

REPORT N° 48/06
PETITION 12.174
ADMISSIBILITY
ISRAEL GERARDO PAREDES COSTA
DOMINICAN REPUBLIC
March 15 , 2006

I. SUMMARY

1. On April 28, 1999, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission" or the "IACHR") received a petition filed by Mr. Israel Gerardo Paredes Costa (hereinafter "the petitioner" or "the alleged victim"), alleging international responsibility on the part of the Dominican Republic (hereinafter "the State") based on the fact that, as asserted, a group of police officers came to the premises of his company on April 6, 1992, where they arrested him and carried out a series of seizures. He also alleges that other searches occurred later and that he was accused, even in the national press, of being the alleged coordinator of an attack that was to take place in the city. In addition, the petitioner asserts that he was subjected to various types of torture such as keeping him hung [by his wrists] in a cell after he had been beaten and taken to the brink of starvation, only to be found innocent later by the court. He also indicates that various belongings seized during the searches have not yet been returned to him.

2. For its part, the State asserts that the national police are entirely willing to deliver the seized property to the petitioner and that two members of the police would be subject to disciplinary investigation for the actions committed.

3. After an exhaustive analysis of the positions of the petitioner and the State, the Commission has decided to accept the petition on possible violations to the detriment of Israel Gerardo Paredes Costa of Articles 5 (right to personal integrity), 7 (right to personal liberty), 8 (right to a fair trial), 11 (right to honor and dignity), 21 (right to private property) and 25 (right to judicial protection) of the American Convention on Human rights (hereinafter the "American Convention" or the "Convention"), as they relate to Article 1.1 (obligation to respect rights). Finally, the Commission has decided to publish this report in the Annual Report to the General Assembly of the OAS and to notify both parties.

II. PROCESSING BY THE INTER-AMERICAN COMMISSION

4. The Commission received the petition on April 28, 1999 and assigned it case number 12.174, in accordance with the Rules of Procedure then in effect. The information was sent to the State on June 15 of the same year and the State sought an extension until August 27, 1999. On October 29, 1999, the petitioner submitted additional information, which was forwarded to the State on March 21, 2000. On April 10, 2000, the petitioner submitted additional information, which was sent to the State on April 19 of the same year. On May 17, 2000, the State asked for a 30-day extension. On July 21, 2000, the State submitted information, which was forwarded to the petitioner on September 5 of the same year. On September 27, 2000, the petitioner sent additional information, which was forwarded to the State on October 10, 2000. On December 7, 2001, the IACHR requested information from the State, to be sent within 30 days. On December 14, 2001, the State was granted a 30-day extension. On February 15, 2002, the State was informed that the information had been received and the information was sent to the petitioner. Subsequently, the parties continued to send information that was collected and sent to the respective counterpart by the IACHR.

III. POSITIONS OF THE PARTIES

A. The petitioner

5. The petitioner alleges that in 1990 he set up a small photography and advertising company in Santo Domingo called "*Soluciones mágicas C por A.*"

6. He asserts that on March 6, 1992 national police officers from the forgery department came to his company, searched the premises and proceeded to seize items belonging to the alleged victim, including a licensed handgun and 4,200 Dominican pesos. He also asserts that they placed him under arrest. Later, a second and third search were conducted in which the police claimed they found a bottle allegedly containing powder and proceeded to seize a video camera and recorder "even though the representative for the public prosecutor and for the press stated that 'nothing compromising was found.'"

7. The petitioner asserts that he was taken to the Secret Service department where they shut him up in a small cell and kept him hanging up with his hands in handcuffs "after he had spent the entire night with blood coming out his ears" due to, he alleges, a series of blows he received from the interrogators who, he states, beat him in front of General Ramón Alcides Rodríguez Arias, who was chief of the national police at the time.

8. The alleged victim indicates that after some days in that situation they put him into a vehicle and took him to the site of the company where, although they didn't take him out of the vehicle, he could see national police agents removing all the office equipment and work from his company, including a Commodore 128 computer, a photographic enlarger, cameras, personal items and a large amount of equipment. He also indicates that several of these items of property were not noted in the record of the search. In addition, the petitioner asserts that he later found out that his company was subjected to other searches by "two military security bodies called A-2 and G-2."

