

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 118/09; Petition 397-04
Session: Hundred Thirty-Seventh Regular Session (28 October – 13 November 2009)
Title/Style of Cause: Nelson Aparecido Trindade v. Brazil
Doc. Type: Decision
Decided by: First Vice President: Victor Abramovich;
Second Vice President: Felipe Gonzalez;
Commissioners: Sir Clare K. Roberts, 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: 12 November 2009
Citation: Aparecido Trindade v. Brazil, Petition 397-04, Inter-Am. C.H.R., Report No. 118/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by: APPLICANT: Helio Bicudo
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I. SUMMARY

1. On April 27, 2004, the Inter-American Commission on Human Rights (hereinafter the “IACHR” or “Inter-American Commission”) received a petition lodged by Mr. Hélio Bicudo (“the petitioner”), as the President of both the Inter-American Foundation for the Defense of Human Rights and the Human Rights Commission of the São Paulo Municipality, alleging the international responsibility of the Federative Republic of Brazil (“Brazil” or “the State”) for the death of Nelson Aparecido Trindade (“the alleged victim”), which took place on March 14, 1999 inside a cell of the 6th Police District of São Paulo. The petitioner states that Brazil is internationally responsible for the violation of Articles 1 (obligation to respect rights), 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), and 8 (right to a fair trial) of the American Convention on Human Rights (“the American Convention”).

2. The State, for its part, alleges that the petition does not meet the admissibility requirements set forth in Articles 46.1.a and 46.1.b of the American Convention. In that regard, the State asserts that the judicial decision to archive the police investigation does not exhaust the remedies under domestic law, and additionally, that the family of the alleged victim did not pursue a civil action for compensatory damages. Moreover, the State stresses that the petition was not lodged within a period of six months from the date on which the party alleging violation was notified of the final judgment. Indeed, the State observes that the petitioner alleges that domestic remedies were exhausted by means of the judicial decision to archive the police investigation, which was issued on December 6, 2002, that is to say, more than 16 months prior to the presentation of the petition.

3. In this report, the IACHR examines the available information in light of the requirements of the American Convention and concludes that the petition is inadmissible because it was not lodged within six months from the date on which the party alleging violation of his rights was notified of the final judgment, as required under Article 46.1.b of the American Convention. The Inter-American Commission decides to notify the State and the petitioners of this report, to publish this decision and include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

4. The IACHR received the petition on April 27, 2004. On January 11, 2006, the Inter-American Commission forwarded the relevant parts of the communication to the State, and granted it a period of two months to submit its response. On March 14, 2006, the State submitted its response, the relevant sections of which were sent to the petitioner on May 4, 2006.

5. The petitioner submitted additional information on July 12, 2006. This communication was duly forwarded to the State. On August 28, 2006, the State asked for a fifteen-day extension for submitting additional observations; however, no supplementary information has been received from the State to this date.

III. POSITIONS OF THE PARTIES

A. The Petitioner

6. The petitioner asserts that Brazil is responsible for human rights violations in relation to the death of the alleged victim on March 14, 1999, because he was under State custody in a cell at the 6th Police District of São Paulo. Therefore, the petitioner argues that State agents, in this case civil police of São Paulo, effectively had the duty to ensure the alleged victim's personal integrity and life.

7. The petitioner observes that the alleged victim was 39 years old at the time of his death, and that he had been arrested under the suspicion of having stolen a briefcase containing a substantial amount of money from the company for which he had been working for seven years. According to the petitioner, the alleged victim was arrested at 2:41 a.m. on March 14, 1999, and then died in jail by hanging that same night. The petitioner notes that the police officers in charge of the 6th Police District indicated that the alleged victim committed suicide using a leather belt, but the authorities failed to explain how he had access to that object in the first place.

8. The petitioner stresses that the police investigation conducted into the matter by the civil police did not clarify how the alleged victim had a leather belt in his possession inside the cell, nor did it explain the bruises that the alleged victim supposedly had on his forehead and shoulders, according to witnesses who saw the corpse during his burial. The petitioner states that such unexplained circumstances surrounding the alleged victim's death led his family to present a complaint before the Human Rights Commission of the São Paulo Municipality, which was under his Presidency at the time. From then on, the petitioner followed-up the police investigation.

