

REPORT No. 21/14

PETITION 525-07

ADMISSIBILITY

BAPTISTE WILLER AND FRÉDO GUIRANT

HAITI

April 4, 2014

I. SUMMARY

1. On April 20, 2007, the Inter-American Commission on Human Rights (hereinafter, “the Inter-American Commission” or “the IACHR”) received a petition filed by Baptiste Willer (hereinafter “the petitioner” or “Mr. Willer”) against the Republic of Haiti (hereinafter, “Haiti” or “the State”) on his own behalf and on behalf of his brother.

2. The petitioner argues that he was the victim of an attempted homicide; that his brother Frédo Guirant, 16 years of age, was assassinated as the result of the persecution against him; and that the facts remain in impunity. The State, for its part, argues that there has not been any direct or indirect participation of state agents, and that therefore there is no state responsibility.

3. Without prejudging on the merits of the complaint, after analyzing the parties’ positions in light of the requirements set forth in Articles 46 and 47 of the American Convention, the Commission decides to find the case admissible for the purposes of examining the alleged violation of the rights enshrined in Articles 5(1), 8(1), 19, and 25 of the American Convention on Human Rights (hereinafter “American Convention” or “Convention”), in keeping with Article 1(1) of that treaty. The Commission also decides to notify the parties of this decision and to publish it and include it in its Annual Report to the OAS General Assembly.

II. PROCEDURE BEFORE THE IACHR

4. The IACHR received the petition on April 20, 2007, in the context of a working visit by the IACHR to Haiti. On July 19, 2007, it forwarded a copy of the pertinent parts to the State, which it gave two months to submit its observations. On August 27, 2007, the Commission received the response from the State, which was transmitted to the petitioner on September 4, 2007.

5. The petitioner submitted additional information on April 15, 2008; August 12 and 13, September 3, 9, and 22, 2009; October 12, 2011; March 7, 2012; and November 6, 2013. Those communications were duly forwarded to the State. The State has not yet answered the request for observations made on March 19, 2012, with one month to respond.

III. POSITION OF THE PARTIES

A. Position of the petitioners

6. The petitioner alleges that on several occasions he received death threats and was the target of attempted homicides by private persons, which he alleges continue to enjoy impunity. The

facts are said to have unfolded in a context of social violence and citizen insecurity. He indicates that these acts were due to its attitude of neutrality in the face of the existing violence, since he refused to become involved in illegal activities.

7. According to the petition, on February 4, 2007, at 9:00 a.m., Mr. Willer suffered a homicide attempt along boulevard Jean Jacques Dessalines. That same day, between 5:00 p.m. and 6:00 p.m., his brother Frédo Guirant, 16 years of age, is said to have been murdered, which is said to have been related to the attempted homicide that targeted the petitioner. In his petition Mr. Willer identifies the alleged perpetrators of such offenses, who are said to be well-known criminals.

8. According to the information produced, on February 27, 2007, the petitioner sent a communication to the Prime Minister, the Minister of Justice, and the Secretary of State for Public Security in which he reported what had happened, indicated that his life and that of his family was in danger, and requested judicial assistance. According to what was indicated by the petitioner in various communications, that request was never answered. The petitioner indicates that the Prime Minister is the highest authority of the Superior Council of the National Police.

9. The petitioner also refers to a series of events that occurred from 2007 to 2009 said to be related to the attempted homicide. As indicated, he alleges having suffered another attempted homicide on March 9, 2007, at 11:00 a.m. at the place of his business. After these events he is said to have abandoned his house and his business out of fear. In addition, on March 22, 2007, a person with characteristics very similar to his and with the same name is said to have been assassinated in Décaillette. According to the petitioner, this person was assassinated by mistake, as he – the petitioner – was the real target. Moreover, he alleges that on August 28, 2008 his house was robbed. He indicates that the police indicated that nothing could be done due to the lack of patrols. Finally, Mr. Willer alleges that he was pursued by a group of unknown persons in the street on August 26, 2009, but that he was able to escape.

10. The petitioner indicates that in recent years his health has deteriorated. In early 2009 a medical diagnosis had concluded that Mr. Willer suffers from neurasthenia, so he began to receive psychological treatment. In his last communication he indicates that he has two lumbar hernias which, he said, need to be operated on, but that he doesn't have the resources needed to have the surgery. He alleges that he has sought assistance from the Ministry of Public Health and the Ministry of Social Affairs, but that he did not receive a response. The petitioner is asking the IACHR for justice and reparations.

