

REPORT No. 145/11
PETITION 1140-04
ADMISSIBILITY
CLÉLIA DE LOURDES GOLDENBERG and RITA DE CASSIA DA ROSA
(*PRECATÓRIOS*)
BRAZIL¹
October 31, 2011

I. SUMMARY

1. On October 27, 2004 and July 3, 2006 the Inter-American Commission on Human Rights (hereinafter, “the Inter-American Commission” or “IACHR”) received two petitions lodged by attorney Felipe Néri Dresch da Silveira (“the petitioner”), both of which allege similar violations of the human rights to a fair trial and right to judicial protection. The alleged victims of the violations are Clélia de Lourdes Goldenberg and Rita de Cassia da Rosa (“the alleged victims”), respectively.

2. In both communications the petitioner describes in identical fashion that the alleged victims were a widow and daughter, respectively, of deceased public servants, who filed ordinary actions of indemnification against the state of Rio Grande do Sul and the Social Security Institute, contesting the amount the alleged victims had received as pension upon the deaths of their relatives. According to the petitioner, definitive rulings were made in favor of the alleged victims on October 13, 1997 and March 3, 1998. Consequently, judicial executory writs (*precatórios*) were issued, payable to each alleged victim, which to date have not been paid. The petitioner claims that internal legislation of the State does not provide effective recourse to enforce due compliance by the State with court rulings that impose definitive sentences against it that are monetary in nature. Thus, the petitioner claims that these kinds of rulings, which sentence the State to pay values to those it owes, in practice have no efficacy whatsoever. Therefore, the petitioner alleges that the Federative Republic of Brazil (hereinafter, “Brazil” or “the State”) is internationally liable for the violation of Articles 1.1, 2, 8, 25, and 28 of the American Convention on Human Rights (hereinafter, “American Convention” or “Convention”), to the detriment of the alleged victims.

3. For its part, the State argues that the petition is inadmissible because the facts that are the object of the complaint do not characterize violations of the rights enshrined in the American Convention, pursuant to Article 47.b of that treaty. The State admits that it has not paid the *precatórios* issued on behalf of the alleged victims by virtue of the definitive rulings issued in the framework of ordinary actions of indemnification against the State, but that non-payment is due to the unfavorable, even insurmountable fact that it does not have sufficient financial resources. The State further claims that the ruling by the Supreme Federal Tribunal, which rejected the alleged victims’ requests for federal intervention in [the state of] Rio Grande do Sul was issued pursuant to the principles of legal defense and equal protection of law, and was duly reasoned.

4. Without prejudging the merits of the complaint, after analyzing the positions of the parties and in compliance with the requirements set forth in Articles 46 and 47 of the American Convention, the IACHR rules the case to be admissible as pertains to the examination of the alleged violation of the rights enshrined in Articles 8, 21 and 25 of the Convention, pursuant to its Articles 1.1 and 2. On the other hand, the IACHR rules inadmissible the allegation of an alleged violation of Article 28 of the American Convention. Consequently, the Inter-American Commission orders that the parties be notified of this decision, that it be published and included in the Commission’s Annual Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE IACHR

¹ In keeping with the provisions of Article 17.2 of IACHR Regulations, Commissioner Paulo Sérgio Pinheiro, a Brazilian national, did not participate in the debate or the decision contained in this report.

5. The petition on behalf of Clélia de Lourdes Goldenberg was received by the IACHR on October 27, 2004. On July 3, 2006, the petitioner filed additional information and lodged a complaint about the facts related to Rita de Cassia da Rosa. On October 12, 2006, the IACHR transmitted to the State the pertinent portions of the communications related to the alleged victims. The State responded to the petition on October 29, 2007. The petitioner submitted additional information on the following dates: September 17, 2007, December 20, 2007 and September 22, 2010. These communications were duly forwarded to the State. For its part, the State filed additional information on October 29, 2007, which was duly forwarded to the petitioner.

III. POSITION OF THE PARTIES

A. Position of the petitioner

6. The petitioner claims that the alleged victim, Clélia de Lourdes Goldenberg, is the widow of a public servant of the state of Rio Grande do Sul. According to the petitioner, in February 1996, Ms. Goldenberg filed indemnification proceedings (*ação de rito ordinário*) against Rio Grande do Sul and the Social Security Institute, because she disagreed with the amount she was being paid in social security pension. At first instance, the lawsuit was dismissed by the *Tribunal de Justiça* [Court of Justice] of the state of Rio Grande do Sul (hereinafter, "TJE/RS"). Notwithstanding the foregoing, the petitioner maintains that Ms. Goldenberg appealed the ruling, and at second and ultimate instance, the *Supremo Tribunal Federal* [Federal Supreme Court] ("STF") issued a definitive judgment in her favor, on March 3, 1998. The petitioner asserts that, following the definitive ruling issued in favor of Ms. Goldenberg, a court-ordered request for payment payable to her (*precatório*) was issued in August 1999 (for the amount of R\$ 138,373.51 *reais*). According to the petitioner, the State should have paid this *precatório* by the end of 2000, however to date it has not done so.