9. The petitioner alleges that the authorities in charge of the investigation were not impartial. According to the petitioner, the police investigation regarding the alleged victim's death was archived due to the conclusion that the death was a suicide by a judicial decision issued on December 6, 2002, following the conclusions of both the police authority and the Prosecutor's Office (Ministério Público). According to the petitioner, this decision effectively exhausted domestic remedies.

10. The petitioner acknowledges that the decision to archive the police investigation was issued more than sixteen months prior to the presentation of this petition. In this regard, however, the petitioner argues that given the lack of official notification of decisions to archive a police investigation in Brazil, the family of the alleged victim only found out about it in November of 2003, when informed thereof by the Human Rights Commission of the São Paulo Municipality.

11. Based on the above considerations, the petitioner asks that the Inter-American Commission declare this petition admissible with respect to alleged violations of Articles 1.1, 4, 5, 7 and 8 of the American Convention.

B. The State

12. The State argues that the petition is inadmissible in accordance with the provisions of Articles 46.1.a and 46.1.b of the American Convention. According to the State, on March 14, 1999 at 2:41 a.m. the alleged victim was arrested in flagrante delicto for stealing a package with five thousand reais from the company Prosegur Brasil S/A for which he worked. The State informs that the alleged victim was then brought to the police station by the head of security of the aforementioned company along with three other witnesses. According to the files of the police investigation, the Chief of Police Cíntia Tucunduva Gomes took the statements of all four witnesses, as well as of the alleged victim, who confessed to having committed the crime due to financial hardship.

13. The State adds that since the alleged victim was wearing the company's uniform at the time of his arrest, a bag with his personal clothing items was brought to him from his locker and he was placed in cell number 6 of the 6th Police District by civil police officer Maria Dalva Ferreira Carneiro, where he was held by himself. According to the State, a few hours later at 7:56 a.m. the same police officer went to check on the detainee and verified that he had hung himself from the bars in the cell bathroom.

14. The State explains that a police investigation was immediately initiated by the 4th Police District (Division of Internal Affairs of the Civil Police of São Paulo), and it concluded that the alleged victim's death was a suicide, particularly taking into account that the forensic examination of cell number 6 did not indicate any evidence of a struggle and that the autopsy and the photographs of the cadaver indicated death by mechanical asphyxia due to hanging with no evidence of mistreatment or other physical wounds.

15. With respect to the admissibility of this petition, firstly the State alleges that if the Inter-American Commission agrees with the petitioner that the domestic remedies were exhausted by

the decision to archive the police investigation of December 6, 2002, the petition was not lodged within a period of six months from that date, but rather it was presented sixteen months and twenty-one days after said judgment. With regard to the claim that the alleged victim's widow only found out about the decision to archive the police investigation in November of 2003, the State maintains that she had hired a private attorney to accompany the police investigation. Therefore, the State submits that she cannot claim unawareness, particularly when no proof of such lack of knowledge is presented. In addition to that, the State adds that there is a document in the files of the police investigation signed by the petitioner as the president of the Human Rights Commission of the São Paulo Municipality and dated July 7, 2003, which mentions the archiving of the police investigation. In view of the foregoing, the State asserts that the petitioner himself was reportedly aware of the fact that the police investigation had been archived at least as early as July 2003, that is to say, more than nine months before the petition was presented before the IACHR.

16. Notwithstanding the foregoing, the State also argues that it does not consider that the decision to archive a police investigation exhausts remedies under domestic law. Indeed, the State asserts that such decision has a *rebus sic stantibus* nature, and does not constitute *res judicata*, because if the circumstances change and new evidence is presented to the authorities, the police investigation may be reopened. Moreover, the State adds that the family of the alleged victim did not pursue a civil action for compensatory damages either.

