REPORT No. 144/11
PETITION 1050-06
ADMISSIBILITY
PEDRO STÁBILE NETO AND OTHER OFFICIALS OF THE MUNICIPALITY OF SANTO ANDRÉ
(*"PRECATÓRIOS"*)
BRAZIL[1]
October 31, 2011

I. SUMMARY

1. On September 29, 2006, the Inter-American Commission on Human Rights (hereinafter "Inter-American Commission" or "IACHR") received a petition filed by attorneys Pedro Stábile Neto, Fernando Romera Stábile, and Caroline Romera Stábile ("the petitioners") in which they allege violation of subsistence rights to the detriment of Pedro Stábile Neto and 1,377 other public officials ("the alleged victims")[2], related to judicial executory writs (*precatórios*) of the alleged victims, and the lack of due judicial protection and the violation of judicial guarantees due to the lack of an effective remedy for guaranteeing their rights. In that connection, the petitioners maintain that the Federative Republic of Brazil ("Brazil" or "State") is internationally liable for violating Articles 1.1, 2, 8, 11 and 25 of the American Convention on Human Rights ("American Convention" or "Convention"), and Articles XI, XIV and XVIII of the American Declaration of the Rights and Duties of Man ("American Declaration" or "Declaration")[3].

2. The petitioners maintain that on March 30, 1994, they filed an ordinary action for indemnification against the municipality of Santo André for failure to pay a wage supplement recognized by law and ignored by the then mayor, Celso Daniel. The petitioners state that their right to the wage supplement was recognized in first and second instance judgments which became *res judicata* through definitive decisions of the Higher Court of Justice (*Superior Tribunal de Justicia* - STJ) and of the Federal Supreme Court (*Supremo Tribunal Federal* - STF). According to the petitioners, in keeping with Brazilian legislation for execution of amounts owed by the State, they were given judicial executory writs (*precatórios*), which have still not been honored. Despite having attempted further remedies with a view to obtaining payment, the petitioners claim that there is no legal recourse under domestic law of the State to force it to abide by judicial decisions of a financial nature imposed on it through final judgments.

3. For its part, the State argues that the petition is inadmissible due to failure to exhaust domestic remedies, as required by Article 46.1.a of the Convention. In this regard, Brazil indicates that as part of the process of executing the *precatório* undertaken by the petitioners, some remedies are still awaiting a decision. In any case, according to the State, the petitioners' *precatório* should have been executed and paid by the end of 1999, and therefore presentation of the petition in 2006 was extemporaneous and meets neither the six month requirement nor the reasonable period of time requirement provided for in Article 46.1.b of the Convention and Article 32.2 of the Rules of Procedure of the IACHR, respectively. Finally the State argues that what prevented payment of the alleged victims' *precatórios* are the financial constraints of the municipality of Santo André in conjunction with the need to continue providing essential public services to the population in the municipality.

4. Without prejudging the merits of the complaint, after analyzing the positions of the parties, and pursuant to the requirements set forth in Articles 46 and 47 of the Convention, the IACHR decides to declare the case admissible for the purposes of examining the alleged violation of the rights

[1] Pursuant to Article 17.2 of the Rules of Procedure of the IACHR, Commissioner Paulo Sérgio Pinheiro, a Brazilian national, did not take part in the discussion or decision regarding this report.

[2] The alleged victims are duly named and identified in annexes 1A and 2 of the original petition and in the list of names and addresses that accompanied the petitioners' communication of September 27, 2007– Appendix 1: List of alleged victims.

[3] The petitioners also maintain that Brazil violated Article 11.1 of the International Covenant on Economic, Social and Cultural Rights.

protected in Articles 8, 21, and 25 of the American Convention, in conjunction with Articles 1.1 and 2 of that treaty. At the same time, it declares the argument regarding alleged violation of Article 11 of the Convention to be inadmissible. Consequently, it decides to notify the parties of this decision, publish it, and include it in its annual report to the General Assembly of the OAS.

II. PROCEEDINGS BEFORE THE IACHR

5. The petition was received by the IACHR on September 29, 2006 and its annexes were received on October 13, 2006. On September 27, 2007, the petitioners presented additional information. The IACHR transmitted the pertinent parts of the complaint to the State on January 28, 2008. The State replied to the petition on July 2, and 22, 2008. The petitioners submitted further information on August 25, 2008 and August 30, 2010. Those communications were duly forwarded to the State. The State presented no further observations by the date of approval of this report.

