

REPORT Nº 36/01*
CASE 11.694
EVANDRO DE OLIVEIRA ET AL.
BRAZIL
February 22, 2001

I. SUMMARY

1. On July 24, 1996, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition from the Center for Justice and International Law (CEJIL) and Human Rights Watch/Americas (hereinafter "the petitioners") alleging that on October 18, 1994, the Federative Republic of Brazil (hereinafter the "State" or the "Brazilian State" or "Brazil"), had unlawfully executed Evandro de Oliveira, Andre Luis Neri da Silva, Alberto dos Santos Ramos, Macmillea Faria Neves, Adriano Silva Donato, Alex Viana dos Santos, Alexandre Batista de Souza, Alan Kardec Silva de Oliveira, Clemilson dos Santos Moura, Robson Genuino dos Santos, Fabio Henrique Fernandes Vieira, and Ramilson José de Souza, and had allegedly sexually abused J.F.C., C.S.S., and L.R.J. during a raid conducted by the Civil Police in the Nova Brasília favela in Rio de Janeiro. The petitioners allege that the Brazilian State is responsible for violating Article 4 (Right to Life); Article 5 (Right to Humane Treatment); Article 8 (Right to a Fair Trial); Article 11(1) (Right to Privacy); and Article 11(2) and 11(3) (right to the inviolability of the home) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention").

2. The State provided information on the domestic measures taken to establish the circumstances in which the offenses occurred. However, it has not expressly disputed compliance with the requirement regarding exhaustion of domestic remedies.

3. After analyzing the allegations of the parties, the Commission decided to declare the case admissible.

II. PROCEEDINGS BEFORE THE COMMISSION

4. On November 19, 1996, the Commission asked the Brazilian State to provide information regarding the facts alleged in the petition. On February 19, 1997, and again on March 31, 1997, the State asked for an additional 30 days to respond, and the Commission agreed to both requests. On July 7, 1998, in view of the State's inaction, the Commission sent a letter to the State requesting the necessary information and advising it of the application of Article 42 of its Rules of Procedure. On August 7, 1998, the State forwarded its reply. On September 1, 1998, the Commission forwarded information from the State to the petitioners, who provided additional information on November 17, 1998. On November 25, 1998, and again on May 1, 2000, the Commission requested the Brazilian State to make its final observations. The State did not reply to either of these requests.

III. POSITION OF THE PARTIES

A. Position of the petitioners

5. The petitioners allege that at 5:00 a.m., on October 18, 1994, a group of 110 civil police from *Divisão de Repressão a Entorpecentes* [Narcotics Enforcement Division] (DRE) of the state of Rio de Janeiro conducted a raid in the Nova Brasília favela in Rio de Janeiro on the pretext of serving 104 arrest warrants. They add that there was an armed confrontation between drug traffickers and police and that the alleged violations of human rights took various forms, which are described below.

6. According to the petitioners, a first group of police invaded the home of J.F.C. and her boyfriend "Paizinho," and ordered them to surrender. After handcuffing Paizinho, the police kicked him and beat him over the head in order to force him to tell them the whereabouts of

one of the leaders of the local drug trafficking ring, and finally grabbed him and threatened to kill him. The police also injured J.F.C. by beating her on the legs and stomach.

7. The petitioners also allege that the same police raided another trafficker's house and, as they were firing when they went in, they killed Adriano Silva Donato and Alan Kardec de Oliveira, whose bodies were dragged outside and taken to the main town square. Immediately afterwards, police dragged Clemilson dos Santos from his house and allegedly summarily executed him in the same square.

8. According to the petitioners' version, a second group of police raided a house and allegedly summarily executed Sergio Mendes Oliveira, Fabio Henrique Vieira, and Evandro de Oliveira, the last of whom was shot in both eyes. The police then raided another house and killed Robson Genuino dos Santos, Ramilson José de Souza, and Alberto dos Santos Ramos.

9. The petitioners also allege that a group of 10 police raided another house, in which C.S.S., L.R.J., and André Luiz Neri Silva were present, and some of the police sexually abused C.S.S. and L.R.J.. In addition, the police beat L.R.J. and André in order to extract information on the whereabouts of one of the leaders of the local trafficking ring. The police then took André, whose body was later found in the main square with the other bodies.

10. The petitioners state that the police operation ended at 9:30 a.m. with fourteen (14) of the alleged traffickers dead.