B. Position of the State

11. In its answer the State indicates that the Ministry of Foreign Relations forwarded the petition to the Ministry of Justice and Public Security so that it might act accordingly.

12. In that note the State briefly refers to the merits and indicates that “no element in the record shows that a state agent is implicated in the attempted homicides perpetrated against Mr. Baptiste, or that the persons that he has identified as accomplices are being protected or aided and abetted by the Haitian authorities.” The State also indicates that “one of the alleged perpetrators is being actively sought by the Police and is the subject of a television spot in which the population is asked to collaborate with the judicial authorities to secure his arrest.”

13. No additional observations have been received from the State as of the date of the adoption of this report.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

14. The petitioner is authorized, in principle, by Article 44 of the American Convention to submit petitions to the Commission. The petition notes as the alleged victim a physical person with respect to whom the State of Haiti undertook to respect and ensure the rights enshrined in the American Convention. As regards the State, the Commission notes that Haiti has been a state party to the American Convention since September 27, 1977, the date on which it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition. In addition, the Commission is competent *ratione loci* to hear the petition, insofar as it alleges violations of rights protected in the American Convention said to have occurred in the territory of Haiti, a state party to that treaty.

15. The Commission is competent *ratione temporis* insofar as the obligation to respect and ensure the rights protected in the American Convention was already in force for the State on the date the facts alleged in the petition are said to have occurred. Finally, the Commission is competent *ratione materiae* because the petition alleges possible violations of human rights protected by the American Convention.

B. Admissibility Requirements

1. Exhaustion of domestic remedies

16. Article 46(1)(a) of the American Convention requires the prior exhaustion of remedies available in the domestic jurisdiction in keeping with generally recognized principles of international law, as a requirement for admitting claims alleging violation of the American Convention. The purpose of this requirement is to enable the national authorities to take cognizance of the alleged violation of a protected right and, if appropriate, to resolve it before it is taken up by an international body.

17. Article 46(2) of the Convention provides that the requirement to exhaust domestic remedies is not applicable when (i) the domestic legislation of the state in question does not have due process of law for protecting the right or rights allegedly violated; (ii) the persons whose rights were allegedly violated have not been allowed access to domestic remedies, or have been kept from exhausting them; or (iii) there is an unwarranted delay in the decision on such remedies.

18. The petitioner alleges that the authorities have not answered his request for judicial assistance. The State indicates that one of the alleged perpetrators of the facts is being actively sought by the police.

19. As appears from the record of this case, on February 27, 2007, the petitioner sent a communication to the Prime Minister, the Minister of Justice, and the Secretary of State for Public Security indicating that on February 7, 2007, he had been the victim of an attempted homicide, that on the same day his 16-year-old brother had been assassinated, and that both he and his family were in danger.

20. The Inter-American Commission has established that in cases such as the instant case, which involve crimes that must be investigated and prosecuted at the initiative of the authorities, “the State has the obligation to promote and give impetus to the criminal process, and that in such cases, this is the suitable way to clarify the facts, prosecute those responsible, and establish the appropriate criminal sanctions, as well as to pave the way for other forms of reparation of a financial nature.”¹

21. In the petition under analysis, while there is no information on the filing of a judicial complaint by the petitioners, the authorities were informed of the occurrence of crimes prosecutable at the initiative of the State. The State indicates that the police initiated a search for one of the four alleged perpetrators. Moreover, even in the absence of specific information in this regard, the Commission considers it reasonable to understand that the alleged violent death of Frédo Guirant gave rise to an investigation at its own initiative. Nonetheless, seven years after the alleged facts, no judicial investigation has formally begun, nor is there any information on the outcome of the police search. Therefore, the IACHR decides to apply the exception to the exhaustion of domestic remedies provided for in Article 46(2)(c) of the American Convention with respect to the death of the minor Frédo Guirant and the alleged attempted homicide directed against Baptiste Willer on February 27, 2007.

22. In relation to the arguments regarding the health of Baptiste Willer, the Commission observes that there is not sufficient information that would allow to conclude that domestic remedies have been exhausted or that any of the exceptions provided for in Article 46(2) of the American Convention applies.