III. POSITION OF THE PARTIES

A. Position of the petitioners

6. The petitioners argue that the State violated the subsistence rights of the alleged victims, by failing to pay the *precatórios* issued on their behalf during execution of a debt recognized by a final court judgment, relating to a wage supplement they were granted under a municipal law. Specifically, the petitioners indicate that on April 21, 1989, the Mayor of the municipality of Santo André, Celso Daniel, promulgated Municipal Law No. 6.504/89, granting all municipal government officials a wage supplement designed to cushion the effects of inflation at that time. Despite the promulgation of that law, according to the petitioners, the same mayor later broke it and never included the aforementioned wage supplement in the wages of municipal government officials. In light of that, the petitioners indicate that on March 30, 1994, they filed an ordinary action for indemnification on behalf of 1,377 local government officials against the municipality of Santo André.

7. According to the petitioners, the alleged victims obtained a first instance judgment in their favor (handed down by the judge of the First Civil Court of the district of Santo André on June 21, 1994), which was subsequently confirmed on appeal (judgment handed down by the Court of Justice of the State of São Paulo – "TJE/SP" – on September 5, 1996). The petitioners argue that the municipality of Santo André filed a series of interlocutory and/or extraordinary appeals, all of which they say were rejected by the competent courts: a motion for clarification (*Embargos de Declaração*) rejected by the TJE/SP on November 28, 1996; a special and extraordinary appeal rejected by the TJE/SP; an *Agravo de Instrumento* rejected by the STJ on August 12, 1997; and an *Agravo de Instrumento* rejected by the STF on February 13 1998. According to the petitioners, said decisions of the STJ and STF became *res judicata* on September 9, 1997 and March 9, 1998, respectively.

8. According to the petitioners, Brazilian law - specifically Article 100 of the Constitution - establishes that debts of the State must be paid through judicial executory writs (*requisição judicial de pagamento*) known as *precatórios*. The petitioners also maintain that due payment of the *precatórios* pertains to a *sui generis* execution process by virtue of which embargoing public goods (*lato sensu*, including financial assets) is absolutely forbidden by law under Articles 100 of the Civil Code and Article 649 of the Code of Civil Procedure. Accordingly, the petitioners maintain that the Brazilian legal system makes it possible to indefinitely postpone execution of court judgments of a financial nature that rule in favor of the State's creditors on the basis of a lack of budgetary resources, as a result of which Brazil has failed to comply with its duty to provide effective resources and adequate judicial protection, as well as to adopt measures to render the aforementioned rights effective. In fact, they argue that under Brazil's domestic laws there is no due legal process for obliging the State to comply with a judicial *precatório* payment order, which means that its creditors – such as the alleged victims – are utterly defenseless.

9. Thus it is argued that the execution of such judgments against the State may be postponed indefinitely, in accordance with an order of preference, until the State has sufficient funds to pay its debts. In fact, the petitioners maintain that Brazilian legislation only allows two judicial ways of

protesting the State's failure to pay a debt: i) a request for intervention, which might be that of the Federal Union vis–à–vis the states or, alternatively, of the states vis–à–vis the municipalities (pursuant to Articles 34, VI, and 35, IV respectively of the Constitution; and ii) a request the revenue be attached ("sequestered"), which would only be possible if it is shown that the order of preference was not observed, according to Articles 100, §2 of the Constitution and 731 of the Code of Civil Procedure. Although those remedies exist, the petitioners argue that neither of them is effective because in practice they do not oblige the State to pay its *precatórios*–related debts.

10. The petitioners aver that, after the definitive judgment in their favor, the TJE/SP ordered the issuance of the *precatório* of the alleged victims, to which it assigned the number 002/99 (that is to say, it was second in the order of preference for that year), in the amount of what was then R$ 40,718,480.33 (forty million, seven hundred and eighteen thousand, four hundred and eighty *reais* and thirty–three cents). The petitioners add that under applicable legislation the aforementioned *precatório* was to have been paid in full by the end of 1999. Nevertheless, so far the municipality of Santo André allegedly has not paid the *precatório* of the alleged victims.

