

Nogueira de Carvalho et al. v. Brazil

ABSTRACT¹

I. FACTS

A. Chronology of Events

Before 1995: Mr. Gilson Nogueira de Carvalho is a human right lawyer who works for Center for Human Rights and Popular Memory (*Centro de Derechos Humanos y Memoria Popular*), an organization affiliated with the National Human Rights Movement.² One of his professional activities is to monitor and report on the activities of the Golden Boys, an active death squad in the State of Rio Grande do Norte.³ The Golden Boys are allegedly comprised of members of the police force under the direction of Mr. Maurilio Pinto de Medeiros, the Deputy Secretary of Public Security of Rio Grande do Norte.⁴

August 14–15, 1995: During a hearing of the Federal Human Rights Commission in Brasilia, Mr. Nogueira de Carvalho informs the authorities that he is receiving death threats.⁵

September 6, 1995: Mr. Nogueira de Carvalho begins receiving protection from the Federal Police.⁶

June 3, 1996: The Federal Police protection of Mr. Nogueira de Carvalho ends.⁷

1. Zach Tripodes, Author; Kathryn Benson, Editor; Megan Venanzi, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Nogueira de Carvalho et al. v. Brazil, Preliminary Objections and Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 161, ¶ 67.2 (Nov. 28, 2006).

3. *Id.*

4. Nogueira de Carvalho et al. v. Brazil, Admissibility Report, Report No. 61/00, Inter-Am. Comm'n H.R., Case No. 12.058, ¶ 9 (Oct. 3, 2000).

5. *Id.* ¶ 18.

6. *Id.* ¶ 19.

7. *Id.*

October 19, 1996: Mr. Nogueira de Carvalho receives a threatening telephone call while he is at a public festival with friends.⁸

October 20, 1996: Around 12:00 AM, as Mr. Nogueira de Carvalho is driving to his farm with a companion, a Volkswagen Gol that has no license plate follows them.⁹ Inside the car are three men whose faces are covered.¹⁰ As Mr. Nogueira de Carvalho drives up to his front gate, the Volkswagen Gol maneuvers itself between Mr. Nogueira de Carvalho's car and the gate.¹¹ Moments later, a passenger of the Volkswagen Gol points a gun out the window at begins shooting.¹² Mr. Nogueira de Carvalho attempts to reverse his car, but is struck in the head by gun fire, killing him.¹³ Several more shots are fired before the Volkswagen Gol leaves.¹⁴ The Volkswagen Gol is later discovered abandoned and burned.¹⁵ The autopsy of Mr. Nogueira de Carvalho reveals at least eighteen bullet-hole entries.¹⁶

October 25, 1996: The investigation of Mr. Nogueira de Carvalho's murder is transferred to the Federal Police following a request by the Governor of Rio Grande do Norte.¹⁷ That same day the Federal Police opens an investigation.¹⁸

June 9, 1997: The Federal Police Chief submits the report regarding the investigation of Mr. Nogueira de Carvalho's murder, which concludes that there is insufficient evidence to identify the perpetrators.¹⁹

June 10, 1997: The Court of Macaíba grants a request by the Public Prosecutor to close the investigation for lack of evidence, but the court closes the case without prejudice meaning it can be reopened at a later day if additional evidence is uncovered.²⁰

8. Nogueira de Carvalho et al. v. Brazil, Preliminary Objections and Merits, ¶ 67.3.

9. *Id.* ¶ 67.4.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. Nogueira de Carvalho et al. v. Brazil, Preliminary Objections and Merits, ¶ 67.3.

15. *Id.* ¶ 67.6.

16. *Id.* ¶ 67.5.

17. *Id.* ¶ 67.7.

18. *Id.* ¶ 67.8.

19. *Id.* ¶ 67.12.