7. Likewise, the petitioner maintains that alleged victim, Rita de Cassia da Rosa, is the daughter of a public servant of the state of Rio Grande do Sul. According to the petitioner, in September 1994, Ms. da Rosa filed indemnification proceedings (*ação de rito ordinário*) against Rio Grande do Sul and the Social Security Institute, because she disagreed with the amount she was being paid in social security pension. At first instance, the lawsuit was dismissed by the TJE/RS. Notwithstanding the foregoing, the petitioner maintains that Ms. da Rosa appealed the ruling, and at second and ultimate instance, the STF issued a definitive judgment in her favor, on October 13, 1997. The petitioner asserts that, following the definitive ruling in favor of Ms. da Rosa, two court-ordered request for payment payable to her (*precatórios*) on July 26, 1999 (for the amount of R\$ 25,909.53 *reais*) and on July 16, 2001 (for the amount R\$ 2,083.70). According to the petitioner, the State should have paid these *precatórios*, by the end of 2001 and 2003, respectively, however to date it has not done so.

8. By virtue of the State's alleged noncompliance with rulings issued on behalf of the alleged victims, both women filed petitions for federal intervention in Rio Grande do Sul, pursuant to Articles 34, VII and 36, II of the Constitution. According to the petitioner, the petition filed by Ms. Goldenberg (Federal Intervention – IF 3350) was rejected through a judgment by the STF on April 3, 2003, which became *res judicata* on April 28, 2004; while the petition filed by Ms. da Rosa (Federal Intervention – IF 4968) was rejected through a judgment by the STF on May 3, 2006, which became *res judicata* on May 22, 2006.

9. According to the petitioner, once the petitions for intervention filed by the alleged victims were rejected, the alleged victims had no other avenue by which to obligate the State to comply with the court orders to pay their *precatórios*, which places them in a situation of absolute lack of judicial protection. Therefore, the petitioner claims that the execution of these rulings against the State can be postponed indefinitely, according to an order of preference, until the State avails itself of sufficient resources with which to make its payments.

10. By virtue of the foregoing, the petitioner alleges that the State has violated the rights enshrined in Articles 8 and 25 of the American Convention, pursuant to articles 1.1, 2 and 28 of that treaty, to the detriment of the alleged victims.

B. Position of the State

11. The State makes a preliminary observation that the file of this petition indicates that there are two complaints, one related to Clélia de Lourdes Goldenberg and the other related to Rita de Cassia da Rosa, both lodged by the same petitioner on the basis of identical allegations. As to the admissibility of the petitions, the State claims that the facts presented by the petitioner are inadmissible, given that they do not characterize violations of the rights enshrined in the American Convention, pursuant to Article 47.b of that treaty.

12. In that regard, the State observes that the ordinary actions of indemnification filed by the alleged victims were decided in their favor by definitive judgments that became *res judicata*. Consequently, the State reports, it began the process of execution of those judgments with the issuance of the respective *precatórios*. According to the State, Ms. Goldenberg was issued *precatório* No. 15.254, which should have been paid by the end of 2000. The State also indicates that *precatórios* Nos. 29.401 and 38.092, which should have been paid by the end of 2003 and 2004, respectively, were issued to Ms. da Rosa. However, the State observes that, by virtue of financial restrictions it faced and by order of preference established by law, the State has only been able to pay through *precatório* No. 11.728. Therefore, there are 631 *precatórios* that have preference over the payment owed to Ms. Goldberg, while 6,456 and 9,847 *precatórios* have preference over the *precatórios* of Ms. da Rosa.

13. Based on these circumstances, the State indicates that the request for federal intervention filed by the alleged victims were rejected by the STF because there was no malicious intention on the part of State authorities in not complying with the payments. In any event, the State indicates that Brazilian law ensures all guarantees necessary to preserve the real value of the indemnifications owed by the State. It indicates measures to ensure monetary adjustments prior to liquidating each debt the payment of which has been delayed, as well as appropriate interest added for the delay by the State.