11. In light of the above, the petitioners indicate that the alleged victims filed a request for State intervention in the municipality of Santo André, and on September 4, 2002 the TJE/SP ordered state intervention in the municipality, of which the Governor of São Paulo was duly notified on January 9, 2003. However, the Governor did not proceed to intervene in the municipality. The petitioners also point out that the alleged victims filed two requests for the attachment of assets. The first was allegedly rejected on October 14, 2002 because it was determined that the municipality had not honored the *precatório* due to financial constraints and had not disrespected the order of preference; in fact, the petitioners maintain that the municipality of Santo André suspended payment of all its *precatórios* as of 1999. Subsequently, according to the information provided, on May 24, 2006, the alleged victims filed another request for the attachment of revenue, which was admitted by the TJE/SP on September 11, 2007. Nevertheless, the State apparently appealed that decision through a "protest" appeal (*Reclamação* n. 5536) to the STF, whose decision is still pending. In short, the petitioners note that available domestic remedies have been attempted even though they reiterate that they are not apt for forcing the state to pay its *precatório*–related debt.

12. Finally regarding the arguments of the State concerning the inadmissibility of the petition, the petitioners note that the State's reply, presented on July 2, 2008, is extemporaneous and, therefore, should not be considered by the IACHR pursuant to Article 30.3 of its Rules of Procedure. For all the above reasons, the petitioners argue that the State has violated Articles 1.1, 2, 8, 11, and 25 of the American Convention, as well as Articles XI, XIV and XVIII of the American Declaration. Likewise the petitioners maintain that Brazil violated Article 11.1 of the International Covenant on Economic, Social and Cultural Rights. The petitioners conclude that because of the length of time that has elapsed without the State satisfying the rights of the alleged victims, at least 204 of them have died without receiving the amounts owed to them so that their heirs now become the alleged victims entitled to receive the indemnification owed by the State. Regarding that issue, the petitioners have indicated in one of their subsequent communications that the number of alleged victims totals at least 1,404.

B. Position of the State

13. First, the State notes that the IACHR is not competent *ratione materiae* to examine alleged violations of Article 11 of the International Covenant on Economic, Social, and Cultural Rights under Article 23 of the Rules of Procedure of the Inter–American Commission. In addition, the State argues that the petition is inadmissible due to failure to exhaust domestic remedies as required under Article 46.1.a of the American Convention. In that regard, the State notes that the ordinary action for indemnification lodged by the alleged victims was decided in their favor, through a final decision which became *res judicata*. Consequently, the State reports, the execution process began with the issuance of the respective *precatório*, which should have been paid by the end of 1999.

14. The State indicates that the municipality of Santo André did not comply with the Court judgment, which resulted in the TJE/SP ordering the intervention of the Governor of São Paulo in the

municipality in November 2002; however, the Governor did not intervene. In spite of that, the State argues that the petition is inadmissible because, in the process of execution, conducted by the petitioners, a request to attach property belonging to the municipality of Santo André was filed on May 24, 2006, and that request was allowed in the Court of first instance and is still awaiting a decision on the "protest" appeal filed by the state of São Paulo. Regarding the failure to make the payment associated with the *precatório* issued on behalf of the alleged victims, the State argues that said failure was due to financial constraints faced by the municipality of Santo André in conjunction with the need to continue providing essential public services to the population of the municipality. In any case, the State notes that Brazilian law provides all necessary guarantees for maintaining the real terms value of the indemnifications owed by the State, *inter alia*, by allowing for monetary adjustment prior to the settlement of a debt payment of which has been delayed, as well as payment of the pertinent interest owed because of the delay in payment by the State.

15. The State also argues that Articles 32.1 of the Rules of Procedure of the IACHR and 46.1.b of the American Convention require that petitions be lodged with the Inter–American Commission within six months of the final decision that exhausted the domestic remedies. Alternatively the State notes that the petition must be lodged within a reasonable period of time in duly specified cases. Accordingly, the State refutes the argument of the petitioners that failure to comply with the definitive judgment which ordered the municipality to pay the amounts owed to the alleged victims could amount to an ongoing violation of rights. In fact, the State argues that the facts alleged in the petition are of an instantaneous nature, given that – contrary to what the petitioners claim – the failure to pay the *precatórios* is just a sequel of the facts complained of, which are executed instantaneously, that is to say, failure to comply with the final judgment that ordered the State to make that payment. In that sense, the State reiterates that domestic remedies have not been exhausted and that the petition does not meet the requirement of Article 32.2 of the Rules of Procedure of the IACHR, particularly since the failure to pay was consummated at the end of 1999, i.e., almost seven years before presentation of the petition on September 29, 2006.

