



Gomes Lund, et al. (Araguaia Guerrilla) v. Brazil

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Country: Brazil

Region: Americas

Year: 2010

Court: Inter-American Court of Human Rights Inter-American Court of Human Rights

Health Topics: Prisons, Violence

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Freedom of expression, Right to due process/fair trial, Right to liberty and security of person

Facts

On 26 March 2009, the IACmHR submitted to the IACtHR a lawsuit against Brazil, which originated in a petition filed on 7 August 1995 by the Center for Justice and International Law (CEJIL) and Human Rights Watch/Americas. The underlying claims concerned Brazil's alleged responsibility for the arbitrary detention, torture and forced disappearance of 70 people, among them farmers of the Brazilian Araguaia region and members of the Brazilian communist party, carried out from 1972 to 1975 by the Brazilian military with the aim of eradicating the Araguaia Guerilla during Brazil's dictatorship, which lasted from 1964 to 1985. Members from the Family Members of the Deceased and Disappeared Politicians from the State Institute of Violence Studies, Mrs. Angela Harkavy and Never Again Torture Group joined the lawsuit (the "Group").

Prior to submitting its lawsuit to the IACtHR, the IACmHR had admitted a claim on 6 March 2001 based on Brazil's alleged violations of Articles 4, 8, 12, 13 and 25, in accordance with Article 1.1, of the ACHR, as well as Articles I, XXV and XXVI of the American Declaration of Man's Rights and Duties. On 31 October 2008 the IACmHR approved the Formal Report No 91/08, based on Article 50 of the ACHR, which contained certain recommendations to be carried out by Brazil. Brazil was notified of the Formal Report on 21 November 2008. Despite Brazil's having received two extensions, the deadlines for reporting on its compliance passed without a "satisfactory implementation" of the recommendations. In response, the IACmHR referred the case to the jurisdiction of the IACtHR on 26 March 2009.

On 18 July 2009 the Group presented their arguments and demanded that Brazil be held accountable for violations of Articles 2, 3, 4, 5, 7, 8, 13 and 25 of the ACHR, all of which are related to Articles 1.1 and 2 of the ACHR, as well as certain Articles of the Inter-American Convention to Prevent and Sanction Torture.

On 31 October 2009 Brazil responded to the complaint and the Group's allegations and requested that the Court (a) find that the Court lacked authority *ratione temporis* regarding the alleged violations that occurred prior to the recognition of the competent jurisdiction of the Brazilian courts, (b) find that the Court lacked authority due to pending local proceedings, and (c) immediately dismiss the case due to the Group's alleged lack of standing.

[Adapted from INTERIGHTS summary, with permission]

Decision and Reasoning

The Court found that Brazil had violated articles 3, 4, 5, 7, 8.1, 13.1, and 25 of the American Convention on Human Rights.

The Court held that the forced disappearances and executions amount to continuous actions and that even though the physical acts occurred before Brazil accepted jurisdiction of the Court, Brazil has a continuous duty that extended into the time after Brazil accepted jurisdiction.

The Court found that the provisions of the Brazilian Amnesty Law that prohibit prosecution of severe violations to human rights are incompatible with the ACHR because they lack judicial effect and should not act to obstruct the investigation of the facts or the identification and punishment of those responsible;

Thus the court found that:

- (1) Brazil is liable for all forced disappearances and as such, for violations to the rights which recognise legal entitlement to life, to personal integrity and to personal liberty set forth in Articles 3, 4, 5 and 7 of the ACHR, with regards to Article 1.1;
- (2) Brazil violated its obligation to amend local law to conform with the ACHR, in accordance with Article 2, in relation to Articles 1.1, 8.1 and 25;
- (3) Brazil violated the civil rights and judicial protections provided by Articles 8.1 and 25.1 of the ACHR, with regards to Articles 1.1 and 2, due its failure to investigate the facts of the case and to sentence and punish those responsible;
- (4) Brazil violated the freedom of thought and expression protected under Article 13 of the ACHR, with regards to Articles 1.1, 8.1 and 25;
- (5) Brazil violated the civil rights protected under Article 8 of the ACHR, with regards to Articles 1.1 and 13.1, by allowing its local ordinary proceedings to exceed reasonable periods of time;
- (6) Brazil violated the personal right to integrity granted by Article 5.1 of the ACHR, with regards to Article 1.1;
- (7) Brazil must efficiently conduct, with local ordinary proceedings, criminal investigations of the facts of the case in order to obtain the truth, to determine the corresponding criminal charges and to apply effectively the necessary punishment;
- (8) Brazil must take all necessary actions to locate the victims and to provide free medical and psychological assistance to the victims;
- (9) Brazil must (a) publish the Court's Resolution once in its official gazette, (b) publish an official summary of the Resolution, (c) publish the complete version of the Resolution on the State website, (d) publish the Resolution in book format;
- (10) Brazil must hold a public event whereby it takes international responsibility for the facts of the case;
- (11) Brazil must continue to implement a program on human rights aimed at all hierarchical levels of Brazil's armed forces;
- (12) Brazil shall adopt measures necessary to formulate the crime of forced disappearances pursuant to Inter-American standards;
- (13) Brazil must take all actions to secure the effective trial and punishment of those responsible for the forced disappearances through existing mechanisms within Brazilian law;
- (14) Brazil must continue to develop initiatives to publish all information concerning the Guerilha do Araguaia, as well as information related to the violations of human rights that occurred during the military regime;
- (15) Brazil must pay certain amounts to each family of the victims and other applicants;
- (16) Brazil must take certain other actions to assist with the identification of victims, to provide notice of the Resolution and to facilitate the filing of indemnification claims by the affected family members;
- (17) the Court will supervise the fulfilment of the Resolution;
- (18) Brazil shall inform the Court within one year of all measures it has adopted to comply with the Resolution.

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Decision Excerpts

¶17. In its constant jurisprudence, this Court has established, however, that acts of a continuous or permanent nature extend throughout time wherein the event continues, maintaining a lack of conformity with

international obligations. In accordance with the foregoing, the Court highlights that the continuous or permanent nature of the enforced disappearance of persons has been recognized in a repeated manner in the International Law of Human Rights, where the act of disappearance and execution commence with the deprivation of liberty of the person and the subsequent lack of information regarding the whereabouts, and continues until the whereabouts of the disappeared person are made known and the facts are ascertained. Therefore, the Court has jurisdiction to analyze the alleged enforced disappearances of the alleged victims as of Brazil's recognition of the Court's contentious jurisdiction.

108. In short, each time there is reasonable cause to suspect that a person was subject to an enforced disappearance an investigation must be initiated. This obligation is independent from the filing of a complaint, given that in cases of enforced disappearance, international law and the general obligation to guarantee require the obligation to investigate the case ex officio, without delay, and in a serious, impartial, and effective manner. This is a fundamental and determinant element for the protection of certain rights affected by such situation. In any case, every State authority, public official or individual, that has had notice of acts of the enforced disappearance of persons, must immediately report said facts.

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