

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 119/09; Petition 398-04
Session:	Hundred Thirty-Seventh Regular Session (28 October – 13 November 2009)
Title/Style of Cause:	Edson Prado v. Brazil
Doc. Type:	Decision
Decided by:	President: Luz Patricia Mejia Guerrero; First Vice President: Victor Abramovich; Second Vice President: Felipe Gonzalez; Commissioners: Sir Clare K. Roberts, Florentin Melendez, Paolo G. Carozza. Commissioner Paulo Sergio Pinheiro, a Brazilian national, did not participate in the deliberations or the decision regarding this petition, in accordance with the provisions of Article 17.2.a of the Commission’s Rules of Procedure.
Dated:	12 November 2009
Citation:	Prado v. Brazil, Petition 398-04, Inter-Am. C.H.R., Report No. 119/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by:	APPLICANT: Helio Bicudo
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## I. SUMMARY

1. On April 27, 2004, the Inter-American Commission on Human Rights (hereinafter the “IACHR” or “Inter-American Commission”) received a petition lodged by Mr. Hélio Bicudo (hereinafter “the petitioner”), as the President of both the Inter-American Foundation for the Defense of Human Rights and the Human Rights Commission of the São Paulo Municipality, alleging the international responsibility of the Federative Republic of Brazil (“Brazil” or “the State”) for the death of Edson Prado (“the alleged victim”), which took place on May 12, 2003 inside a cell of the Penitentiary of Ribeirão Preto, in São Paulo. The petitioner states that Brazil is internationally responsible for the violation of Articles 1 (obligation to respect rights) and 4 (right to life) of the American Convention on Human Rights (“the American Convention”).

2. The State, for its part, alleges that the petition does not meet the admissibility requirements, in conformity with Articles 46.1.b and 47.b of the American Convention. In that regard, the State asserts that the judicial decision to archive the police investigation does not exhaust the remedies under domestic law and, additionally, that the family of the alleged victim did not pursue a civil action for compensatory damages. Moreover, the State stresses that the petition does not state facts that tend to establish a violation of the rights guaranteed by the American Convention, since the death of the alleged victim was duly investigated and ultimately the judicial decision to archive the police investigation was based on the fact that the evidence showed that the alleged victim died from natural causes.

3. In this report, the IACHR examines the available information and concludes that the petition is inadmissible because it does not state facts that tend to establish a violation of the rights guaranteed by the American Convention, in conformity with Article 47.b of said international instrument. The Inter-American Commission decides to notify the State and the petitioners of this report, to publish this decision and include it in its Annual Report to the OAS General Assembly.

## II. PROCESSING BY THE COMMISSION

4. The IACHR received the petition on April 27, 2004. On January 11, 2006, the Inter-American Commission forwarded the relevant parts of the communication to the State and granted it a period of two months to submit its response. On March 15, 2006, the State submitted its response, the relevant sections of which were sent to the petitioners on May 4, 2006.

5. The petitioner submitted additional information on July 12, 2006. This communication was duly forwarded to the State.

6. On August 28, 2006, the State asked for a fifteen-day extension with a view to submitting additional observations; however, no such information has been received to this date.

## III. POSITIONS OF THE PARTIES

### A. The Petitioner

7. The petitioner asserts that Brazil is responsible for human rights violations in relation to the death of the alleged victim on May 12, 2003, because he was under State custody in a cell at the Penitentiary of Ribeirão Preto, in São Paulo. Therefore, the petitioner argues that State agents, in this case either civil police or prison guards of São Paulo effectively had the duty to ensure the alleged victim's personal integrity and life.

8. The petitioner observes that the alleged victim was 35 years old at the time of his death from pulmonary congestion and cerebral edema, one day after visiting day. According to the petitioner, during the visit of his mother and his companion the previous day, the alleged victim had complained of death threats, particularly from the penitentiary's director of discipline.

9. The petitioner doubts the veracity of the official version provided after the investigation into the alleged victim's death, which concluded that he had fallen from the upper bunk bed while sleeping. In support of his allegations, the petitioner stresses that the height of the alleged victim was 1,92 meters and that supposedly his death was caused by a fall from a bunk bed 1,50 meters off the ground.