16. In conclusion, the State stresses that the municipality of Santo André did not pay the *precatório* of the alleged victims due to adverse and even insurmountable circumstances as it did not have sufficient financial resources to do so. In addition, the State notes that the Brazilian Constitution establishes an order of preference for payment of *precatórios* in order to ensure equal treatment of the State's creditors, according to an objective, chronological rationale. Accordingly, the State argues that intervention by the IACHR could result in arbitrary preferences with respect to payment of the State's debts, violating guarantees provided in the Brazilian Constitution.

IV. ANAYLYS OF COMPETENCE AND ADMISSIBILITY

A. **Competence**

17. In principle, the petitioners are entitled, under Article 44 of the American Convention, to lodge petitions with the IACHR. The petition points to individual persons as the alleged victims, in respect of whom the State undertook to respect and ensure the rights upheld 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 September 25, 1992, when it deposited its instrument of ratification. Therefore, the IACHR is competent *ratione personae* to examine the petition. Further, the Inter-American Commission is competent *ratione loci* to hear the petition since it alleges violations of rights protected in the American Convention said to have taken place within the territory of Brazil, a State Party to that treaty.

18. As regards competence *ratione temporis*, the Inter-American Commission notes, to begin with, that the petitioners complained of facts related to the promulgation of a municipal law on April 21, 1989. That notwithstanding, the IACHR observes that the alleged violations complained of in this petition refer not to the promulgation of the law as such, but rather to failure to pay *precatório* n. 002/99 at the end of 1999, and the alleged failure to comply with definitive judgments handed down in the framework of an ordinary action for indemnification initiated on March 30, 1994. Thus, the arguments of the petitioners

refer to the alleged failure to comply with said court judgments, failure to pay the aforementioned *precatório*, and the lack of legal remedies – given the ongoing failure to make that payment – to force the State to pay its debts to the alleged victims. In that sense, the IACHR decides that it is competent *ratione temporis* because the obligation to respect and guarantee rights under the American Convention was already in effect for the State on the date on which the violations alleged in the petition are said to have occurred.

19. Finally, the Inter-American Commission is competent *ratione materiae*, because the petition complains primarily about possible violations of human rights protected under the American Convention. At the same time, the IACHR notes that the petitioners also allege violations of Articles XI, XIV and XVIII of the American Declaration. The IACHR emphasizes that for Brazil, as a State Party to the American Convention, "the specific source of its obligations with respect to the protection of human rights is, in principle, the Convention itself"[4], provided that the petition refers to the alleged violation of identical rights in both instruments. In the instant case, there is a similarity of content between the provisions of the Declaration and those of the Convention invoked by the petitioners, specifically with regard to Article XVIII of the Declaration and Article 25.1 of the Convention. Furthermore, regarding the alleged failure to pay their *precatório*, the arguments of the petitioners in relation to Articles XI and XIV of the American Declaration are closely related and therefore, subsumed under Article 21 of the American Convention. Consequently, said arguments will be examined exclusively on the basis of the Convention. Finally, the IACHR decides that it is not competent *ratione materiae* to pronounce on alleged violations of the International Covenant on Economic, Social and Cultural Rights, although it could take it into account for the purpose of interpreting and applying the regional instruments.

B. Exhaustion of domestic remedies

20. In accordance with genuinely recognized principles of international law, Article 46.1.a of the American Convention requires prior exhaustion of the remedies available under domestic law as a prerequisite for the admission of a petition by the IACHR. For its part Article 46.2 of the Convention provides that the prior exhaustion of domestic remedies requirement is not applicable when: i) the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; ii) the Party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or iii) there has been an unwarranted delay in rendering a final judgment under the aforementioned remedies.

21. In this petition, the petitioners have argued that there are no effective judicial remedies for obliging the State to pay a *precatório* owed, payment of which has not been effected. For its part, the State maintains that the petition is inadmissible because, in the course of the execution process conducted by the petitioners, a decision is still pending on a protest appeal filed by the state of São Paulo regarding the first instance judgment of September 11, 2007 with respect to the request for an attachment ("secuestro") filed by the petitioners on May 24, 2006 (*supra* paragraphs 11 and 14).

