

REPORT No. 14/11¹
PETITION 1347-07
ADMISSIBILITY
ORLANDO OLIVARES ET AL.
(DEATHS IN THE VISTA HERMOSA PRISON)
VENEZUELA
March 23, 2011

I. SUMMARY

1. On October 16, 2007, the Inter-American Commission on human rights (hereinafter “the Commission,” “the IACHR,” or “the Inter-American Commission”) received a petition submitted by the Venezuelan Prisons Observatory (hereinafter “the petitioners”), which alleged that the Bolivarian Republic of Venezuela (hereinafter also “the State”), was responsible for the extrajudicial execution of Messrs. Orlando Edgardo Olivares Muñoz, Joel Rinaldi Reyes Navas, Orangel José Figueroa, Héctor José Muñoz Valero, Pedro Antonio López Chaurán, José Gregorio Bolívar Corro, and Richard Alexis Palma (hereinafter “the alleged victims”), who at the time of the facts were incarcerated at the Bolívar State judicial detention center (“Vista Hermosa Prison”). They alleged that agents of the State executed the victims in the context of an operation to control a riot in that prison. They also alleged that the State is responsible for the lack of investigation and punishment for said deaths, which occurred on November 10, 2003.

2. The petitioners alleged that the State is responsible for violations of the right to life, the right to humane treatment, and the right to judicial protection, as guaranteed in Articles 4, 5, and 25 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), in connection with the obligation respect the rights established in Article 1.1 of said treaty

3. The State argued basically that it had been legal for the National Guard to go into the Vista Hermosa Prison at the time of the facts; that competent authorities had intervened and had taken the necessary measures to respond to the violent situation; and, that investigations in the case were underway and domestic remedies had not been exhausted.

4. Without prejudging the merits of the petition, after analyzing the parties’ positions, and in compliance with the provisions of Articles 46 and 47 of the American Convention, the Commission decided to declare the case admissible for purposes of examining the alleged violation of the rights guaranteed in Articles 4, 5, 8, and 25 of the American Convention, in connection with its Article 1.1, to the detriment of the alleged victims. The Commission decided to notify the parties of this decision, to publish it, and to include it in its annual report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

5. The Inter-American Commission registered the petition with number P-1347-07, and transmitted the relevant parts to the State on December 11, 2007, giving it two months to submit its observations, in accordance with Article 30 of the IACHR Rules of Procedure. Subsequently, the IACHR repeated its request to the State for observations in letters of April 1 and October 29, 2008.

6. The State’s response on the petition was received on November 17, 2008, and the appendixes to that note arrived on November 24, 2008.

7. The petitioners’ comments on the State’s response were received on December 19, 2008, and forwarded to the State on January 5, 2009, giving it one month to present its observations.

¹ Pursuant to Article 17.2 of the Commission’s Rules of Procedure, Commissioner Luz Patricia Mejía, a Venezuelan national, did not participate in the discussion or decision on this case.

Subsequently, the Inter-American Commission reiterated that request on November 19, 2009, but as of this date has not received a response.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

8. The petitioners said that on November 10, 2003, at about 4:30 p.m., there had been a clash or uprising among inmates at the Vista Hermosa Prison, which had led the Director of that detention center to request the entry of members of the National Guard (a part of the national armed forces), which was responsible for the prison's external security.

9. The soldiers of the National Guard and agents of the Ministry of Interior and Justice (responsible for security within prisons) cleared out the inmates and put them in the sports facilities, specifically in an area called: "the field," and then beat them with bats, pipes, rifles, and "peinillas". In addition, they were said to have taken the alleged leaders of the cellblocks and executed them. These are the seven alleged victims named in the petition, all of them died on the date of the facts.

10. According to the petitioners, the autopsies revealed that the victims died from gunshot wounds: in the parietal region (Bolívar); in the back (Figueroa); from the rear to the front (Núñez); in the supra-auricular region (Reyes); in the right posterior parietal region (Muñoz); in the right retro-auricular region (López), and in the right region of the neck (Olivares). The foregoing would be consistent with the statements of several eyewitnesses that four National Guard troops were directly responsible for these deaths.

