

REPORT No. 131/10
PETITION 162-03
DECISION TO ARCHIVE
BRAZIL¹
October 23, 2010

ALLEGED VICTIMS: Celso Daniel

PETITIONERS: Bruno José Daniel Filho

INITIATION OF PROCESSING: January 20, 2006

ALLEGED VIOLATIONS: The petitioner does not allege any specific violations

I. POSITION OF THE PARTIES

A. Position Of The Petitioner

1. On March 5, 2003, the Inter-American Commission on Human Rights (the “Inter-American Commission” or the “IACHR”) received a communication requesting the intervention of the IACHR in order to ensure that the investigations into the death of Celso Daniel (the “alleged victim”), former Mayor of Santo André city, São Paulo, were conducted by the Federal Police instead of the Civil Police.

2. According to the petitioner, the ineffective investigation carried out by the Civil Police presented a series of irregularities and contradictions in relation to the kidnapping, detention and the circumstances and place of death of the alleged victim, which occurred between January 9 and 10, 2002. According to the petitioner, those irregularities and contradictions were demonstrated when the Office of the Public Prosecutor started reviewing the investigation carried out by the Civil Police. He further submits that the alleged ineffectiveness of the police investigation harmed the subsequent judicial process, since a substantial amount of evidence that might have been crucial in determining the circumstances of the death was lost. The petitioner indicates that, were it not for the dedicated work of the Office of the Public Prosecutor, it would have been impossible to identify the intellectual author of the crime. This person was arrested in December of 2003 and charged with the crime, along with other defendants. The petitioner observes, however, that the intellectual author was later freed due to a decision of the Supreme Court on a writ of *habeas corpus*, in July of 2004, due his allegedly prolonged pre-trial detention at that point. The petitioner observes that the investigation into the murder of the alleged victim is complex and has been made more difficult due to the initially poor investigation conducted by the Civil Police, and also by the fact that, since the crime, eight people linked to the investigation (witnesses and others) had also been murdered.

B. Position of the State

3. In its response of May 3, 2006, the State asserted that the petition is inadmissible due to lack of exhaustion of domestic remedies, in conformity with Article 46.1.a of the American Convention. In addition to that, The State noted that the petitioner had also failed to comply with the requirements in Article 28 of the IACHR’s Rules of Procedure.

4. With regard to the investigation into the death of the alleged victim, the State observed that his body was found on January 20, 2002. According to the State, a police investigation was immediately initiated. The State asserted that, On April 4, 2002, the Office of the Public Prosecutor charged six people with the alleged victim’s death and with other related crimes. Moreover, according to

¹ In keeping with Article 17.2.a of the Rules of Procedure of the IACHR, Commission member Paulo Sérgio Pinheiro, a Brazilian national, did not participate in the deliberations or in the voting on this report.

the State, the Office of the Public Prosecutor carried out its own complementary investigation apart from that of the Civil Police, which resulted in the amendment of the indictment on November 5, 2003, in order to charge the intellectual author of the crime and another material author. Brazil noted that the alleged intellectual author was the victim's friend who was driving the vehicle at the time of the kidnapping, and had served as the main eyewitness during the initial investigation.

5. With regard to the criminal process into the alleged victim's death, the State argued that it is a complex procedure due to the number of defendants --eight in total-- and the circumstances of the crime. Brazil indicated that, despite this, the criminal action was duly handled by the judicial authorities and that the petitioner has acknowledged the complexity of these investigations.

II. PROCEEDINGS BEFORE THE IACHR

7. The Inter-American Commission received the petition on March 5, 2003. After multiple requests for additional information and the respective communications from the petitioner, on January 20, 2006 the IACHR notified the State of the petition, giving it two months to provide the information it deemed appropriate. The State presented its response to the petition on May 3, 2006. The IACHR duly transmitted this communication to the petitioner for his observations, on May 10, 2006.

8. On July 18, 2006, the petitioner asked for a one-month extension to present observations regarding the State's response, which was granted by the Inter-American Commission on August 1, 2006. Because the petitioner did not respond, on January 14, 2009, the Inter-American Commission reiterated its previous request for information. On that same date, the IACHR also requested the petitioner to submit up-to-date information regarding the alleged facts, specifically on the admissibility requirements of the petition, and set a one month time period.

9. Since the petitioner did not present observations regarding the State's response and the period established had elapsed, on September 15, 2009, the Inter-American Commission reiterated its previous request for information and additionally inquired whether the grounds for the petition still existed or subsisted. On that same date, the IACHR also advised the petitioner that it might order the record to be closed, in conformity with Article 48.1.b of the American Convention. To date, the petitioner has not responded to the IACHR's request nor has he submitted more detailed and up-to-date information regarding the facts referred to in the petition.

III. GROUNDS FOR THE DECISION TO ARCHIVE

10. Articles 48.1.b of the American Convention and 42 of the Rules of Procedure of the IACHR establish that prior to determining admissibility the Inter-American Commission shall ascertain whether the grounds for the petition still exist or subsist; and that if it considers that they do not, it shall order the case to be archived. In addition, Article 42.1.b of the Rules establishes that the IACHR may also decide to archive a case when the information necessary for the adoption of a decision is unavailable.

11. To date the Inter-American Commission still lacks the necessary elements for the adoption of a decision on the admissibility of this petition, despite its reiterated requests for information submitted to the petitioner. Specifically, the IACHR does not have information about the exhaustion of domestic remedies and the other admissibility requirements; neither does it have information as to whether the grounds for the petition still exist.

12. As a result, the IACHR decides to archive the file of the present petition, pursuant to Article 48.1.b of the American Convention, as well as Article 42.1.b of the Rules of Procedure.

Done and signed in the city of Washington, D.C., on the 23rd day of the month of October, 2010. (Signed): Felipe González, President; Dinah Shelton, Second Vice-President; Luz Patricia Mejía Guerrero, María Silvia Guillén, and José de Jesús Orozco Henríquez, members of the Commission.