9. The petitioner claims that he was again placed in a cell where he spent four days without water and food until in the early morning of the fifth day he collapsed and began to babble "like someone full of anguish and crying until they called the Secret Service chief, a national police colonel by the name of Julio César Campusano." Due to his condition, he was transported to the Padre Billini hospital where they treated him for starvation and an advanced state of dehydration.

10. The petitioner alleges that 19 days after the arrest he was presented to the press and that it was under these circumstances that he learned that he was being accused of owning a bomb factory the purpose of which was to sabotage the celebration of the 500th anniversary of the "Discovery and Evangelization of America." He alleges that after being presented to the press, he was not brought to court and was jailed and handcuffed for 32 more days during which, he asserts, he was subjected to a series of death threats and "physical and psychological torture." He alleges that at no time was he taken before the competent court nor was there any legal order legalizing his situation, as required by domestic law under the Political Constitution.

11. The petitioner argues that later, "although he was expecting to be brought before a judge for a habeas corpus hearing," he was conducted to the "La Victoria" penitentiary, entering it on April 7, 1992. He asserts that on that same day he saw other inmates forced to lie on the wet floor where they were whipped with a tire band and steel wire by Colonel Benito Díaz Pérez. He alleges that, in order to avoid such mistreatment, he had to pay 200 pesos and was later jailed in a cell with hundreds of prisoners sleeping one on top of another: "The overpopulation was huge, the prison capacity was 800 people and there were 4,231 inmates when I got there."

12. The petitioner also alleges that he asked to be allowed to submit a habeas corpus petition, although it was not very clear who received his request, but five months went by without his being brought before the court. He alleges that shortly after he had been deprived of liberty for a total of four years, his case was heard by a judicial authority and he was finally released after having been in that situation for a total of seven years. He adds that the criminal chamber of the first instance court of the

national district ruled on his release on April 15, 1999, declaring him not guilty due to insufficient evidence.

13. The petitioner also indicates that the court ruling ordered that all property seized from him should be returned but to date this has not been fully carried out. He also alleges that the same ruling stated that there were four search procedures but none of them record the seven handcrafted bombs for which the petitioner had been accused. He also states that the ruling indicates that it was unlawful for the prosecutor's office representative to declare the existence of powder in a bottle without proper analysis of the substance.

14. He also alleges that the court's ruling considers it a matter of "great concern" that the petitioner was arrested on March 6, 1992 and interrogated 20 days later, on March 26 of the same year. He also states that the ruling records violations of judicial guarantees, both constitutional and human rights guarantees. The petitioner asserts that he submitted a letter to the Dominican Human Rights Committee dated June 23, 1999, and a letter to Major General Pedro de Jesús Candelier, chief of the national police, dated August 25, 1999, asking that the court's order seeking return of the seized property be enforced. The petitioner also indicates that on September 27, 1999, the Dominican Human Rights Committee submitted a letter to the President of the Republic informing him of and seeking action regarding the seized property as well as the acts of torture alleged by the petitioner. Finally, the petitioner argues that on November 30, 1999 he submitted a letter to Dr. César Pina Toribio, General Prosecutor of the Republic, informing him of the acts of torture and the failure to carry out the return of his property. He also indicates that he submitted letters to other high officials of the Dominican State such as the President of the Supreme Court of Justice and the Secretary of State for Foreign Relations.

15. The petitioner alleges that, due to a communication from the State urging him to appear at the headquarters of the national police, he went to the indicated place on February 15, 2002, where they transferred him to the Internal Affairs Department, where he was attended by General Mariano Madé Ramírez, who, according to the petitioner, was his principal torturer. The petitioner establishes that this is the person in charge of the police's internal case. He thus reported the situation to the Dominican chancellery, asserting that he would not meet with someone who had subjected him to physical and psychological mistreatment. The petitioner alleges that in future dealings with various departments of the national police, he received only rebuffs in his efforts to resolve the case in question.

16. The petitioner also indicates that on July 17, 2001 he filed a civil suit with the Third Division of the Civil and Commercial Chamber of the First Instance Court of the National District for damages and injuries against the national police, setting forth the facts of torture and the failure to return his property. This suit was declared inadmissible on September 26, 2002 because the petitioner submitted photocopies rather than originals as documentary evidence. Finally, the petitioner asserts that to date his property has not been returned to him nor has any investigation been conducted and that, on the contrary, he has received a series of threats and attacks from members of the national police due to the attention that the case has been getting, including in the media.