20. Nogueira de Carvalho et al. v. Brazil, Preliminary Objections and Merits, ¶ 67.12.

August 3, 1998: The Human Rights Ombudsman of the Natal Courts informs the Public Prosecutor that Mr. Antônio “Carla” Lopes, a friend of Mr. Nogueira de Carvalho and private investigator, collected additional evidence regarding the case for them.²¹

August 31, 1998: The Public Prosecutor requests that the police reopen the investigation in light of the new information.²²

September 24, 1998: The Court of Macaíba grants the request and reopens the investigation.²³

November 15, 1998: In a separate investigation, the Federal Police execute a search warrant and seize several firearms from the home of Mr. Otávio Ernesto Moreira, a former Rio Grande do Norte police officer, who at the time was in preventive custody.²⁴

December 10, 1998: Brazil accepts the contentious jurisdiction of the Inter-American Court.²⁵ That same day the Federal Police conclude that a cartridge found at the site of Mr. Nogueira de Carvalho’s murder was fired by one of the firearms seized from Mr. Moreira’s home.²⁶

January 25, 1999: The Public Prosecutor charges Mr. Moreira with aggravated homicide for the death of Mr. Nogueira de Carvalho.²⁷

March 3, 1999: Mr. Lopes, the friend of Mr. Nogueira de Carvalho who conducted a private investigation of his death, is murdered.²⁸

June 16, 1999: The Inferior Court of Macaíba confirms the indictment of Mr. Moreira and commits him to trial.²⁹

October 24, 2001: The Court of Macaíba approves Mr. Moreira’s request that the venue be changed to the Court of Natal.³⁰

21. *Id.* ¶ 67.13.

22. *Id.* ¶ 67.14.

23. *Id.* ¶ 67.15.

24. *Id.* ¶ 67.16.

25. *Id.* ¶ 4.

26. Nogueira de Carvalho et al. v. Brazil, Preliminary Objections and Merits, ¶ 67.18.

27. *Id.* ¶ 67.20.

28. *Id.* ¶ 67.21.

29. *Id.* ¶ 67.22.

30. *Id.* ¶ 67.24.

June 6–7, 2002: The jury trial takes place in the Court of Natal.³¹ By a vote of five to two, the jury votes to acquit Mr. Moreira.³²

March 6, 2004: The Second Criminal Chamber of the State Court of Rio Grande do Norte dismisses the Public Prosecutor's appeal against the acquittal.³³

January 20, 2005: The parents of Mr. Nogueira de Carvalho, Ms. Jaurídice Nogueira de Carvalho, and Mr. Geraldo Cruz de Carvalho, who participated in Mr. Moreira's case as third-party plaintiffs, file a special motion and an extraordinary remedy before the State Court of Rio Grande do Norte in which they request that the jury's acquittal be reversed.³⁴

May 11, 2005: The State Court of Rio Grande do Norte refers the petitions to the Higher Court and to the Federal Supreme Court.³⁵

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

December 11, 1997: The Center for Human Rights and Popular Memory (*Centro de Derechos Humanos y Memoria Popular*), the Holocaust Human Rights Project, and the Group of International Human Rights Law Students file the complaint against the State before the Commission.³⁶

August 21, 2000: Global Justice joins the complaint as a co-petitioner.³⁷

October 2, 2000: The Commission adopts Admissibility Report No. 61/00 in which it finds the complaint admissible.³⁸

31. *Id.* ¶ 67.31.

32. Nogueira de Carvalho et al. v. Brazil, Preliminary Objections and Merits, ¶ 67.31.

33. *Id.* ¶ 67.32.

34. *Id.* ¶ 67.33.

35. *Id.*

36. *Id.* ¶ 5.

37. *Id.*

38. Nogueira de Carvalho et al. v. Brazil, Preliminary Objections and Merits, ¶ 9.

March 10, 2004: The Commission adopts Report on the Merits No. 22/04 in which it finds the State responsible for violations of Article 4 (Right to Life), Article 8 (Right to a Fair Trial), and Article 25 (Right to Judicial Protection) in relation to Article 1(1) of the American Convention.³⁹ The Commission made various recommendations to the State.⁴⁰

B. Before the Court

January 13, 2005: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁴¹

June 21, 2005: The State files a brief of preliminary objects in which it argued that the Court lacked jurisdiction *ratione temporis* (temporal jurisdiction) and that the petitioners had not exhausted domestic remedies.⁴²

1. Violations Alleged by Commission⁴³

Article 8 (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁴⁴

Same Violations Alleged by Commission, plus:

Article 4 (Right to Life)

Article 1(1) (Obligation to Respect Rights) of the American Convention.