14. In conclusion, the State underscores that Rio Grande do Sul has not paid the *precatórios* held by the alleged victims because of the unfavorable, even insurmountable fact that it does not have sufficient financial resources to do so. Furthermore, the State indicates that the Brazilian Constitution establishes an order of preference for the payment of *precatórios* so as to ensure the equal treatment of creditors of the State, pursuant to an objective chronological logic. Therefore, the State claims that intervention by the IACHR could result in arbitrary preferences in the payment of debts of the State, in violation of guarantees provided in Brazil's Constitution.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

15. The petitioner is entitled, in principle, by Article 44 of the American Convention, to lodge petitions with the IACHR. The petition names individuals as the alleged victims, on behalf of whom the State undertook to respect and ensure the rights enshrined in the American Convention. As far as the State is concerned, The Inter-American Commission notes that Brazil has been a State Party to the American Convention since 25 September 1992, the date it deposited its ratifying instrument. Therefore, the IACHR has competence *ratione personae* to hear the petition, because it contains allegations of violations of rights protected under the American Convention, which allegedly occurred in the territory of Brazil, a State Party to that treaty.

16. The IACHR also rules that it has competence *ratione temporis* in that the obligation to respect and guarantee the rights protected under the American Convention was already in force for the State when the alleged violations claimed in the petition occurred. These alleged violations refer to the lack of payment of *precatórios* issued in 1999 and 2001 as the result of definitive judgments pronounced within the framework of ordinary actions of indemnification, on March 3, 1998 and October 13, 1997. Lastly, the Inter-American Commission has *rationae materiae* jurisdiction because the petition contains claims of possible violations of human rights that are protected under the American Convention.

B. Admissibility requirements of the petition

17. Applying the practice of making decisions *per curiam*,² pursuant to the decision of the IACHR in Report 144/11 on P-1050-06 (Pedro Stábile Neto and other officials of the municipality of Santo André), of October 31, 2011, the Inter-American Commission concludes, as regards the admissibility of this petition, that Brazilian law does not provide effective and adequate legal remedies to ensure payment of the *precatórios* owed by the State, making applicable the exception provided in Article 46.2 of the American Convention, in relation to the exhaustion of remedies under domestic law. According to the information available, noncompliance with these rulings or, in other words, the nonpayment of the *precatórios* at issue in this case continues to this date, therefore the petition was presented within a reasonable time period, in keeping with Article 32.2 of IACHR Rules of Procedure. Further, the Inter-American Commission concludes that the requirements set forth in Articles 46.1.c and 47.d of the American Convention have been met. Lastly, the IACHR establishes that if the petitioner's allegations are proven true they could characterize violations of rights enshrined under Articles 8, 21³ and 25 of the American Convention, pursuant to Articles 1.1 and 2 of that treaty.

18. Consequently, the IACHR decides that the petition is admissible as it pertains to the cited rights enshrined in the American Convention. On the other hand, the IACHR determines that the petitioners have not proven *prima facie* any alleged noncompliance with Article 28 of the American Convention, pursuant to its Article 47.b.

² See IACHR Report No. 133/09, Inadmissibility, Petition 989-04, *Contribution to the social security of retired and pensioned public servants – Physicians Union of the Federal District (Brazil)*, 12 November 2009, paragraph 21; and Report o. 134/09, Inadmissibility, Petitions 1133-04 and 115-05, *Contribution to the social security of retired and pensioned public servants – UNAFISCO, CONAMP et al. (Brazil)*, 12 November 2009, paragraph 23.

³ Neither the American Convention nor the IACHR Rules of Procedure require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Commission, although petitioners may do so. It is for the Commission, based on the system's jurisprudence, to determine in its admissibility report which provisions of the relevant Inter-American instruments are applicable and could be found to have been violated if the alleged facts are proven by sufficient elements.

V. CONCLUSIONS

19. The IACHR concludes that it has jurisdiction to examine the complaints presented by the petitioner, in keeping with the requirements set forth in Articles 46 and 47 of the American Convention. Therefore, based on the arguments of fact and law that have heretofore been expounded, and without prejudgment on the merits of the matter,

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

1. To declare this petition admissible with respect to Articles 8, 21 and 25 of the American Convention, pursuant to Articles 1.1 and 2 of that treaty;
2. To declare this petition inadmissible with respect to Article 28 of the American Convention;
3. To notify the State and the petitioner of this decision;
4. To continue with an examination of the merits of the matter;
5. To publish this decision and include it in the Commission's Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on October 31, 2001. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President; Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commissioners.