22. According to the Rules of Procedure of the IACHR, and as the IACHR and the Inter American Court of Human Rights ("Inter American Court") have long established, "the State claiming non-exhaustion has an obligation to prove that domestic remedies remain to be exhausted and that they are effective."[5] In addition, the Inter American Count has established that:

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[4] I/A Court H.R Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10 paragraph 46.

[5] I/A Court H.R. *Velásquez Rodríguez v. Honduras Case.* Preliminary Objections**.** Judgment of June 26, 1987. Series C No. 1, paragraph 88. See also I/A Court H.R. *Nogueira de Carvalho et al v. Brazil case. Preliminary Objections and Merits.* Judgment of November 28, 2006. Series C No. 161, paragraph 81; IACHR. Report No. 77/98, Admissibility, Case 11.556, Corumbiara (Brazil), September 25, 1998, paragraphs13 and 14; and IACHR. Report No. 33/97, Admissibility, Case 11.405, Ovelário Tames (Brazil), October 1, 1997, paragraphs. 75 and 76.

> whenever a petitioner alleges that such remedies do not exist or are illusory, the granting of such protection may be not only justified, but urgent. In those cases, not only is Article 37 (3) of the Regulations of the Commission on the burden of proof applicable, but the timing of the decision on domestic remedies must also fit the purposes of the international protection system. […]. This is why Article 46 (2) of the Convention sets out exceptions to the requirement of recourse to domestic remedies prior to seeking international protection, precisely in situations in which such remedies are, for a variety of reasons, ineffective.[6]

23. Accordingly, the Court has also ruled that, "a remedy must also be effective – [as well as adequate] that is, capable of producing the result for which it was designed"[7], and that "adequate" means:

> Adequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted[8].

24. With respect to this petition, the IACHR considers that the State did not meet the burden of proof incumbent upon it regarding the effectiveness and adequacy of the remedies it says were not exhausted. In this regard, the IACHR notes, first that one of the judicial channels open in the case of noncompliance with the timely payment of a *precatório* is the request for intervention. As argued by both parties (*supra* paragraphs. 11 and 14), the alleged victims submitted a request for state intervention in the municipality of Santo André and, despite the fact that a decision was taken in favor of the alleged victims' request on September 4, 2002,[9] the Governor of São Paulo did not carry out the court–ordered intervention. In any case, the IACHR takes note of the provision contained in the Brazilian Federal Constitution regarding intervention[10], which orders the replacement of the authorities responsible for the causes of that intervention – in this case the chief of the Executive, i.e., the municipal mayor – by an appointed overseer [*interventor]*, to run the municipality's finances better. Nonetheless, the State has not proved that the above could result in effective payment of the wages owed to the alleged victims, particularly when the State itself has argued to the IACHR that the payment was not effected due to insurmountable financial constraints faced by the municipality of Santo André (*supra* paragraphs 14 and 16). Therefore, in keeping with the parameters established in paragraphs 22 and 23 of this report, the IACHR decides that, for the purposes of the examination of admissibility, the intervention request is not a remedy that had to be exhausted.

25. In addition, the IACHR observes that the other judicial channel available for questioning failure to pay a *precatório* is the request for an "attachment" of revenue which is only possible if it is established that the order of precedence was not observed as required under Articles 100, §2 of the Constitution[11] and 731 of the Code of Civil Procedure[12]. As argued by both parties, (*supra* paragraphs 11

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[6] I/A Court H.R. *Velásquez Rodríguez v. Honduras Case*. Preliminary Objections**.** Judgment of June 26, 1987. Series C No. 1, paragraph. 93. Article 37.3 of the Rules of Procedure of the IACHR then in force is similar to current Article 31.3, and established: "When the petitioner contends that he or she is unable to prove compliance with the requirement indicated in this article, it shall be up to the State concerned to demonstrate to the Commission that the remedies under domestic law have not been previously exhausted unless that is clearly evident from the record."

[7] I/A Court H.R. *Velásquez Rodríguez v. Honduras case*. Merits. Judgment of July 29, 1988. Series C No. 4, paragraph. 66.

[8] I/A Court H.R. *Velásquez Rodríguez v. Honduras case*. Merits. Judgment of July 29, 1988. Series C No. 4, paragraph. 64.

[9] Decision of the Court of Justice of São Paulo on September 4, 2002. Process of State Intervention de n.° 071.567.0/1 – Annex n. 11 of the original petition lodged on September 29, 2006.