2. Timeliness of the petition

23. Article 46(1)(b) of the American Convention establishes that for a petition to be admissible by the Commission it must be presented within six months of the date on which the person alleged harmed was notified of the final decision.

24. In the claim under analysis, the IACHR has applied the exception to the requirement of exhaustion of domestic remedies pursuant to Article 46(2)(c) of the American Convention. In this respect, Article 32 of the Commission’s Rules of Procedure establishes that in those cases in which the exceptions to the prior exhaustion rule apply, the petition should be filed in a time the Commission considers reasonable. To that end, the Commission should consider the date of the alleged violation of rights and the circumstances of each case.

25. In the petition under analysis, the facts alleged took place on February 27, 2007. The petition was filed on April 20, 2007. Therefore, the Commission concludes that this action meets the requirement established in Article 46(1)(b) of the American Convention.

3. Duplication of procedures and international *res judicata*

26. It does not appear from the record that the subject matter of the petition is pending in any other international proceeding for settlement, or that it reproduces a petition already examined by

¹ IACHR, Report No. 19/12, Petition 1127-05, Family of Sergio Arturo Canales Galvez, Honduras, March 20, 2012, para. 29.

this or any other international organization. Therefore, one should consider that the requirements established at Articles 46(1)(c) and 47(d) of the Convention have been met.

4. Colorable claim

27. For the purposes of admissibility, the Commission should decide whether the facts alleged tend to establish a violation of any of the rights recognized in the American Convention, as stipulated in Article 47(b) of that instrument, or whether the petition is "manifestly groundless" or "obviously out of order," pursuant to Article 47(c). The criterion for analyzing admissibility is different from that used for the analysis of the merits, given that the Commission only performs a *prima facie* analysis to determine whether the petitioners establish an apparent or possible violation of a right guaranteed by the American Convention. It is a summary analysis that does not imply prejudging or issuing a preliminary opinion on the merits.

28. Neither the American Convention nor the IACHR Rules of Procedure require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Commission, although petitioners may do so. It is for the Commission, based on the system's jurisprudence, to determine in its admissibility report which provisions of the relevant Inter-American instruments are applicable and could be found to have been violated if the alleged facts are proven by sufficient elements.

29. The petitioner argues that he was a victim of attempted homicide; that his 16-year-old brother was assassinated because of the persecution against him; and that the facts remain in impunity. At the same time, the State indicates that there has been no direct or indirect participation of state agents, and consequently it refers to the lack of state responsibility.

30. The Inter-American Commission understands that, according to the petitioner's approach, there is an alleged denial of justice regarding purported violent attacks that are said to have resulted in the death of his brother and to have affected him. In that regard, the IACHR observes that if proven, the facts alleged could tend to establish possible violations of the rights at Articles 5(1), 8(1), and 25 of the American Convention with respect to Baptiste Willer and in Articles 19, 8(1), and 25 of the same instrument to the detriment of Frédo Guirant, all in relation to Article 1(1) of the American Convention. The Commission will examine the facts alleged in light of Article 19 of the American Convention, specifically in relation to the special duty of protection that corresponds to the states, in keeping with the principle of the best interest of the child and the *corpus juris* in relation to the rights of children and adolescents.

V. CONCLUSIONS

31. The Inter-American Commission concludes that it is competent to examine the claims presented in this matter, and that the petition is admissible pursuant to Articles 46 and 47 of the American Convention. Based on the arguments of fact and law set forth above, and without it representing any prejudgment on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**DECIDES:**

1. To find this petition admissible with respect to Baptiste Willer in relation to the alleged violations said to have occurred on February 27, 2007 of the rights recognized in Articles 5(1), 8(1), and 25 of the American Convention in relation to Article 1(1) of the same instrument; and with respect to Frédo Guirant, in relation to the alleged violations of the rights recognized in Articles 19, 8(1), and 25 in relation to Article 1(1) of the American Convention.

2. To notify the parties of this decision;

3. To continue with the analysis on the merits; and

4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 4th day of April, 2014. (Signed): Tracy Robinson, President; Rose-Marie Belle Antoine, First Vice-President; Felipe González, Second Vice-President; et José de Jesús Orozco Henríquez, Rosa María Ortiz, Paulo Vannuchi, James L. Cavallaro, members of the Commission.