

REPORT No. 87/11¹
DECISION TO ARCHIVE
PETITION 893-07
BRAZIL
July 21, 2011

ALLEGED VICTIM: Paulo Veronesi Pavesi

PETITIONER: Paulo Airton Pavesi

ALLEGED VIOLATIONS: Articles 4, 5, 7, 8, 10, 11, 13, 14, 19, 24, 25, 28, 29, and 31 of the American Convention on Human Rights (“American Convention”)

PROCESSING BEGAN: June 23, 2008

I. PETITIONER

1. The petitioner contends that on April 19, 2000, his son Paulo Veronesi Pavesi, aged 10, suffered an accident and was taken to Pedro Sanches Hospital in the city of Poços de Caldas, state of Minas Gerais. The child was examined and operated on; he was subsequently taken to the intensive care unit (ICU) where he was placed in an induced coma, under the care of the attending physician. The petitioner claims that on April 20, 2000, a neurologist determined that the state of the alleged victim’s health indicated brain death and that his chances of survival were minimal. At that juncture, the petitioner stated his intent for his son’s organs to be made available for donation, should brain death be established.

2. One hour later, according to the petitioner, the neurologist informed the family that the alleged victim had died and contacted the MG SUL TRANSPLANTES organ bank. However, when the physician from that center examined the alleged victim, he noted blood circulation in the brain and stated that the child was not dead. The petitioner claims his son was then taken back to the ICU. The following morning, they physician decided to transfer the alleged victim to the Santa Casa de Misericórdia Hospital, since the Pedro Sanches Hospital was not authorized to remove organs. At the second hospital, the alleged victim underwent a second examination, which determined that he had suffered brain death. Thereupon, his organs were harvested for transplant and his body was buried on April 22, 2000.

3. The petitioner contends that his son was murdered, since the organ bank was called in before brain death was confirmed. According to the petitioner, the organ bank saw the alleged victim as a potential donor and it immediately cut off all procedures and life support, thus eliminating any possibility of his recovery. The petitioner further alleges that documents were lost and maliciously altered; the transplant waiting list was disregarded; there were inconsistencies between the doctors’ statements; some physicians were not authorized to perform transplants; and there was political pressure to prevent an investigation from being carried out and the guilty from being punished. The petitioner accuses the doctors involved in treating his son (and in transplanting his organs), the mayor of Poços de Caldas, members of Congress, agents of the Federal Public Prosecution Service, and officials of the Santa Casa de Misericórdia Hospital of being part of an “organ transplant mafia.”

4. According to the petitioner, in spite of his repeated accusations regarding his son’s murder, the incident has not been investigated. The petitioner adds that he has been pressured on account of his allegations, as a result of which he and his family relocated to Italy, where they have requested political asylum.

¹ In compliance with the terms of Article 17.2.a of the Commission’s Rules of Procedure, Commissioner Paulo Sérgio Pinheiro, a Brazilian national, did not participate in discussing or deciding this case.

II. STATE

5. In response to the petitioner's contentions, the State maintains that the petition is inadmissible in that the remedies offered by domestic jurisdiction have not been exhausted as required by Article 46.1.a of the American Convention. According to the State, at the request of the Federal Public Prosecution Service ("MPF") and in light of the petitioner's allegations, the Federal Police opened an investigation (*Inquérito Policial*) to examine the facts and determine whether the alleged victim's death was due to natural causes. As a result of that investigation, claims the State, the MPF filed criminal charges for qualified culpable homicide against the four physicians responsible for the case on May 17, 2001. In addition, the State reports that the Federal Public Prosecution Service also opened a civil investigation (*Inquérito Civil Público*), as a result of which the Santa Casa de Misericórdia Hospital lost its license for performing organ transplants. That investigation also led to the filing of a civil suit for administrative misconduct (*Ação Civil Pública de Improbidade Administrativa*) against the Secretary for Health and other state authorities.

