

REPORT Nº 45/10
DECISION TO ARCHIVE
PETITION 1401-06
BRAZIL
March 17, 2010

ALLEGED VICTIM: Lawrence Dutra da Costa

PETITIONER: Marcus Vinícius Lima da Rocha

ALLEGED VIOLATIONS: The petitioner does not specify the violations being alleged.

DATE PROCESSING BEGAN: July 12, 2007

I. POSITION OF THE PETITIONER

1. The petitioner's complaint concerns the court's delay in processing a civil suit brought against the municipality of Manaus, Amazonas state, seeking compensatory damages for the physical and mental after-effects caused to his son by alleged omissions and negligence in the medical treatment administered to him by a staff member of a State outpatient clinic.

2. The petitioner reports that on August 26, 1995, he took his 5-year-old son to a health clinic because the boy presented symptoms of stomach poisoning, vomiting and difficulty breathing. According to the petitioner, after examining the boy, the staff member who examined him said that his condition was serious and that the clinic did not have the equipment needed to treat him properly. He therefore recommended that the petitioner take him to a hospital. One hour later, the petitioner arrived at a private hospital, where his son was hospitalized in the Intensive Care Unit due to cardio-respiratory arrest. The petition states that the child was in a coma for approximately 15 hours and that he sustained a cerebral vascular accident that left him a quadriplegic, with difficulty speaking. It also asserts that to this date the boy has needed various surgeries and specialized medical care.

3. In 1999, four years after these events, the petitioner filed a civil suit holding the State liable for material and moral damages, given the high cost of the necessary medical treatment. According to the petition, despite the fact that a precautionary measure was granted in August 2003 in which the State was ordered to pay 3 minimum wages to his son until he reached the age of 60 and that a ruling found the State liable and ordered it to pay 400 minimum wages for moral damages on June 19, 2006, that ruling allegedly never became final because appeals were pending.

4. The petitioner's contention, therefore, was that the remedies under domestic law were ineffective and there had been an unwarranted delay in acting on the alleged suit.

II. POSITION OF THE STATE

5. The IACHR received the Brazilian State's response on September 12, 2007. The State argued that the petition did not satisfy the rule requiring prior exhaustion of the remedies under domestic law. According to the State, as part of a civil suit for compensatory damages, Lawrence Dutra da Costa had been receiving three minimum salaries on a monthly basis since 2003 by virtue of a court-ordered precautionary measure. It added that a lower court ruling was issued on June 19, 2006; and a superior court ruling was issued on February 27, 2007. Both ordered the State to pay 400 minimum wages for moral damages given the State's objective civil liability under Brazilian law. The State asserts that there was no unwarranted delay in the proceedings on the civil suit and that the only appeal still pending was a special appeal filed with the Supreme Court.

6. In conclusion, the State observed that there was no irregularity whatsoever in the processing of the civil suit, which is why the petition would be inadmissible.

III. PROCESSING WITH THE COMMISSION

7. The Inter-American Commission received the petition on February 23, 2007. On April 23, 2007, the IACHR requested additional information from the petitioner. The latter provided the requested additional information via communications received on June 4, 2007, July 2, 2007, July 5, 2007, July 9, 2007 and July 12, 2007.

8. By note dated July 12, 2007, the IACHR advised the Brazilian State of the complaint and gave it two months in which to provide whatever information the State deemed relevant. The State answered the petition by a note received on September 12, 2007. The Inter-American Commission received additional information from each of the parties and duly forwarded that information to the other party.¹

IV. GROUNDS FOR THE DECISION TO CLOSE THE RECORD

11. Article 48(1)(b) of the American Convention on Human Rights and Article 42 of the Rules of Procedure of the Inter-American Commission on Human Rights provide that when processing a petition, after the information has been received or after the period established has elapsed and the information has not been received, the Commission shall ascertain whether the grounds for the petition or communication still exist. If they do not, the Commission shall order the record to be closed.

12. In his communication, received by the IACHR on February 6, 2008, the petitioner stated that on December 11, 2007, the Supreme Court had decided the special appeal in his favor and that as a result, the case in the domestic courts had ended. On February 12, 2009, the petitioner stated that “the situation was settled at the domestic level, as the court confirmed the ruling ordering the State to pay my son 3 minimum wages each month until he reached the age of 60, as well as R\$ 177,935.43 (one hundred seventy-seven thousand nine hundred thirty-five *reais* and forty-three cents) as compensation for moral damages”; he closed by thanking the Inter-American Commission for the role it had played. On August 4, 2009, the petitioner reiterated that the case had already been settled in the domestic courts with a ruling in his favor.

13. Similarly, according to the information provided by the State on January 23, 2008, the Supreme Court had denied the special appeal filed by the municipality of Manaus. The ruling, delivered on December 11, 2007, had allegedly ended the case in the domestic courts. Furthermore, by a communication received on December 9, 2008, the State reported that “the decision ordered compensatory damages of three minimum wages to be paid to Lawrence Dutra da Costa until he reaches age 60, and the sum of R\$ 177,935.43 (one hundred seventy-seven thousand nine hundred thirty-five) *reais* as compensation for moral damages.” Finally, in the State’s communication, received on June 10, 2009, the State requested that the record on this petition be closed, reasoning that since the matter had been settled in the domestic courts, the grounds for the petition no longer exist.

14. The Commission therefore decides to close the record on the present petition, pursuant to Article 48(1)(b) of the American Convention and Article 42 of the Rules of Procedure of the Inter-American Commission, as the grounds for the original petition no longer exist.

Done and signed in the city of Washington, D.C., on the 17 day of the month of March, 2010.
(Signed: Felipe González, President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de

¹ The petitioner sent communications on August 17, 2007, August 29, 2007, October 11, 2007, October 17, 2007, October 25, 2007, November 8, 2007, November 28, 2007, December 20, 2007, December 24, 2007, December 27, 2007, January 2, 2008, January 22, 2008, February 6, 2008, February 21, 2008, March 13, 2008, April 4, 2008, May 16, 2008, July 14, 2008, August 11, 2008, October 15, 2008, October 17, 2008, February 12, 2009 and August 4, 2009. The State sent communications on January 23, 2008, April 15, 2008, May 22, 2008, September 22, 2008, December 9, 2008, December 29, 2008 and June 10, 2009. Those communications were duly forwarded to the petitioner.

Jesús Orozco Henríquez, and Rodrigo Escobar Gil, members of the Commission).