17. In conclusion, the State emphasizes that the death in question was duly investigated, with the active participation of the Office of the Public Prosecutor, and ultimately resolved by a competent judicial authority by a decision dated December 6, 2002. Therefore, the State asks that the Inter-American Commission declare this petition inadmissible with respect to all alleged violations of the American Convention.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

18. The petitioner is authorized by Article 44 of the American Convention to lodge complaints with the Inter-American Commission. The petition points to Nelson Aparecido Trindade as the alleged victim, an individual whose rights as embodied in the American Convention the State undertook to respect and ensure. As regards the State, the IACHR notes that Brazil is a State Party to the American Convention, having ratified it on September 25, 1992. Therefore, the Inter-American Commission is competent *ratione personae* to examine the petition.

19. The IACHR is competent *ratione materiae* because the petitioner alleges violations of rights protected by the American Convention. It is also competent *ratione temporis* because the obligation to respect and ensure the rights protected by the American Convention was already in effect for the State on March 14, 1999, when the events alleged in the petition took place. Lastly, the Inter-American Commission is competent *ratione loci* because the alleged violations of rights occurred within the territory of a State Party to the American Convention.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

20. Article 46.1.a of the American Convention stipulates that the admissibility of a petition is subject to the requirement “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.” This requirement ensures that the State has the opportunity to resolve disputes within its own legal system. The prior exhaustion requirement applies when there are remedies that are available, adequate and effective for remedying the alleged violation; otherwise, Article 46.2 specifies the exceptions under which the requirement does not apply.[FN2]

[FN2] See IACHR. Admissibility report No. 55/06, Case 12.380, Members of José Alvear Restrepo Lawyers’ Collective, Colombia, July 20, 2006, para. 35.

21. It is an undisputed fact in the instant case that the court decision to archive the police investigation was issued on December 6, 2002. However, the parties disagree as to whether that decision effectively exhausted the remedies under domestic law, in conformity with Article 46.1.a of the American Convention.

22. Regarding this matter, the IACHR has consistently held that in Brazil a court decision to archive a police investigation is final, since it is not subject to any legal appeal.[FN3] In fact, in accordance with Brazilian law, specifically the Code of Criminal Procedure, there is no appeal against a court ruling to archive a police investigation.[FN4] Therefore, once this judgment has been handed down, for the purposes of admissibility, domestic remedies have been exhausted.

[FN3] IACHR. Report No. 37/02, Admissibility, Case 12.001, Simone André Diniz, Brazil, October 9, 2002, paras. 25-27; Report No. 80/05, Case 12.397, Inadmissibility, Hélio Bicudo, Brazil, October 24, 2005, para. 27; and Report No. 41/07, Petition 998-05, Admissibility, Lazinho Brambilla da Silva, Brazil, July 23, 2007, para. 57.

[FN4] IACHR. Report No. 80/05, Case 12.397, Inadmissibility, Hélio Bicudo, Brazil, October 24, 2005, para. 28; and Report No. 41/07, Petition 998-05, Admissibility, Lazinho Brambilla da Silva, Brazil, July 23, 2007, para. 57.

23. The only possibility provided for in Brazilian criminal law for the reopening of an archived police investigation is the discovery of new evidence related to the case, pursuant to Article 18 of the Code of Criminal Procedure[FN5] and to Series (Súmula) 524 of the Supreme Federal Court.[FN6] In other words, as correctly pointed out by the State, the decision to archive a police investigation does not entail *res judicata*, since it is a decision that might be subject to reconsideration if new evidence is discovered. Nevertheless, the IACHR considers that such decision entails the exhaustion of domestic remedies, since no appeal against it is possible.[FN7]

[FN5] This Article provides that: “After a judicial authority, based on the lack of grounds for the complaint, has ordered the investigation archived, the police authority may initiate a new investigation should new evidence be discovered.”

[FN6] Súmula 524 dissipates any possible ambiguity in the Code of Criminal Procedure, by establishing that: “Once the police investigation is archived, pursuant to a court order handed down at the request of the public prosecutor, a new criminal action may not be undertaken without the discovery of new evidence.”

[FN7] IACHR. Report No. 80/05, Case 12.397, Inadmissibility, Hélio Bicudo, Brazil, October 24, 2005, para. 28; and Report No. 41/07, Petition 998-05, Admissibility, Lazineo Brambilla da Silva, Brazil, July 23, 2007, para. 57.