July 28, 2005: Forty organizations and individuals submit amicus curiae briefs to the Court.⁴⁵

39. *Id.* ¶ 11.

40. *Id.*

41. *Id.* ¶ 16.

42. *Id.* ¶ 21.

43. Nogueira de Carvalho et al. v. Brazil, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.058, ¶ 156 (Jan. 13, 2005).

44. Nogueira de Carvalho et al. v. Brazil, Preliminary Objections and Merits, ¶ 20. Global Justice and the *Centro de Derechos Humanos y Memoria Popular* served as representatives of Ms. Nogueira de Carvalho and Mr. Cruz de Carvalho. *Id.* ¶ 18.

45. (1) Center for Justice and International Law, (2) Front Line – The International Foundation for the Protection of Human Rights Defenders, (3) World Organisation Against Torture, (4) *Corporación Colectivo de Abogados “José Alvear Restrepo,”* (5) *Movimiento Nacional de Derechos Humanos, Asociación Fomento,* (6) Miguel Agustín Pro Juárez Human Rights Center, (7) *Una Ventana a la Libertad,* (8) *Comité de Familiares de Detenidos – Desaparecidos,* (9) Robert

November 28, 2006: In its first preliminary objection, the State argues that the Court lacks jurisdiction because the death of Mr. Nogueira de Carvalho occurred before the State accepted the contentious jurisdiction of the Court.⁴⁶ While the Court agrees that it could not hear facts related to the death of Mr. Nogueira de Carvalho, it nonetheless found that it had jurisdiction to hear arguments related to acts or omissions of the State associated with Mr. Nogueira de Carvalho's death that persisted beyond the date on which the State accepted the contentious jurisdiction of the Court because "on-going or lasting violations" do not violate the principle of non-retroactivity as defined in Article 28 of the Vienna Convention on the Law of Treaties.⁴⁷

In its second preliminary objection the State argues that domestic remedies had not been exhausted because (1) the criminal investigation into Mr. Nogueira de Carvalho's death was ongoing when the Commission issued its Admissibility Report, (2) the two remedies filed by the parents of Mr. Nogueira de Carvalho are still pending before State courts, and (3) the parents of Mr. Nogueira de Carvalho seeking compensation in the case never attempted to seek compensation from the State via domestic remedies.⁴⁸ However, the Court dismisses this preliminary objection because the State's failed to make the objection

F. Kennedy Memorial Center for Human Rights, (10) *Centro de Derechos Económicos y Sociales*, (11) *Centro de Documentación en Derechos Humanos Segundo Montes Mozo S.J.*, (12) *Casa Alianza Honduras*, (13) *Centro para la Acción Legal en Derechos Humanos*, (14) *Programa Venezolano de Acción-Educación en Derechos Humanos*, (15) *Comité Permanente de Defensa de los Derechos Humanos de Orellana*, (16) *Grupo Interdisciplinario de Derechos Humanos de Medellín*, (17) *Comisión Mexicana de Defensa y Promoción de los Derechos Humanos*, (18) *Centro de Iniciativas Democráticas*, (19) *Instituto de Defensa Legal*, (20) *Asociación Pro Derechos Humanos*, (21) *Coordinadora Nacional de Derechos de Perú*, *Movimiento Nacional de Derechos Humanos*, (22) *Fundação Interamericana de Defesa de Direitos Humanos*, (23) *Terra de Direitos*, *Comisión Colombiana de Juristas*, (24) *Coordinadora de Derechos Humanos del Paraguay*, (25) *Centro de Derechos Humanos y Ambiente*, *Abogados y Abogadas del Noroeste Argentino en Derechos Humanos y Estudios Sociales*, (25) *Centro de Estudios Legales y Sociales*, (26) *Movimiento de Mujeres Dominico-Haitianas*, (27) *Human Rights Without Frontiers International*, (28) *University of Virginia School of Law International Human Rights Law Clinic*, (29) *Human Rights Network International*, (30) *Rights International – The Center for International Human Rights Law*, (31) *International League for Human Rights*, (32) *University of Minnesota Human Rights Center*, (33) *International Human Rights Clinic of George Washington University*, (34) *European Roma Rights Centre*, (35) *Washington College of Law Center for Human Rights and Humanitarian Law*, (36) *University of Essex Human Rights Centre*, (37) *Union Internationale des Avocats*, (38) *Benjamín Cuéllar Martínez*, (39) *Ms. Matilde Guadalupe Hernández Espinoza*, and (40) *Mr. Alejandro Ponce*, *Mr. Carlos Ayala*, and *Mr. Pedro Nikken* in their personal capacity as trial lawyers. *Id.* ¶ 35.