11. The petitioners say that although the judicial investigations started on the same day of the facts, November 10, 2003, to date the criminal proceeding is still in the preparatory phase by the Public Prosecutor's Office, in the Second Prosecutor's Office for Basic Rights in Ciudad Bolívar. They say that the last official decision in the case was a resolution of the Third Control Court on June 19, 2006, which rejected the petitioners' motion to set a reasonable deadline for finishing the pre-trial proceedings. Therefore, they consider that there has been an unwarranted delay in the case, and a pattern of denial of justice.

12. In view of the foregoing, they allege that the State has failed to fulfill its basic duty to respect and guarantee the life and humane treatment of the victims in the instant case, who were individuals in State custody for whom it was in a position to guarantee their rights.

13. The petitioners allege that the victims' next-of-kin suffered direct violation of their right to humane treatment and a fair trial as a result of the inaction and unwarranted delay in the action of the judicial authorities.

14. With respect to the admissibility of the petition, the petitioners allege that the exception provided in Article 46.2.c of the American Convention applies in this case, because they consider that there has been an unwarranted delay of more than five years in the decision on the appropriate remedy, which in this case would be a criminal trial of those responsible for the deaths of the alleged victims.

15. According to the petitioners, the violations alleged in this case refer not only to the acts that directly caused the deaths of the seven named victims; but also to the State's failure to carry out its duty to protect the life and humane treatment of incarcerated persons, and the failure of all public officials to guarantee the necessary security in the detention centers to prevent more deaths in the prisons. The petitioners say that the overall situation of prisons in Venezuela is extremely serious. They note that the Inter-American Court has approved provisional measures with regard to Venezuela's prisons, and that the Inter-American Commission has referred repeatedly in its reports to the grave situation of prisoners in Venezuela. Particularly with regard to several violent acts that have occurred in the prisons and the failure of the State to investigate them.

B. Position of the State

16. The State says that on November 10, 2003, during a visit to the Vista Hermosa Prison by officials of the Ministry of Interior and the General Directorate for Custody and Rehabilitation of Inmates, there was a fight among the inmates and some of them fired guns. The Director of that detention center therefore expressly requested the intervention of the National Guard to quell the situation.

17. The legal basis for this action of the Director of the Vista Hermosa Prison was Article 8 of the Penitentiary System Act, which says: "External security of the establishments may be entrusted to military agencies, which shall refrain from any intervention in the internal security system, except in cases where expressly requested by the director of the facility or the person acting in that capacity."

18. A Security Board was then formed, consisting of the First and Second Judges of the Ciudad Bolívar district; the Regional Public Defender Coordinator; the Public Defender of Ciudad Bolívar; the Ombudsman; the Chief Prosecutor of the State of Bolívar; the Director of the Vista Hermosa Prison; the intervening Director; and the Commander of the Second Company of Detachment 81 of the National Guard. The Board decided to take disciplinary measures to restore order in the facility, ordering the transfer of 54 inmates to the Judicial Detention Center of Monagas, and 32 to the Judicial Detention Center of Anzoátegui. They also applied a contingency plan by the National Guard, and made a general search, which led to the confiscation of a large number of illegal objects.

19. The State said that on November 10, 2003, the Public Prosecutor's Office had opened the investigation into the deaths of Messrs. Orlando Edgardo Olivares, Joel Rinaldi Navas, Orangel José Figueroa, Héctor José Muñoz Valero, Pedro Antonio López Chauran, José Gregorio Bolívar Corro, and Richard Alexis Núñez Palma, and of those inmates and officials who had been wounded. It added that the case was in the "preparatory phase," and that in the course of the time elapsed the Public Prosecutor's Office had taken some depositions from witnesses, and in October 2006 took evidence at the site of the facts with the support of the Crime Reconstruction Division of the Bureau of Scientific, Criminal, and Forensic Investigations.

20. With respect to compliance with the requirements for admissibility of the petition, the State expressly alleged the lack of exhaustion of domestic remedies, because criminal investigations into the deaths of the seven alleged victims were ongoing and the petitioners had not filed a motion for constitutional protection (*amparo*).

21. In response to the petitioners' comments on the general state of prisons in Venezuela, the State submitted general information about the measures, plans, and programs that it would be implementing to improve conditions in the country's prisons.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

22. The petitioners are entitled, in principle, to lodge petitions with the Commission pursuant to Article 44 of the American Convention. The petition indicates that the alleged victims are individual persons with respect to whom the State of Venezuela has undertaken to respect and guarantee the rights established in the American Convention. With respect to the State, the Commission notes that the Bolivarian Republic of Venezuela has been a State Party to the American Convention since September 8, 1977, the date on which it deposited its instrument of ratification. Hence, the IACHR has *ratione personae* competence for this case. The Commission has *ratione loci* competence to consider the petition, because it alleges violations of rights protected in the American Convention that are said to have occurred in the territory of the Bolivarian Republic of Venezuela, a State Party to that treaty.