B. The State

17. The State asserts that the alleged victim was invited to a hearing with responsible police personnel in order to have his property returned. It indicated that the police were entirely willing to execute the ruling referred to by the petitioner, which ordered that the property be returned.

18. The State indicates that the national police had arranged for the alleged victim to appear at the National Police Building to receive the referenced property. The Dominican State also asserts that “police authorities are evaluating the possibility of compensating Mr. Paredes Acosta for possible deterioration of the seized equipment.”

19. The State also asserts that a police disciplinary court has proceeded to investigate two members of the national police who may have committed unlawful acts against the alleged victim.

20. The Dominican State also indicates that, with respect to the harassment and attacks reported by the petitioner, at no time have the police been persecuting or harassing the petitioner since the petitioner has no procedure pending with the national police.

IV. ANALYSIS

A. The Inter-American Commission’s competence *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae*

21. The petitioner has the right under Article 44 of the American Convention to file complaints with the IACHR. The petition indicates an individual as the alleged victim, with respect to whom the Dominican State agreed to respect and ensure the rights enshrined in the American Convention and other international instruments. In addition, the Commission indicates that the Dominican Republic ratified the American Convention on April 19, 1978, and the Commission is thus competent *ratione personae* to examine the petition.

22. The commission is competent *ratione loci* to hear the petition, in that the petition alleges violations of human rights protected under the American Convention that occurred within the territory of a State Party to that treaty. The IACHR is competent *ratione temporis* in that the obligation to respect and ensure the rights protected under the American Convention were already in effect for the State when the events in the petition are alleged to have occurred. Finally, the Commission is competent *ratione materiae* because the petition alleges violations of human rights protected by the American Convention.

B. Other admissibility requirements of the petition

1. Exhaustion of domestic remedies

23. Article 46.1.a of the American Convention provides that the admissibility of a petition submitted to the Commission in accordance with Article 44 of the Convention is subject to the requirement “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.” The purpose of this requirement is to enable national authorities to have the opportunity to address the alleged violation of a protected right, and where appropriate resolve it, prior to any submission before an international mechanism.

24. The requirement of prior exhaustion applies when domestic remedies are available in practice within the national system, and would be adequate and effective in providing a remedy for the alleged violation. In this sense, Article 46.2 specifies that the requirement is not applicable when the domestic legislation does not afford due process for the protection of the right in question; or if the alleged victim did not have access to domestic remedies; or if there was unwarranted delay in reaching a final judgment in response to the invocation of those remedies. As indicated by Article 31 of the Commission’s Rules of Procedure, when a petitioner alleges one of these exceptions, it then falls to the State to

demonstrate that domestic remedies have not been exhausted, unless that is clearly evident from the record.

25. According to the principles of international law as reflected in the precedents established by the Inter-American Commission and Court, it may first be noted that the State in question may expressly or tacitly waive the invocation of this rule¹. Second, in order to be considered timely, the objection that domestic remedies have not been exhausted must be raised during the first stages of the proceeding; otherwise, it will be presumed that the interested State has tacitly waived its use². Finally, the State that alleges non-exhaustion of domestic remedies must indicate which remedies should have been exhausted, as well as provide evidence of their effectiveness³. Consequently, if the State in question does not provide timely arguments with respect to this requirement, it will be understood to have waived its right to argue the non-exhaustion of domestic remedies and thereby discharge the burden of proof that would correspond to it.

26. In the present case, the petitioner contends that the domestic remedies were exhausted with the judgment of April 15, 1999 of the Tenth Criminal Board, which granted his release and ordered the return of his personal items that were sized by the national police. The petitioner points out that the judgment acquired authority given that it was not appealed. Likewise, the petitioner presented additional information which states that on July 17, 2001, before the Third Division of the Civil and Commercial Chamber of the First Instance Court of the National District, he filed a civil suit for damages and injuries against the national police, which was declared inadmissible on September 26, 2002. For its part, the State abstained from presenting arguments with respect to the admissibility of the demand.

27. Based on the terms of Article 46 of the Convention and Article 31 of the Rules of Procedure; on the analysis of the petition, in particular in consideration of the petitioner's allegations; and considering the State abstained from presenting specific and concrete information with respect to the questions of admissibility of the present petition, the Commission concludes that the requirement of prior exhaustion of domestic remedies is satisfied.

