit updated information to the IACHR. However, as of the date this report is approved, no such information has been received.

III. POSITION OF THE PARTIES

A. The petitioners

7. The petitioners allege that in Brazil the inadequate distribution of rural lands has resulted in serious levels of violence, which have been exacerbated due to the impunity seen in most cases. They maintain that in the state of Maranhão, where the events occurred, there is a specific situation of conflict between the alleged landowners and those who have occupied and cultivated those lands for time immemorial without having been guaranteed any recognition of the related legal rights.

8. According to the petitioners, the murder of the alleged victim occurred within this context. In effect, the petitioners maintain that the villages of Pitoró, Resfriado, and Pescateira, located on the Conceição do Salazar farm, are lands that were allegedly donated to former slaves in 1901 by a woman nicknamed “Doña Blanca.” They also allege that in 1959 Jorge Rocha Tibúrcio, father of Jonas da Cruz Rocha, had improperly registered the title of the lands in question. The petitioners assert that the result of this situation was a rural conflict between the inhabitants of the Conceição do Salazar farm, among them the alleged victim, and its alleged owner, Jonas da Cruz Rocha, who had expelled two families of rural workers from that property in 1989. In addition, that farmer supposedly filed a court action for reinstatement of possession (Ação de Reintegração de Posse) in 1990.

9. According to the petition, the conflict was aggravated when Jonas da Cruz Rocha hired private militia to block the highways leading to the fields of rural workers who lived on the Conceição do Salazar farm. It is also alleged to have produced death threats against Agripino Lima da Rocha, who reported the threats to the Chief of Police of the municipality of Coroatá on October 4, 1991. In addition, on October 24, 1991, civil society organizations sent a communication to the Secretary of Public Security of Maranhão denouncing the tensions in the region and requesting preventive measures to disarm the private militia operating in that area. According to the petitioners, rural workers in the region had allegedly been the victims of violence perpetrated by the militia since September 28, 1991.

10. The petitioners allege that despite the complaints described above, the authorities failed to take any measures whatsoever to prevent violence in the area. As a result of this, according to the petitioners, on November 5, 1991, at about 11:30 am, Francisco de Assis Ferreira and the rural worker Francisco das Chagas Sousa, both inhabitants of the Conceição do Salazar farm, were surprised by an ambush on that farm, during which gunmen murdered the former with two shots from a firearm.[FN2]

[FN2] According to the petitioners, the rural worker Francisco das Chagas Sousa was also wounded in the left arm by one of the shots.

11. The petitioners note that the police investigation regarding the murder of the alleged victim was initiated on November 6, 1991. According to the petitioners, the police authorities did not conduct basic expert tests, such as ballistic tests and crime scene investigation. In addition, the petitioners assert that, after the record of the police investigation was sent to the Public Prosecutor's Office, that office indicated on November 23, 1991 that the examination of the body (autopsy) was invalid because it had been issued by persons not expert in forensic science. Based on all the aforementioned failings, the petitioners emphasize that the police investigation into the murder of the alleged victim lasted until 1994. According to the petitioners, it was not until November 24, 1994, more than four years after the crime, that the Public Prosecutor's Office submitted the respective complaint to the court, charging as the perpetrators of the crime the gunmen João Felício de Oliveira and Francisco de Sousa Lobão, who had allegedly been hired by Natal José de Sousa and the farmer Jonas da Cruz Rocha.

12. The petitioners argue that the court took nearly a year, until November 15, 1995, just to begin the judicial processing of the complaint. At the end of the evidentiary phase, nearly two years later, the judge decided on November 11, 1997 not to present the indictment (Impronúncia Ruling)[FN3] to the jury due to a lack of evidence. However, the petitioners assert that the alleged victim's legal representatives – duly accredited as Assistants to the Prosecution – were not properly informed of this decision. For this reason, on May 30, 2000 they filed an appeal challenging that decision (recurso em sentido estrito) with the Court of Justice of Maranhão. According to the petitioners, up to the date the petition under review was submitted, that appeal has not been heard by the court, and consequently the respective criminal action would not have any final judgment.

[FN3] In crimes prosecuted by a jury trial, following the evidentiary phase, a judge must examine the available evidence in the criminal case to determine whether the probable existence of a felony against life can be established, as well as the respective alleged authorship. The judge then prepares a Pronúncia ruling, asserting the existence of evidence indicating the commission and authorship of the crime and determines the legal provision the accused is understood to have violated. If these elements are not present, a ruling of Impronúncia is issued. For further information about Pronúncia and Impronúncia, see Articles 413 and 414 (et seq.) of the Brazilian Criminal Procedure Code (as amended in 2008 by Law No. 11.689).