46. *Id.* ¶ 37.

47. *Id.* ¶¶ 43, 45. Vienna Convention on the Law of Treaties art. 28, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331.

48. *Nogueira de Carvalho et al. v. Brazil*, Preliminary Objections and Merits, ¶ 47.

during the admissibility stage before the Commission and therefore is deemed to have waived this objection.⁴⁹

III. MERITS

A. *Composition of the Court*⁵⁰

Sergio García Ramírez, President
Alirio Abreu Burelli, Vice-President
Antônio Augusto Cançado Trindade, Judge
Cecilia Medina Qurioga, Judge
Manuel E. Ventural Robles, Judge
Diego García Sayán, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

November 28, 2006: The Court issues its Judgment on Preliminary Objections and Merits.⁵¹

The Court found unanimously that Brazil had not violated:

Article 8 (Right to a Fair Trial), and Article 25 (Right to Judicial Protection), in relation to Article 1(1) of the Convention, to the detriment of Ms. Nogueira de Carvalho and Mr. Cruz de Carvalho,⁵² because:

Noting that it undertook a thorough analysis limited to those facts that took place following the State's acceptance of the Court's contentious jurisdiction, the Court finally notes, without further discussion, "that it has not been demonstrated that the State violated the right to fair trial or the right to judicial protection given in Articles 8 and 25 of the American Convention in the case."⁵³

49. *Id.* ¶ 53.

50. Judge Oliver Jackman did not take part in drafting the Judgment because he was unable to attend the session of the Court. *Id.* n.*.

51. *See generally id.*

52. *Id.* ¶ 81.

53. *Id.*

The Court declined to rule on whether Brazil had violated:

Article 4 (Right to Life), in relation to Article 1(1) (Obligation to Respect Rights) of the Convention, to the detriment of Mr. Nogueira de Carvalho,⁵⁴ because:

*The Court lacked jurisdiction to hear facts related to the death of Mr. Nogueira de Carvalho because those facts took place prior the State's recognition of the Court's contentious jurisdiction.*⁵⁵

C. Dissenting and Concurring Opinions

[None]

IV. REPARATIONS

[None]

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

[None]

VII. LIST OF DOCUMENTS

A. Inter-American Court

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Nogueira de Carvalho et al. v. Brazil, Preliminary Objections and Merits, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 161 \(Nov. 28, 2006\).](#)

54. Nogueira de Carvalho et al. v. Brazil, Preliminary Objections and Merits, ¶ 44.

55. *Id.*

3. Provisional Measures

[None]

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Nogueira de Carvalho et al. v. Brazil, Admissibility Report, Report No. 61/00, Inter-Am. Comm'n H.R., Case No. 12.058 \(Oct. 3, 2000\).](#)

3. Provisional Measures

[None]

4. Report on Merits

[Not Available]

5. Application to the Court

[Nogueira de Carvalho et al. v. Brazil, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.058 \(Jan. 13, 2005\) \(Available only in Spanish and Portuguese\).](#)

VIII. BIBLIOGRAPHY

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Valerio de Oliveira Mazzouli, *The Inter-American Human Rights Protection System: Structure, Functioning and Effectiveness in Brazilian Law*, 3 INTER-AM. & EUR. HUM. RTS. J. 175 (2010).