10. In addition to the foregoing, the petitioner emphasizes that there are unexplained circumstances surrounding the alleged victim's death, such as the fact that his cellmates stated before the police authorities that the alleged victim had used cocaine on the night of his death, but the post-mortem toxicology report did not indicate the presence of any drugs in his body.

Also, the petitioner indicates that the conclusion of the autopsy, which indicated death from natural causes, is unlikely to be true.

11. The petitioner alleges that the investigation into the alleged victim's death was conducted by authorities lacking impartiality, since it was carried out by civil police from the Police District near the Penitentiary, that is to say, from the same institution to which the prison guards that might be responsible for the death of the alleged victim belonged.

12. Based on the foregoing irregularities, the petitioner informs that the police investigation was archived by means of a judicial decision issued on November 7, 2003. In conclusion, the petitioner asks that the Inter-American Commission declare this petition admissible with respect to alleged violations of Articles 1.1 and 4 of the American Convention.

#### B. The State

13. The State argues that the petition is inadmissible in accordance with the provisions of Articles 46.1.b and 47.b of the American Convention. According to the State, the alleged victim died on May 12, 2003, due to an accidental fall from his bunk bed while sleeping inside his cell, which ultimately caused pulmonary congestion and cerebral edema. The State informs that the alleged victim was urgently taken to the Emergency Room of the Hospital das Clínicas, where he died from pulmonary congestion and cerebral edema at around 4:30 a.m.

14. The State adds that a civil police investigation was initiated to clarify the causes of death of the alleged victim by the 8th Police District of the municipality of Ribeirão Preto, state of São Paulo. According to the State, the authorities immediately ordered that all seven cellmates of the alleged victim be interrogated, and also requested an autopsy and a toxicology report.

15. The State explains that, according to the statements of the alleged victim's cellmates, he had used cocaine the previous afternoon, presented erratic behavior and seemed to be suffering from hallucinations, which might have caused him to fall from the bunk bed and hit his face on the cement floor. His cellmates, according to the State, also reported that the alleged victim had suffered no physical aggression inside the penitentiary.

16. Despite the foregoing, the State indicates that the toxicology report concluded that the alleged victim had not used any illegal toxic substance. On the other hand, the State observes that the autopsy determined that the alleged victim's death occurred from natural causes due to pulmonary congestion and cerebral edema, both of which were consistent with the alleged fall from his bunk bed. Having found no evidence of malicious conduct resulting in the alleged victim's death, the State notes that the judicial authority, in line with the opinion of the Public Prosecutor's Office (Ministério Público), decided to archive the police investigation on November 7, 2003.

17. With respect to the admissibility of this petition, firstly the State alleges that the facts presented in it do not tend to establish a violation of a right guaranteed by the American Convention. In this regard, as discussed above, the State affirms that the police authorities duly investigated whether the death of the alleged victim might have been caused by malicious

conduct from either prison guards from the Penitentiary of Ribeirão Preto or his cellmates, but the investigation found no evidence to that effect. Moreover, the State emphasizes that the investigation showed that the death of the alleged victim was caused by an accidental fall from his bunk bed, which led to pulmonary congestion and cerebral edema, that is to say, the death was due to natural causes.

18. Additionally, the State does not consider that the decision to archive a police investigation exhausts the remedies under domestic law. In fact, the State asserts that such a decision is merely “terminative” in nature and cannot correspond to the fulfillment with the prior exhaustion requirement. Indeed, the State argues that the decision to archive has a *rebus sic stantibus* nature, and does not constitute *res judicata*, because if the circumstances change and new evidence is presented to the authorities, the police investigation may be reopened. Moreover, the State adds that the family of the alleged victim did not pursue a civil action for compensatory damages either.

19. In conclusion, the State emphasizes that the case in question was duly investigated, with the active participation of the Prosecutor’s Officer, and ultimately resolved by a competent judicial authority through a decision dated November 7, 2003. Therefore, the State asks that the Inter-American Commission declare this petition inadmissible with respect to all alleged violations of the American Convention.

#### IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

##### A. Competence *ratione materiae*, *ratione personae*, *ratione temporis*, and *ratione loci*

20. The petitioner is authorized by Article 44 of the American Convention to lodge complaints with the Inter-American Commission. The petition points to Edson Prado as the alleged victim, an individual whose rights as embodied in the American Convention the State undertook to respect and ensure. As regards the State, the IACHR notes that Brazil is a State Party to the American Convention, having ratified it on September 25, 1992. Therefore, the Inter-American Commission is competent *ratione personae* to examine the petition.

21. The IACHR is competent *ratione materiae* because the petitioner alleges violations of rights protected by the American Convention. It is also competent *ratione temporis* because the obligation to respect and ensure the rights protected by the American Convention was already in effect for the State on March 14, 1999, when the events alleged in the petition took place. Lastly, the Inter-American Commission is competent *ratione loci* because the alleged violations of rights occurred within the territory of a State Party to the American Convention.

##### B. Other admissibility requirements

###### 1. Exhaustion of domestic resources

22. Article 46.1.a of the American Convention stipulates that the admissibility of a petition 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.” This

requirement ensures that the State has the opportunity to resolve disputes within its own legal system. The prior exhaustion requirement applies when there are remedies that are available, adequate and effective for remedying the alleged violation; otherwise, Article 46.2 specifies the exceptions under which the requirement does not apply.[FN2]

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[FN2] See IACHR. Report No. 55/06, Admissibility, Case 12.380, Members of José Alvéar Restrepo Lawyers' Collective, Colombia, July 20, 2006, para. 35.

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23. It is an undisputed fact in the instant case that the court decision to archive the police investigation was issued on November 7, 2003. However, the parties disagree as to whether this decision effectively exhausts the remedies under domestic law, in conformity with Article 46.1.a of the American Convention.

24. Regarding this matter, the IACHR has consistently held that in Brazil a court decision to archive a police investigation is final, since it is not subject to any legal appeal.[FN3] In fact, in accordance with Brazilian law, specifically the Code of Criminal Procedure, there is no appeal against a court ruling to archive a police investigation.[FN4] Therefore, once this judgment has been handed down, for the purposes of admissibility, domestic remedies have been exhausted.

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[FN3] IACHR. Report No. 37/02, Admissibility, Case 12.001, Simone André Diniz, Brazil, October 9, 2002, paras. 25-27; Report No. 80/05, Case 12.397, Inadmissibility, Hélio Bicudo, Brazil, October 24, 2005, para. 27; and Report No. 41/07, Petition 998-05, Admissibility, Lazinho Brambilla da Silva, Brazil, July 23, 2007, para. 57.

[FN4] IACHR. Report No. 80/05, Case 12.397, Inadmissibility, Hélio Bicudo, Brazil, October 24, 2005, para. 28; and Report No. 41/07, Petition 998-05, Admissibility, Lazinho Brambilla da Silva, Brazil, July 23, 2007, para. 57.

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25. The only possibility provided for in Brazilian criminal law for the reopening of an archived police investigation is the discovery of new evidence related to the case, pursuant to Article 18 of the Code of Criminal Procedure[FN5] and to Series (Súmula) 524 of the Supreme Federal Court.[FN6] In other words, as correctly pointed out by the State, the decision to archive a police investigation does not constitute *res judicata*, since it might be subject to reconsideration if new evidence is discovered; however, the decision to archive effectively terminates the criminal proceedings, since no appeal against it is possible.[FN7] Consequently, the IACHR considers that this decision entails the exhaustion of domestic remedies.

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[FN5] This Article provides that: "After a judicial authority, based on the lack of grounds for the complaint, has ordered the investigation archived, the police authority may initiate a new investigation should new evidence be discovered."

[FN6] Súmula 524 dissipates any possible ambiguity in the Code of Criminal Procedure, by establishing that: "Once the police investigation is archived, pursuant to a court order handed

down at the request of the public prosecutor, a new criminal action may not be undertaken without the discovery of new evidence.”