23. The Commission has *ratione temporis* competence because the obligation to respect and guarantee the rights protected in the American Convention was in force for the State on the date the facts alleged in the petition are said to have occurred.

24. Finally, the Commission has *ratione materiae* competence because the petition alleges possible violations of human rights protected in the American Convention.

B. Exhaustion of domestic remedies

25. Article 46.1.a of the American Convention stipulates, as a requirement for the admission of a petition alleging violations of rights protected in that treaty, that remedies under domestic law have been exhausted in accordance with generally recognized principles of international law.

26. Article 46.2 of the Convention provides that the requirement for prior exhaustion of domestic remedies shall not be applicable when:

- a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

27. The requirement for prior exhaustion of domestic remedies applies when the national system has adequate and effective remedies to correct the alleged violation. This requirement for admissibility is intended to inform national authorities of the alleged violation of a protected right so that, if appropriate, they can correct it before it is considered at the international level.

28. According to Article 31.3 of the Commission's Rules of Procedure and the consistent jurisprudence of the Inter-American Court,² when the petitioner contends that it is not possible to prove compliance with the requirement of exhaustion of domestic remedies, it shall be up to the State concerned to demonstrate that the remedies under domestic law have not been previously exhausted, unless that is clearly evident from the record.

29. In this case, the State made timely reference to the failure to exhaust domestic remedies, saying that the criminal proceeding regarding the deaths of the alleged victims was ongoing; and alleging that the petitioners had not exhausted the constitutional appeal for protection established in Article 27 of the Venezuelan Constitution.

30. With respect to the criminal proceeding, the State noted that the respective investigations had begun on the same day as the facts, November 10, 2003, and that they had not been concluded. It said that the case was still in the "preparatory phase"; i.e., its initial investigative period in the Public Prosecutor's Office. Both parties agree on this fact.

31. The Commission notes that the last judicial decision in the case was a resolution of the Third Control Court on June 19, 2006, which rejected the petitioners' motion to set a reasonable deadline for the Public Prosecutor's Office to finish the pre-trial proceedings.³

32. The Inter-American Commission reiterates that to analyze compliance with the requirement to exhaust domestic remedies, it must determine what was the appropriate remedy to

² Inter-American Court, *Case of Velásquez Rodríguez*, Judgment of July 29, 1988, para. 64.

³ Initial petition received on October 16, 2007. Appendix K2. Record of the Third Criminal Control Court of Ciudad Bolívar of June 19, 2006.

exhaust under the circumstances, meaning the remedy best suited to resolving the legal infringement. In cases of alleged arbitrary denial of the right to life, the appropriate remedy is the investigation and criminal proceedings undertaken and pursued *ex officio* by the State in order to identify and punish those responsible.⁴

33. The State argues that the petitioners should have exhausted the remedy of constitutional protection, established in Article 27 of the Constitution. According to the State, “this action is intended to restore the violated or threatened rights by means of a short procedure, and is a vehicle for ensuring the peaceful enjoyment of the person’s rights and guarantees.”⁵

34. In the instant case the deaths of the alleged victims occurred in the Vista Hermosa Prison on November 10, 2003, and now, more than seven years later, the criminal proceeding is in the preparatory phase. The appropriate remedy in the case, in principle, is criminal investigation. The State has not indicated that the facts investigated are particularly complex, and the file does not indicate that. On the contrary, the alleged perpetrators of the deaths have been identified from the first moments of the investigation, and the facts occurred when the victims were under control of the State, incarcerated in a prison. However, the case in the domestic jurisdiction has not advanced beyond the initial investigative period despite the passing of several years. Therefore, the Inter-American Commission concludes that the exception to the requirement for exhaustion of domestic remedies stipulated in Article 46.2.c of the American Convention applies, given the unwarranted delay in reaching a judgment under the domestic remedies.