11. The petitioners state that police inquiry Nº 184/94 was begun on October 18, 1994, by the Narcotics Enforcement Commission to establish the irregularities in the actions of the police. At the same time, the Rio de Janeiro government established a special commission to oversee investigations (Inquiry Nº 52/94), which were conducted by the Ombudsman for the Civil Police and the *Delegacia Especial contra a Tortura e Abuso de Autoridade* (DETAA) [Special Commission against Torture and Abuse of Authority]. The petitioners state that inquiry Nº 52/94, conducted by the DETAA, concluded that the police had summarily executed individuals and committed other abuses but that, in the course of investigations, none of the aggressors identified by the victims gave evidence or were arrested.

12. The petitioners state that the Public Prosecutor, Maria Inês Pimentel, who was responsible for following-up on Inquiries Nº 184/94 and Nº 52/94, systematically refused to provide any information regarding those inquiries.

13. The petitioners state that, under Article 10 of the Brazilian Penal Code, 30 days are allowed for completion of police inquiries, which may be extended, with judicial authorization, for an additional 30 days. The petitioners state that, in this case, the inquiries begun to establish the events that transpired in Nova Brasília favela were not concluded until November 1998, when additional information was sent in, that is, four years after the inquiries were initiated.

14. With respect to exhaustion of domestic remedies, the petitioners affirm that the petition is admissible on the grounds of the unwarranted delay under domestic remedies, Article 46(2)(c). The petitioners add that the four-year delay in conducting the police inquiry, without any of the corresponding criminal charges having been brought against the perpetrators, demonstrates that domestic remedies are ineffective in redressing the violations of human rights in this case.

B. Position of the State

15. In response to the allegations of the petitioners, the Brazilian State stated:

2. The version of events based on information collected by the Office of the Public Prosecutor of the state of Rio de Janeiro in fact coincides with that of the petitioners in that the murders were the result of repressive action—a veritable war operation, involving 110 police from the Narcotics Enforcement Division of Police Station Nº 21 and other units of the Civil Police of Rio de Janeiro—to destroy a drug trafficking ring that

was taking refuge in the Nova Brasília favela and had heavy weaponry: rifles, machine guns, grenades, etc.

3. It was also clearly demonstrated that the drug traffickers reacted violently, and that three civil police officers were injured as a result.

4. As a result of the incident, two investigations were launched.

The police inquiry conducted by the Narcotics Enforcement Division therefore intended to investigate whether there was criminal or culpable excess in the repressive police action.

The other police inquiry, brought by the Special Commission on Torture and Abuse of Authority, sought to investigate the claim that summary executions had occurred and that the civil police had committed other violent acts.

Representatives of the Office of the Public Prosecutor supervised both inquiries.

16. With respect to the investigations process, the State transcribed the information supplied by representatives of the Office of the Public Prosecutor:

It should be clarified that the first inquiry underway in the DRE found that if there was criminal or culpable excess in the police action, attaching to the report, as it did, technical documents, such as medical examiner's reports, in which this state attorney did in fact establish that some of the bodies showed punctures of both eyes, this requires more detailed investigation, such as that mentioned above, with summoning of individuals. However, the problem was that there was not enough time.

In addition to that investigation, another was begun in the Special Commission against Torture and Abuse of Authority in view of the statements of some of those involved in the confrontation that there had been summary executions and even sexual abuse by the police.

The fact is that such statements also require more detailed investigation, since the individuals who were informed on have ties with the dead, it being common knowledge that the law of silence prevails in the area, there being a general consensus to attempt to undermine the police, the traffickers even offering rewards to anyone who does. (...)

IV. ANALYSIS OF ADMISSIBILITY

A. Competence *ratione materiae*, *ratione personae*, *ratione temporis*, and *ratione loci* of the Commission

17. The Commission has competence *ratione personae* (by reason of the person involved) to examine the case because the petition indicates that the alleged victims are individuals whose rights, as enshrined in the Convention, the Brazilian State undertook to respect and guarantee. In addition, the facts alleged relate to the action of agents of the state of Rio de Janeiro and, under Article 28 of the Convention, where a federal state, such as Brazil, is involved, the national government is responsible under international law for acts committed by agents of the constituent states of the federation.

18. The Commission has competence *ratione materiae* (by reason of the matter involved) as the case involves allegations of violations of rights recognized in the Convention, that is: the right to life (Article 4); the right to humane treatment (Article 5); the right to a fair trial (Article 8); the right to privacy [Article 11(1)]; and the right to inviolability of the home [Article 11(2) and 11(3)].