[10] See Federal Constitution of Brazil Articles 35 and 36.

[11] Federal Constitution of Brazil Article 100, § 2: "The budgetary allocations and the credits opened shall be assigned directly to the Judicial Power, it being within the competence of the President of the Court which rendered the decision of execution to determine payment, according to the possibilities of the deposit, and to authorize, upon petition of a creditor and exclusively in the event that his right of precedence is not respected, seizure of the amount required to satisfy the debt" (Portuguese original: *As dotações orçamentárias e os créditos abertos serão consignados diretamente ao Poder Judiciário, cabendo ao Presidente do Tribunal que proferir a decisão exeqüenda determinar o pagamento segundo as posibilidades do depósito, e autorizar, a*

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and 14), the alleged victims filed a request for attachment on May 24, 2006, which was allowed by the TJE/SP on September 11, 2007, while a "protest" appeal lodged by the municipality of Santo André has not yet been resolved.[13] Here the IACHR notes that the State has not proved that that judicial appeal could result in actual payment of the wages owed to the alleged victims particularly since the State itself argued to the IACHR that payment had not been made due to insurmountable financial constraints faced by the municipality of Santo André (*supra* paragraphs 14 and 16). Likewise, in its judgment rejecting the first request for attachment filed by the alleged victims, the TJE/SP established on October 14, 2002, that:

> In conclusion, regarding failure to pay [the *precatório*], in itself 'the attachment is not an instrument for obliging payment in the event of omission by the authorities. The failure to include financial resources in the budget, insufficient allocation, or even failure to assign the amount to the judiciary constitute violation of constitutional norms and disobedience of a court order but do not warrant attachment unless the order of preference was breached. In the case referred to here, the applicable norms are those relating to liability and the intervention of the Union in the states and by the latter in municipalities [quotation omitted].[14].

26. Therefore, in keeping with the parameters established in paragraphs 22 and 23 of this report, the IACHR decides that, for the purposes of examining admissibility, the request for attachment is likewise not a remedy that had to be exhausted. In fact, although the petitioners have final judgments in their favor, they have not been executed due to an order of preference and because supposedly there are not enough financial resources available for payment;[15] and the State does not deny that the executions of the judgments are being postponed, it only refers to the timeliness and reasonable nature of said measures.[16] In conclusion, the IACHR decides that, for the purposes of the admissibility of this petition, Brazilian legislation does not contain effective and adequate judicial remedies for ensuring payment of the *precatórios* owed by the State. In light of the above, the IACHR declares the applicability to this situation of the exception provided for in Article 46.2.a of the American Convention regarding the exhaustion of domestic remedies. At the merits stage, the IACHR will examine whether the causes and effects of the objection referred to constituted violations of the American Convention,[17] in particular Articles 1.1, 2, 8, and 25.

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requerimento do credor, e exclusivamente para o caso de preterimento de seu direito de precedência, o secuestro da quantia necesaria à satisfação do débito).

[12] Code of Civil Procedure, Article 731: "If the creditor has been passed over with respect to the place to which he is entitled in the order of preference, the President of the court which issued the order may, after consulting the Attorney General, order the attachment of the amount needed to satisfy the debt. (Portuguese original: (*Se o credor for preterido no seu direito de preferência, o presidente do tribunal, que expediu a ordem, poderá, depois de ouvido o chefe do Ministério Público, ordenar o seqüestro da quantia necessária para satisfazer o débito*).

[13] Proceedings relating to Appeal Rcl/5536 – Annex no. 3 of the communication presented by the petitioners on August 25, 2008.

[14] Decision of the Court of Justice of São Paulo of October 14, 2002. Attachment proceedings n.° 093.113.0/1-00 – Annex n. 13 of the original petition presented on September 29, 2006 (Portuguese original: *Por fim, no que toca à situação de inadimplência, em si "o secuestro não é instrumento para compelir ao pagamento no caso de omissão da administração. A falta de inclusão de verba no orçamento, a consignação de dotação insuficiente, ou a própria omissão ao empenhar a verba para o Poder Judiciário são violações de regras constitucionais e desobediência à ordem judicial, mas não ensejam o seqüestro se não houver preterição de nenhum credor. No caso, incidem as normas relativas ao crime de responsabilidade e a intervenção da União no Estado e deste no Município"* [citação omitida]).