35. Finally, the Commission reiterates that the exceptions to the requirement for exhaustion of domestic remedies set forth in Article 46.2 of the Convention are closely linked to determination of possible violations of certain rights guaranteed in that instrument, such as the right to a fair trial. However, by its nature and purpose, Article 46.2 is an autonomous norm *vis á vis* the substantive norms of the Convention. A decision on whether the exceptions to the requirement for exhaustion of domestic remedies apply to the case in question must therefore be made prior to and independently of the analysis of the merits, because it requires a different standard of assessment than that used to determine the possible violation of Articles 8 and 25 of the Convention.

36. In the light of the foregoing, and the evidence present in the file of the instant case, the Inter-American Commission considers for purposes of determining admissibility that there has been an unwarranted delay in rendering a final judgment and the domestic remedies have been ineffective for timely resolution of the matter. The IACHR therefore applies the exception to the requirement for exhaustion of domestic remedies established in Article 46.2.c of the American Convention to the instant case.

C. Deadline for presentation of the petition

37. Article 46.1.b of the Convention requires that, in order to be admissible, petitions must be submitted within six months of the notification of the final judgment rendered in the domestic jurisdiction.

38. In the case under consideration, the IACHR has applied the exception to exhaustion of domestic remedies set forth in Article 46.2.c of the American Convention. In this regard, Article 32 of the Commission’s Rules of Procedure establishes that in 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.

⁴ IACHR, Report No. 22/09, Petition 908-04, Admissibility, Igmarr Alexander Landaeta Mejías and others, Venezuela, March 20, 2009, para. 45.

⁵ Response of the State received on November 17, 2008, pp. 18 and 19.

39. The facts that gave rise to the petition started in November 2003, the petition was presented to the IACHR in October 2007, and according to information in the case file on the date of this report, investigations were still in the preparatory phase. The petitioners filed a motion to expedite the proceeding, which the Third Control Court denied in 2006. The Commission therefore considers that the petition was presented within a reasonable period of time in the terms of the IACHR Rules of Procedure and in keeping with its practice in similar cases.

D. Duplication of proceedings and international and *res judicata*

40. Nothing in the file of the instant case indicate that the subject matter of the petition is pending in another international proceeding for settlement or that it is substantially the same as one previously studied by the Commission or by another international human rights body. The requirements established in Articles 46.1.c and 47.d of the Convention have therefore been satisfied.

E. Characterization of the alleged facts

41. For the purposes of admissibility, the Commission must decide whether the alleged facts tend to establish a rights violation, as stipulated in Article 47.b of the American Convention, or whether the petition is “manifestly groundless” or “obviously out of order,” as described in Article 47.c. The level of conviction regarding those standards is different from that required in deciding on the merits of a complaint; the IACHR must perform a summary *prima facie* evaluation, not to establish the existence of a violation, but to examine if the petition establishes grounds for the apparent or potential violation of a right guaranteed by the Convention. This determination involves a summary analysis, which does not imply a prejudgment or advance opinion on the substance of the matter.⁶

42. In view of the elements of fact and law presented by the parties and the nature of the matter put before it, the IACHR considers that the facts alleged by the petitioners tend to constitute violations of rights protected in Articles 4 and 5 of the American Convention to the detriment of the seven alleged victims named in paragraph 1 of this report, in connection with Article 1.1 of the same treaty; and of Articles 5, 8, and 25 of the American Convention to the detriment of Ms. Lorenza Pérez de Olivares and the other next-of-kin of the alleged victims who may be identified in the merits stage, pursuant to Article 1.1 of that treaty.

43. The IACHR deems that although the petitioners did not specifically allege the violation of Article 8 of the American Convention, they did raise allegations of unwarranted delay in the investigation and punishment of the parties responsible for the alleged acts. Analysis of the possible violation of Article 8 of the Convention is therefore appropriate during the examination of the merits of the instant case.

V. CONCLUSIONS

44. In accordance with arguments of fact and law set out 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 Articles 4, 5, 8, and 25, of the American Convention on Human Rights, in connection with Article 1.1 thereof.
2. To notify the Venezuelan State and the petitioners of this decision.
3. To continue with its analysis of the merits of the case.

⁶ See in general: IACHR, Report No. 12/10, Case 12.106, Admissibility, Enrique Hermann Pfister Frías and Lucrecia Pfister Frías, Argentina, March 16, 2010, para. 46; IACHR, Report No. 10/10, Petition No. 214-08, Admissibility, Koempai et al., Suriname, March 16, 2010, para. 43.

4. 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 23rd day of March 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González and María Silvia Guillén, Commission Members.