19. The Commission has competence *ratione temporis* (by reason of the time involved) as the alleged facts date from October 18, 1994, when the obligation to respect and guarantee the

rights established in the Convention was in force for the Brazilian State, which ratified the Convention on September 25, 1992.

20. The Commission has competence *ratione loci* (by reason of the place involved) because the alleged facts occurred in the city of Rio de Janeiro, that is, within territory subject to the jurisdiction of the Brazilian State.

B. Exhaustion of domestic remedies

21. Pursuant to Article 46(1)(a) of the Convention, one the Commission's admissibility requirements is that domestic remedies must have been exhausted, in accordance with principles of international law. However, Article 46(2) of the Convention establishes that the aforementioned provision does not apply in the following cases:

- 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.

22. In this case, according to information supplied by the petitioners and confirmed by the Brazilian State, two police inquiries were initiated to determine the events that took place in Nova Brasília favela: (a) Inquiry Nº 184/94, begun on October 18, 1994, conducted by the Narcotics Enforcement Commission; and (b) Inquiry Nº 52/94, conducted by the Special Commission against Torture and Abuse of Authority. The opening date of this inquiry is not available.

23. According to the information available, the Commission notes that Brazilian law provides for a 30-day period for conclusion of police inquiries, which may be extended for an additional thirty days with judicial authorization. However, according to the information available in the file, even now the inquiries have not been completed, despite the passage of six years.

24. The State did not expressly dispute whether the requirement of exhaustion of domestic remedies had been met, confining itself to reporting that two police inquiries had been initiated to establish the alleged violations taking place in the police raid of Nova Brasília favela, and that the investigations process is being supervised by the Office of the Public Prosecutor. The Commission indicates that the State should expressly and duly cite the provisions regarding failure to exhaust domestic remedies so that it may oppose the petition's admissibility. In this case, the State did not avail itself of that prerogative, which amounts to its tacit waiver.¹

25. In view of the foregoing, the Commission states that, with six years having elapsed since the initiation of the investigations in 1994, without the police inquiries having been concluded, there has been an unwarranted delay as defined in Article 46(2) (c) of the Convention. Delay in the conclusion of these investigations implies that criminal proceedings cannot be brought, thereby making it impossible for the perpetrators to be punished. For the foregoing reasons, the Commission considers that the requirement regarding the exhaustion of domestic remedies is met.

C. Period for lodging the petition

26. In view of the unwarranted delay under domestic remedies and the corresponding application of Article 46(2)(c) of the Convention and Article 37(2)(c) of the Commission's Rules of Procedure, the Commission decides that, pursuant to Article 46(2) of the Convention, the

¹ Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987, Series C, No. 1, para. 88, and Inter-American Court of Human Rights, Case of Loayza Tamayo, Preliminary Objections, Judgment of January 31, 1996, Series C, Nº 25, para. 40.

exception to said requirement regarding the period for lodging the petition also applies. The Commission considers that the petition was lodged within a reasonable period of time.

D. Duplication of proceedings and *res judicata*

27. The Commission has no knowledge that the subject of the petition is pending in another international proceeding for settlement, or that it represents, from a substantive standpoint, a reproduction of an appeal already examined by the Commission or another international entity. Therefore, the Commission finds that the requirements of Article 46(1)(c) and 47(d) of the Convention have been met.

E. Characterization of the facts

28. If their veracity is confirmed, the facts alleged by the petitioners may be characterized as violations of the rights enshrined in the American Convention.

V. CONCLUSIONS

29. The Commission concludes that it is competent to hear this case and that it is admissible under Articles 46 and 47 of the American Convention.

30. Based on the arguments of fact and law set forth above, and without prejudice to the merits of the case,

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

1. To declare this case admissible with regard to the facts which, if their veracity is confirmed, constitute violations of Articles 4, 5, 8, 11 (1), 12 (2), 12 (3), and 25 of the American Convention.
2. To notify the Brazilian State and the petitioners of this decision.
3. To continue its analysis of the merits of the case; and
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in Washington, D.C., on this 22nd day of February 2001. (Signed): Claudio Grossman, Chairman, Juan Méndez, Vice-Chairman; Marta Altolaguirre, Second Vice-Chair; Robert K. Goldman, Julio Prado Vallejo, and Peter Laurie, Commissioners.

* Commissioner Hélio Bicudo, a Brazilian national, did not participate in the discussion of this case in accordance with Article 19(2)(a) of the Commission's Rules of Procedure.