24. Based on the foregoing arguments, the Inter-American Commission concludes that domestic remedies were exhausted on December 6, 2002, when the court decision to archive the police investigation was handed down, and thus the requirement established by Article 46.1.a of the American Convention has been met.

2. Deadline for lodging a petition

25. Under Article 46.1.b of the American Convention, the petition must 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.” The IACHR has determined that the six-month time period provided for in Article 46.1.b of the American Convention “has a twofold purpose: to ensure legal certainty and to provide the person concerned with sufficient time to consider his position.”[FN8]

[FN8] IACHR, Report No. 11/96, Case 11.230, Admissibility, Francisco Martorell, Chile, May 3, 1996, para. 33; and Report No. 17/03, Petition 11.823, Inadmissibility, María Estela Acosta Hernández et al. (Explosions in the Reforma District of Guadalajara), Mexico, February 20, 2003, para. 32.

26. It is an undisputed fact in the instant case that the petition was presented in April of 2004. However, the parties differ about the date from which the period of six months referred to in Article 46.1.b of the American Convention should be counted. The petitioner states that the widow of the alleged victim only learned of the decision when notified thereof by the Human Rights Commission of the São Paulo Municipality, in November of 2003; therefore, the petition was lodged within a period of six months. On the other hand, the State argues that the petitioner himself, as President of the Human Rights Commission of the São Paulo Municipality, submitted a request dated July 7, 2003, in which he referred to being aware that the police investigation regarding the death of the alleged victim had been archived, and asked for copies of the file. The State has presented this document, which is part of the files of the police investigation in question, and therefore requests that the Inter-American Commission consider that the party alleging violations in this petition had already learned of the decision to archive the police

investigation at least as early as July 7, 2003; that is to say, more than nine months prior to lodging the petition.

27. In the instant case, the IACHR decides, following its own precedents on this issue, that “the six-month time period must be counted from the date of notification of the judgment that exhausted domestic remedies; in other words, the date on which the petitioner[] learned of it.”[FN9] In this regard, the Inter-American Commission cannot overlook that the final judgment was delivered on December 6, 2002, and that the case file reveals that the petitioner learned of it at least as early as July 7, 2003, more than nine months prior to lodging the petition. The Inter-American Commission also notes that the widow of the alleged victim reportedly was represented by counsel during the investigation. The document presented by the State with its response, as part of the files of the police investigation,[FN10] mentions that “some of the complaints that reach [this Human Rights] Commission [of the São Paulo Municipality] refer to cases that have already been archived [...]”, and specifically refers to the decision to archive the police investigation related to the alleged victim’s death. The Inter-American Commission observes that such document is signed by the petitioner.

[FN9] IACHR, Report No. 17/03, Petition 11.823, Inadmissibility, María Estela Acosta Hernández et al. (Explosions in the Reforma District of Guadalajara), Mexico, para. 32.

[FN10] State’s response of March 14, 2006. Attachment – Police Investigation, at 275 and 276.

28. In view of the foregoing, and mindful that this petition was received at the headquarters of the Inter-American Commission on April 27, 2004, the IACHR concludes that the six-month period counted from when the petitioner learned of the final judgment in the domestic courts had already elapsed. Therefore, the petition does not satisfy the requirement stipulated in Article 46.1.b of the American Convention.

V. CONCLUSION

29. In this report, the IACHR decides that the remedies under domestic law were exhausted, but holds that the petition was lodged after the deadline stipulated by Article 46.1.b of the American Convention. Once the Inter-American Commission finds that the case is inadmissible for failure to comply with a Convention requirement, it need not make any finding on the other prerequisites. Based on the de facto and de jure considerations established above, and in conformity with Article 47.a of the American Convention

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition inadmissible.
2. To notify the State and the petitioner of this decision.
3. To publish this decision and include it in its annual report to the OAS General Assembly.

Done and signed in the city of Washington, D.C. on the 12th day of the month of November 2009. (Signed): Víctor E. Abramovich, First Vice-president; Felipe González, Second Vice-president; Sir Clare K. Roberts, and Paolo G. Carozza, members of the Commission.