[FN7] IACHR. Report No. 80/05, Case 12.397, Inadmissibility, Hélio Bicudo, Brazil, October 24, 2005, para. 28; and Report No. 41/07, Petition 998-05, Admissibility, Lazinho Brambilla da Silva, Brazil, July 23, 2007, para. 57.

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26. Based on the foregoing arguments, the Inter-American Commission concludes that domestic remedies were exhausted on November 7, 2003, when the court decision to archive the police investigation was issued, and thus the requirement established by Article 46.1.a of the American Convention has been met.

2. Deadline for lodging a petition

27. Under Article 46.1.b of the American Convention, the petition must be “lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.” In the instant case, the petition was presented on April 27, 2004, and the final judgment that exhausted the remedies under domestic law was handed down on November 7, 2003.

28. In view of the foregoing, the IACHR concludes that this petition was presented within a period of six months from the date on which the party alleging the violation was notified of the final judgment, in accordance with Article 46.1.b of the American Convention.

3. Duplication of international proceedings and res judicata

29. The Inter-American Commission observes that nothing in the file indicates that this petition is pending in another international proceeding for settlement, or that it is substantially the same as one previously studied by the IACHR or another international organization. Therefore, it complies with the requirements under Articles 46.1.c and 47.d of the American Convention.

4. Characterization of the alleged facts

30. For purposes of admissibility, the Inter-American Commission must determine whether the facts reported in the petition tend to establish a violation of the rights guaranteed by the American Convention, as required by Article 47.b thereof, or whether the petition should be rejected as manifestly groundless or obviously out of order pursuant to Article 47.c thereof. The applicable criteria for evaluating these points are different from those needed to determine the merits of a petition. The IACHR must make a prima facie assessment not to establish the existence of a violation of rights but rather to examine whether the petition presents facts that tend to establish a potential or apparent violation of a right guaranteed by the Convention.

31. In this regard, the Inter-American Commission notes that some of the allegations of the petitioner need to be succinctly examined for purposes of admissibility. First of all, regarding the alleged lack of impartiality of the authorities that investigated the death of the alleged victim, the

Inter-American Commission notes that the incident that led to the alleged victim's death took place inside a São Paulo Penitentiary while he was under the custody of prison guards. The investigation into this death, as observed by both parties, was conducted by civil police authorities. The IACHR observes, in conclusion, that the allegations of the petitioner regarding this point are manifestly unfounded, since the civil police authorities are independent from the prison guards that might allegedly be implicated in the events, so much so that they even belong to two different state secretariats in São Paulo: the Secretariat of Public Security and the Secretariat of Prison Administration, respectively.[FN8]

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[FN8] The Secretariat of Public Security includes the civil police within its structure (see <http://www.ssp.sp.gov.br/institucional/default.aspx?texto=1>). On the other hand, prison guards respond to the Secretariat of Prison Administration (Secretaria da Administração Penitenciária – SAP), which was created by Law n°. 8.209, of January 4, 1993, and regulated by Decree n° 36.463, of January 26, 1993 (see <http://www.sap.sp.gov.br/>).

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32. Secondly, the Inter-American Commission has also previously emphasized that when investigating deaths of persons deprived of liberty in the custody of the State, “it is incumbent on the State to account for any injuries suffered in custody, which obligation is particularly stringent when an individual dies.”[FN9] Additionally, the Inter-American Court has repeatedly stated that in cases of persons deprived of liberty the “duty [of the State to adopt security measures to protect persons subject to its jurisdiction] becomes more evident in the case of people confined in a detention center, in which case the State is the guarantor of the people under its custody.”[FN10]

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[FN9] IACHR. Report No. 54/07, Petition 4614-02, Admissibility, Wilmer Antonio Gonzáles Rojas, Nicaragua, July 24, 2007, para. 50 (quoting ECHR, *Trubnikov v. Russia*, Application No. 49790/99, Judgment of July 5, 2005, para. 68; and ECHR, *Keenan v. United Kingdom*, Application No. 27229/95, Judgment of April 3, 2001, para. 91).