[15] See, *mutatis mutandi*, IACHR. Report No. 03/01, Admissibility, Case 11.670, Amilcar Menéndez et al (Social Security System), Argentina, January 19, 2001, paragraph 52.

[16] See, *mutatis mutandi*, IACHR. Report No. 03/01, Admissibility, Case 11.670, Amilcar Menéndez et al (Social Security System), Argentina, January 19, 2001, paragraph 53.

[17] CIDH. Report No. 35/10, Admissibility, Petition 150-06, *Nélio Nakamura Brandão and Alexandre Roberto Azevedo Seabra da Cruz*, March 17, 2010, paragraph 35; Report No. 96/09, Admissibility, Petition 4-04, *Antônio Pereira Tavares et al*, December 29, 2009, paragraph 35; Report No. 72/08, Admissibility, Petition 1342-04, *Márcio Lapoente da Silveira*, Brazil, October 16, 2008, paragraph 75; Report No. 23/07, Admissibility, Petition 435-2006, *Eduardo José Landaeta Mejía et al,* Venezuela, March 9, 2007, paragraph 47; and Report No. 40/07, Admissibility, Petition 665-05, *Alan Felipe da Silva, Leonardo Santos da Silva, Rodrigo da Guia Martins Figueiro Tavares et al*, Brazil, July 23, 2007, paragraph 55.

C. Timelines of the petition

27. The IACHR decided above that the exception to the prior exhaustion of domestic remedies provided for in Article 46.2.a is applicable to the present situation. In such cases, Article 32.2 of the Rules of Procedure of the Commission establishes that the petition shall be presented within a reasonable period of time, as determined by the Inter-American Commission. To that end, the Commission must consider the date on which the alleged violation of rights occurred and the circumstances of each case.

28. In the instant case, the complaint concerns failure to abide by final court judgments condemning the State to pay a wage supplement recognized by law and being executed through the *precatório* issued on behalf of the alleged victims, as well as the lack of legal remedies for obliging the State to pay its debts. Bearing in mind that, according to the information available, the failure to abide by the aforementioned judgments or in other words, the failure to pay the aforementioned *precatório* continues to this day, the IACHR considers that the petition was lodged within a reasonable period of time, in accordance with Article 32.2 of its Rules of Procedure.[18]

D. Duplication of proceedings and international *res judicata*

29. It does not transpire from the file that the subject of the petition is pending in another international proceeding for settlement, nor does it replicate a petition already examined by the IACHR or other international organ. Therefore, the requirements established in Articles 46.1.c and Article 47.d of the American Convention must be considered met.

E. Colorable claim

30. To determine admissibility, the IACHR must decide whether the alleged facts may constitute a violation of rights, as stipulated in Article 47.b of the American Convention, or whether the petition is “manifestly groundless” or “obviously out of order,” under subparagraph c of that Article.

31. 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.

32. In this case, the Inter-American Commission notes that, if proved true, the arguments of the petitioners regarding the violation of their right to property, and the lack of effective remedies and appropriate judicial protection to guarantee said right, could establish violations of the rights protected under Articles 8, 21[19], and 25[20] of the American Convention in conjunction with Articles 1.1 and 2 of the same treaty. Consequently the IACHR decides that the petition is admissible with respect to the aforementioned rights under Article 47.b of the Convention. On the other hand, the IACHR resolves that the petitioners have not demonstrated *prima facie* the supposed violation of Article 11 of the American Convention.

V. CONCLUSIONS

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[18] See IACHR Report No. 03/01, Admissibility Case 11.670, Amilcar Menéndez et al (Social Security System), Argentina, January 19, 2001, paragraph 60.

[19] As indicated in paragraph 19 of this report the alleged violation of Articles XI and XIV of the Declaration is subsumed under Article 21 of the Convention.

[20] As indicated in paragraph 19 of this report the alleged violation of Article XVIII of the Declaration is subsumed under Article 25 of the Convention.

33. The Commission concludes that it is competent to examine the complaints submitted by the petitioners, pursuant to the requirements set forth in Articles 46 and 47 of the American Convention. Based on the aforementioned factual and legal arguments, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present claim admissible in respect of Articles 8, 21, and 25 of the American Convention, in conjunction with Articles 1.1 and 2 of the same treaty;

2. To declare this petition inadmissible with respect to Article 11 of the American Convention;

3. To notify the State and the petitioners of this decision;

4. To continue analysis of the merits of the matter;

5. 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 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.