13. Thus, the petitioners maintain that there is an unwarranted delay in the decision regarding domestic remedies, in that the crime that occurred in 1991 continues to go with impunity, the perpetrators not having been duly punished through a final judgment. They understand that the exception provided in Article 46.2.c of the American Convention should apply to this petition.

B. The State

14. The State did not respond to the complaint despite having been duly notified on August 2, 2001 in a communication that gave it a two-month period to submit its observations regarding the petition. Moreover, on January 14, 2009 the IACHR reiterated to the State its request for observations; however, as of the date this report is approved, no such information has been received.

IV. ANALYSIS OF ADMISSIBILITY

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

15. The petitioners have standing to file complaints with the Commission pursuant to Article 44 of the American Convention. The petition indicates as alleged victim Francisco de Assis Ferreira, with respect to whom the Brazilian state agreed to respect and guarantee the rights enshrined in that instrument. With respect to the State, as a member of the Organization of American States,[FN4] Brazil has the obligations and duties imposed on it by the American Declaration and the OAS Charter. Brazil is also a State Party to the American Convention, which it ratified on September 25, 1992. Therefore, the Inter-American Commission is competent *ratione personae* to hear the petition. The IACHR is also competent *ratione loci* to hear the petition in that it alleges violations of human rights protected under the American Declaration and the American Convention that would have taken place within the jurisdiction of Brazil, a State Party to these instruments.

[FN4] Brazil is a founding member of the OAS; it signed the OAS Charter in 1948 and deposited its ratifying instrument in 1950.

16. In accordance with Articles 1.2.b and 20 of its Statute, the IACHR is competent *ratione materiae* to examine possible violations of human rights protected by the American Declaration and the American Convention. The Inter-American Commission observes that the events described in the petition began in 1991, when the State had not yet ratified the American Convention. Nonetheless, the IACHR is competent *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”) has stated that:

Moreover, 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.[FN5]

[FN5] 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, 1988, 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.

17. In addition, the Inter-American Commission is competent *ratione temporis* with respect to the allegations of violations of rights protected by the American Convention, in relation to the events that occurred after its ratification by the State. The IACHR observes in this regard that the petitioners have claimed an alleged violation of Article 4 of the American Convention even though the death of the alleged victim occurred on November 5, 1991, prior to the ratification of that instrument by the State of Brazil. As indicated above, the IACHR is not competent *ratione temporis* to apply the American Convention to events that occurred prior to September 25, 1992;[FN6] therefore, such allegations will be analyzed under Article I of the American Declaration.

[FN6] See I/A Court H.R. Nogueira de Carvalho et al. Case v. Brazil. Preliminary Objections and Merits. Judgment of November 28, 2006. Series C, No. 161, para. 44.

B. Other requirements for admissibility of the petition

1. Exhaustion of domestic remedies

18. In accordance with Article 46.1 of the American Convention, in order for a petition to be admitted by the IACHR, domestic remedies must have been exhausted in accordance with generally recognized principles of international law. The second paragraph establishes that these provisions shall not apply when domestic law does not provide due legal process for the protection of the right in question; if the alleged victim had no access to the domestic remedies; or if there was unwarranted delay in the decision regarding those remedies.

19. The State did not respond to the petition, despite having been duly notified, and thus did not file an objection based on failure to exhaust domestic remedies. In cases like this one, referring to criminal violations subject to public prosecution, the IACHR considers that the suitable remedy is normally criminal investigation and trial. The Inter-American Commission must consider that the death of the alleged victim occurred on November 5, 1991, i.e., nearly 18 years ago. The IACHR case file contains no indication that the criminal action regarding the death of the alleged victim has concluded or produced a final judgment. In this regard, the Inter-American Court has maintained that the rule of prior exhaustion must not “lead to a halt or delay that would render international action in support of the defenseless victim ineffective.”[FN7]

[FN7] I/A Court H.R., Velásquez Rodríguez Case. Preliminary Objections. Judgment of June 26, 1987. Series C, No. 1, para. 93.

20. In effect, the petitioners allege that they filed an appeal (supra para. 12) in order to require the court to review the actions that had left the murder unpunished, but did not receive any decision.

21. Therefore, considering that the prior exhaustion rule cannot be interpreted so as to impede access to the inter-American system for an extended time and without warrant, the Inter-American Commission applies to this petition the exception provided under Article 46.2.c of the American Convention.