[FN10] I/A Court HR. Case of persons deprived of liberty at the “Dr. Sebastião Martins Silveira” Penitentiary in Araraquara, São Paulo. Provisional Measures with Respect to Brazil. Order of September 30, 2006, Whereas Clause 11; I/A Court H.R.. Case of Yare I and Yare II Capital Region Penitentiary Center (Yare Prison). Provisional Measures with Respect to Venezuela, Order of May 30, 2006, Whereas Clause 9; I/A Court H.R. Case of Monagas Judicial Confinement Center (“La Pica”). Provisional Measure with Respect to Venezuela, Order of February 9, 2006, Whereas Clause 11; I/A Court H.R. Case of Children and Adolescents Deprived of Liberty at the FEBEM “Tatuapé Complex”. Provisional Measures with Respect to Brazil. Order of July 4, 2006, Whereas Clause 8; I/A Court H.R. Case of the Mendoza Prisons. Provisional Measures with Respect to Argentina, Order of November 22, 2004, Whereas Clause 6; I/A Court H.R. Case of Urso Branco Prison, Provisional Measures with Respect to Brazil. Order of September 21, 2005, Whereas Clause 6.

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33. Notwithstanding the foregoing, the Inter-American Commission is mindful that, “the scope of the positive obligation must be interpreted in a way which does not impose an impossible or disproportionate burden on the authorities.”[FN11] Moreover, the European Court of Human Rights has indicated that “the nature and degree of scrutiny which satisfies the minimum threshold of an investigation’s effectiveness depends on the circumstances of each particular case.”[FN12] According to the circumstances of the instant case, the IACHR understands that the investigations regarding the alleged victim’s death were conducted by competent and independent authorities, and that the autopsy indicated that it was a natural death; which led the judicial authority to archive the case, in line with the opinion of the prosecutor. Moreover, the Inter-American Commission observes that there are no compelling elements about the etiology of the alleged victim’s death that would make it possible to attribute responsibility for it to the State.

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[FN11] ECHR, *Trubnikov v. Russia*, Application No. 49790/99, Judgment of July 5, 2005, para. 69.

[FN12] ECHR, *Uçar v. Turkey*, Application No. 52392/99, Judgment of April 11, 2006, para. 90.

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34. Indeed, the IACHR observes that the autopsy conducted on the cadaver of the alleged victim, as indicated by the opinion of the Chief of Police in charge of the investigation, informed that “the result of the toxicology report was negative, so we conclude that the death occurred due to PULMONARY CONGESTION + DIFFUSED CEREBRAL EDEMA, CONSEQUENTLY IT WAS A NATURAL DEATH.”[FN13] Along the same lines, the opinion of the Public Prosecutor pointed out that “no lesion on the dead body was observed so as to make it believable that this case constitutes a homicide...according to the autopsy, the victim died from pulmonary congestion and diffused cerebral edema; consequently it was a natural death.”[FN14] Following those considerations, the judicial authority decided to archive the police investigation.

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[FN13] State’s response of March 15, 2006. Attachment – Police Investigation, at 71 (capital letters in the original).

[FN14] State’s response of March 15, 2006. Attachment – Police Investigation, at 73.

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35. Therefore, given the characteristics of the instant case, the IACHR determines that the elements available in the file do not allow the Inter-American Commission to ascertain that the death of the alleged victim might prima facie be attributable to the State. In view of the foregoing, the Commission finds that the facts presented in this petition do not tend to establish a violation of the rights guaranteed by the American Convention; therefore, the requirement under Article 47.b of that instrument has not been met.

## V. CONCLUSION

36. The Inter-American Commission concludes that it is competent to examine the claim submitted by the petitioner, but holds that the petition is inadmissible for failure to meet the

admissibility requirement indicated in Article 47.b of the American Convention. Based on the de facto and de jure considerations established above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition inadmissible.
2. To notify the State and the petitioner of this decision.
3. To publish this decision and include it in its annual report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 12th day of the month of November 2009. (Signed): Luz Patricia Mejía Guerrero, President; Victor E. Abramovich, First Vice-president; Felipe González, Second Vice-president; Sir Clare K. Roberts, Florentín Meléndez, and Paolo Carozza, members of the Commission.