2. Timeliness

28. In accordance with Article 46.1.b of the Convention, a petition must be presented in a timely manner to be admitted, namely, within six months from the date on which the complaining party was notified of the final judgment at the domestic level. The six-month rule ensures legal certainty and stability once a decision has been taken.

29. In the present case, considering the judgment dated April 15, 1999, and that the petition was submitted to the Commission on April 28, 1999, the Commission feels that the requirement has been satisfied.

3. International duplication of proceedings and *res judicata*

¹ IACHR Report N° 69/05, petition 960/03, Admissibility, Iván Eladio Torres, Argentina, October 13, 2005, para. 42; I/A Court H.R., *Ximenes Lopes Case. Preliminary Objections*. Judgment of November 30, 2005. Series C No. 139, para. 5; I/A Court H.R., *Moiwana Community Case*. Judgment of June 15, 2005. Series C No. 124, para. 49; and I/A Court H.R., *Serrano Cruz Sisters Case. Preliminary Objections*. Judgment of November 23, 2004. Series C No. 118, para. 135.

² I/A Court H.R., *Mayagna (Sumo) Awas Tingni Community Case. Preliminary Objections*. Judgment of February 1, 2000. Series C No. 66, para. 53; *Castillo Petrucci et al. Case. Preliminary Objections*. Judgment of September 4, 1998. Series C No. 41, para. 56; and I/A Court H.R., *Loayza Tamayo Case. Preliminary Objections*. Judgment of January 31, 1996. Series C No. 25, para. 40. The Commission and the Court have established that "the first stages of the proceeding" should be understood as "the stage of admissibility of the procedure before the Commission, that is, before any consideration of the merits [...]." See, for example, IACHR Report N° 71/05, petition 543/04, Admissibility, Ever de Jesús Montero Mindiola, Colombia, October 13, 2005, that cites I/A Court H.R., *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107, para. 81.

³ IACHR Report N° 32/05, petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral and other persons affected by HIV/AIDS, Guatemala, March 7, 2005, paras. 33-35; I/A Court H.R., *Mayagna (Sumo) Awas Tingni Community Case. Preliminary Objections*, supra note 3, para. 53; *Durand and Ugarte Case. Preliminary Objections*. Judgment of May 28, 1999. Series C No. 50, para. 33; and *Cantoral Benavides Case. Preliminary Objections*. Judgment of September 3, 1998. Series C No. 40, para. 31.

30. Although the petitioner told local authorities that the alleged acts of torture were reported to the United Nations Commission on Human Rights, there is no material file that would allow us to understand that the case is being reviewed in that or in any other international body, or that reproduces a petition already examined by that or any other international body. Thus, it is appropriate to consider the requirements established in Articles 46.1.c and 47.d of the Convention to have been satisfied.

4. Characterization of the alleged facts

31. Without prejudging the merits of the case and although the petitioner does not clearly state which articles of the American Convention were allegedly violated, the Commission believes that, based on the information provided to the IACHR and following the principle of *jura novit curia*, according to which the court may determine the law applicable to the specific case, the actions described, if proven, could represent violations of the right to personal integrity, the right to personal liberty, the right to a fair trial, the right to honor and dignity, the right to private property, and the right to judicial protection enshrined in Articles 5, 7, 8, 11, 21 and 25, respectively, of the American Convention, as they relate to Article 1.1 on the obligation to respect rights.

V. CONCLUSION

32. The Commission concludes that the case is admissible and that it is competent to examine the complaint submitted by the petitioner with respect to the alleged violation of Articles 5, 7, 8, 11, 21 and 25 consistent with Article 1.1 of the American Convention, as provided in Articles 46 and 47 of that same international instrument and in accordance with Articles 28 to 37 and 39 of the Commission's Rules of Procedure.

31. Based on the factual and legal considerations presented above and without prejudging the merits of the case,

THE INTER-AMERICAN HUMAN RIGHTS COMMISSION,

DECIDES:

1. To declare the petition admissible with respect to Articles 1.1, 5, 7, 8, 11, 21 and 25 of the American Convention.
2. To notify the State and the petitioners of this decision.
3. Proceed with the examination of the merits of the case.
4. To publish this decision and include it in its Annual Report for submission to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 15th day of the month of March, 2006.
(Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-President; Clare K. Roberts, Freddy Gutiérrez, Paolo G. Carozza and Víctor Abramovich, Commissioners.