22. Finally, it remains only to indicate that invoking the exceptions to the rule of exhausting domestic remedies is closely linked to the determination of possible violations of certain rights enshrined in the American Convention, such as the guarantees on access to justice. Nonetheless, Article 46.2 of the American Convention, based on its nature and purpose, is a rule the content of which is autonomous vis-à-vis the substantive rules of that international instrument. As a result, the determination as to whether the exceptions to the rule regarding the exhaustion of domestic remedies provided therein are applicable to the instant case must be made prior to and separate from the analysis of the merits of the case, in that it depends on a parameter distinct from that used to determine the violation of Article XVIII of the American Declaration or Articles 8 and 25 of the American Convention.[FN8] Thus, the Inter-American Commission wishes to make it clear that the causes and effects that have resulted in the unwarranted delay in the domestic remedies in the instant case will be analyzed, as relevant, in the report it adopts on the merits of the case, in order to determine whether they actually represent violations of the American Declaration and the American Convention.

[FN8] IACHR, Report No. 72/08, Petition 1342-04, Admissibility, Márcio Lapoente da Silveira (Brazil), October 16, 2008, para. 75; Report No. 23/07, Petition 435-2006, Admissibility, Eduardo José Landaeta Mejía et al. (Venezuela), March 9, 2007, para. 47; Report No. 40/07, Petition 665-05, Admissibility, Alan Felipe da Silva, Leonardo Santos da Silva, Rodrigo da Guia Martins Figueiro Tavares et al. (Brazil), July 23, 2007, para. 55

2. Deadline for lodging a petition

23. Article 46.1.b of the Convention requires that petitions 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. For its part, Article 32.2 of the Commission's Rules of Procedures provides that:

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

24. Under the circumstances of the instant case, the IACHR ruled above regarding the applicability to these events of an exception to the rule of prior exhaustion of domestic remedies, so it must determine if the petition was presented within a reasonable period of time. The petition was submitted on July 19, 2001. There has been no question as to whether at this point the criminal proceeding continues, although there has been no final judgment. Given that the petitioners claim precisely an alleged unwarranted delay and a denial of justice, the IACHR concludes that the petition was submitted within a reasonable period of time and considers the requirement of Article 32.2 of the IACHR Rules of Procedures to have been met.

3. Duplication of proceedings and res judicata

25. The file does not indicate that the subject of the petition is pending in another international proceeding for settlement or that it reproduces a petition already examined by this or any other international body. Thus, it is appropriate to consider the requirements established in Articles 46.1.c and 47.d of the American Convention to have been met.

4. Characterization of the alleged facts

26. The Inter-American Commission must determine whether the facts described in the petition represent violations of the rights enshrined in the American Convention, in accordance with the requirements of Article 47.b, or whether the petition, in accordance with Article 47.c, must be rejected as "manifestly groundless" or "obviously out of order." At this stage in the proceeding, the IACHR must perform a prima facie evaluation, not in order to establish alleged violations of the American Convention and/or of the American Declaration, but rather to examine whether the petition claims facts that could potentially establish violations of rights guaranteed by the American Convention and/or by the American Declaration. This examination does not entail any prejudgment or prior opinion regarding the merits of the matter.[FN9]

[FN9] IACHR, Report No. 21/04, Petition 12.190, Admissibility, José Luís Tapia González et al. (Chile), February 24, 2004, para. 33.

27. In this respect, the Inter-American Commission observes that if the petitioners' allegations regarding the alleged failure to prevent the death of the alleged victim despite repeated complaints regarding the imminence of rural conflicts between the inhabitants of the Conceição do Salazar farm, among them the alleged victim, and its alleged owner, Jonas da Cruz Rocha and the private militia hired by him, as well as the resulting impunity were proven, this could represent violations of Article I of the American Declaration. In addition, were the alleged facts proven with respect to the lack of due diligence in the criminal investigation and proceeding – particularly with regard to the right to obtain decisions from the competent authorities within a reasonable period of time and with the proper judicial guarantees and protection – this could represent violations of Article XVIII of the American Declaration, as well as Articles 8.1 and 25.1 of the American Convention, as they relate to the obligation to respect the rights established under Article 1.1 of the same international instrument. With respect to these articles, therefore, the IACHR decides that the instant petition is admissible, in conformity with Article 47.b of the American Convention.

V. CONCLUSIONS

28. The Inter-American Commission concludes that it is competent to hear the merits of this case and that the petition is admissible in accordance with Articles 46 and 47 of the American Convention. Based on the factual and legal arguments presented above 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 rights protected in Articles I and XVIII of the American Declaration, with regard to events that occurred prior to September 25, 1992;
2. To declare this petition admissible with respect to the alleged violations of rights protected in Articles 8.1 and 25.1 of the American Convention, in relation to the general obligation enshrined in Article 1.1 of that instrument, with regard to events that occurred after September 25, 1992;
3. To declare inadmissible the allegation regarding the alleged violation of Article 4 of the American Convention, in that the IACHR is not competent *ratione temporis* to examine the death of the alleged victim in light of that treaty;
4. To notify the parties of this decision;
5. To continue with the analysis of the merits of the case; and
6. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Buenos Aires, Argentina, on the 7th day of the month of September 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.