6. According to the State, criminal proceedings were first brought before the federal justice system, since the suspected crime involved the provision of health services by the federal authorities through their hospitals. Those proceedings were later suspended, by means of a conflict of jurisdiction motion (CC No. 103.599 – MG), to enable the Superior Court of Justice ("STJ") to rule whether competence over the case lay with the federal courts or with the justice system of the state of Minas Gerais. The State reports that the STJ found that the alleged victim's purported homicide should be tried before the state courts and, on November 12, 2009, the proceedings were referred to the judge of the 1st Criminal District of Poços de Caldas. The State adds that in December 2010, a judgment for the arraignment (*Pronúncia*) of the accused was handed down, which found that there was sufficient evidence to take them before a jury to face charges of culpable homicide.

III. PROCESSING BY THE IACHR

7. The IACHR received the petition on July 10, 2007. The petitioner submitted additional communications on November 4, 20, and 28, 2007; February 8, 2008; March 24, 2008; and April 26, 2008. On June 23, 2008, the Inter-American Commission forwarded the relevant parts of the petitioner's communications to the State in order for it to reply.

8. The petitioner submitted additional information on the following dates: July 9, 14, 24, 25, 29, and 30, 2008; August 1, 2, 7, 11, 15, 20, 23, and 30, 2008; and September 17, 18, 20, and 22, 2008. In addition, on September 19, 2008, the petitioner requested a hearing before the IACHR, at its 133rd regular session, after the deadline stipulated in Article 62.2 of the IACHR's Rules of Procedure in force at the time². On September 26, 2008, the IACHR informed the petitioner that his request for a hearing had been declined because it was lodged after the deadline.

9. In notes received by the IACHR on November 25 and December 9, 2008, the State submitted its reply to this petition. Those communications were duly forwarded to the petitioner. On April 11, 2009, the petitioner sent a communication describing television programs with reports on human organ transplants; he did not, however, refer to the State's reply. The petitioner also sent communications and/or requested information on the status of his petition on the following dates: June 27 and 28, 2009; November 4, 2009; December 15, 2009; January 25, 2010; March 19, 2010; April 21, 22, 23, and 30, 2010; May 18, 2010; June 28, 2010; and July 4, 10, and 28, 2010. Those communications were duly conveyed to the State.

10. The State also submitted additional information on the following dates: March 19, 2010; July 16; 2010; August 24, 2010; and December 7 and 22, 2010. Those communications were duly forwarded to the petitioner.

² Corresponds to Article 64.2 of the IACHR's current Rules of Procedure.

11. On December 14, 2010, the petitioner requested “that his petition be canceled.” Subsequently, on February 8, 2011, the petitioner sent a further communication stating that in December 2010 he had asked “for his complaint to be canceled” and repeating his request for “his complaint to be canceled as promptly as possible”; he also requested an official communication indicating the above to enable him to seek out another international venue. The IACHR consequently informed the petitioner, by means of a letter dated March 11, 2001, that under Article 41 of the Rules of Procedure of the Inter-American Commission, “The petitioner may at any time desist from his or her petition [...]. The statement by the petitioner shall be analyzed by the Commission, which may archive the petition [...] if it deems this appropriate.”

IV. GROUNDS FOR THE DECISION TO ARCHIVE

12. Both Article 48.1.b of the American Convention on Human Rights and Article 42 of the IACHR’s Rules of Procedure provide that, in the processing of a petition, once the observations have been received or the period established has elapsed with no observations received, the IACHR shall ascertain whether the grounds for the petition or communication exist or subsist, and if they do not it shall order the case archived.

13. Regarding desistance, Article 41 of the IACHR’s Rules of Procedure states that the petitioner may at any time desist from his or her petition or case, to which effect he or she must state so in writing to the Inter-American Commission, which may archive the petition or case if it deems appropriate.

14. In the case at hand, the petitioner has repeatedly asked for this petition to be “canceled” by the IACHR and for official notification of that decision to be extended to him. At the same time, the State claims that the petition is inadmissible because domestic remedies have not been exhausted.

15. Having seen the request for desistance lodged by the petitioners, in compliance with Article 41 of the IACHR’s Rules of Procedure, with Article 48.1.b of the American Convention, and with Article 42 of its Rules of Procedure, the Inter-American Commission decides to archive the instant petition.

Done and signed in the city of Washington, D.C., a los 21st. day of the month of July 2011.
(Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President; Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commissioners.