

REPORT No. 143/11
PETITION 303-05
ADMISSIBILITY
MAURICIO HERNÁNDEZ NORAMBUENA
BRAZIL¹
October 31, 2011

I. SUMMARY

1. On March 18, 2005, the Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission” or the “IACHR”) received a complaint filed by Cecilia Adriana Hernández Norambuena (“the petitioner”)² against the Federative Republic of Brazil (“Brazil” or “the State”) for alleged violation of Articles 1.1, 2, 5, 24 and 25 of the American Convention on Human Rights (“American Convention”), regarding the conditions of imprisonment and the differentiated disciplinary regime applied to her brother, Chilean citizen Mauricio Hernández Norambuena (“the alleged victim”), which would constitute cruel, inhumane and degrading treatment.

2. The petitioner affirms that the alleged victim has been incarcerated in the Taubaté and Presidente Bernardes penitentiaries in São Paulo under a prison regime characterized by being held incommunicado and in solitary confinement. According to the petitioner, the so called “differentiated disciplinary regime” was created pursuant to a 2001 decree by the Secretary of Prison Administration of São Paulo [*Secretario de Administración Penitenciaria de São Paulo*], and was later nationally endorsed through the National Congress’ enactment of Law 10,792 on December 1, 2003. The petitioner asserts that this differentiated disciplinary regime has been applied to the alleged victim in an ongoing manner for more than 8 years, and that the conditions of his imprisonment violate his right to personal integrity, equal treatment before the law, the right of non-discrimination, and the right to judicial protection. The State, in turn, states that the petitioner has not exhausted the remedies provided for by domestic courts as required by Article 46.1.a of the American Convention. The State likewise asserts that the exceptions to the rule of previous exhaustion of domestic remedies, as stipulated under Article 46.2 of the Convention, do not apply and that, therefore, the IACHR should declare the petition inadmissible.

3. Without prejudging the merits of the complaint, after analyzing the positions of the parties and in compliance with the requirements stipulated in Articles 46 and 47 of the American Convention, the Inter-American Commission hereby decides to declare this case partially admissible, as regards the alleged incompatibility of the differentiated disciplinary regime with the American Convention, for the purposes of examining the rights enshrined in Articles 5, 8 and 25 of the American Convention, in accordance with the general obligations set forth in Articles 1.1 and 2 of this same international instrument. The IACHR further decides to notify the parties of this decision and to publish and include it in its Annual Report to the OAS General Assembly.

¹ Pursuant to the provisions of Article 17.2 of the IACHR Rules of Procedure, Commissioner Paulo Sérgio Pinheiro, a Brazilian citizen, did not participate in the debate or the decision regarding this report. In addition, Commissioner Felipe González also did not participate in the deliberations or voting on this report, in accordance with Article 17.3 of the IACHR’s Rules of Procedure.

² Through a note submitted to the IACHR on March 11, 2008, the petitioner gave legal powers to the attorney Alberto Espinoza Pino to represent her in the claim filed before the IACHR.

II. PROCEEDINGS BEFORE THE IACHR

4. The Inter-American Commission received the petition on March 18, 2005. On May 11, 2005, it forwarded the relevant parts to the State. On March 5, 2007, given the lack of reply from the State regarding this petition, the IACHR decided to defer addressing its admissibility until the debate and decision on the merits and notified the parties about the case's opening, in accordance with Article 37.3 of the IACHR Rules of Procedure in force at that time.³

5. On March 6 and April 26, 2007, the IACHR received the State's reply to the petition, as well as the respective annexes. In said communications, the State indicated that the reply to the petition had been sent to the Inter-American Commission between April 26 and May 2, 2006, and therefore it had probably gotten lost. In that regard, the State requested that the IACHR reconsider its decision to defer addressing admissibility until the debate and decision on the merits. On March 18, 2008, the IACHR decided to reconsider its decision of joining the analysis of admissibility and the merits and requested additional information about the admissibility of the petition.

6. The IACHR received additional information from the petitioner on the following dates: May 8, 2007, May 23, 2008, and September 27, 2010. These communications were duly forwarded to the State. Furthermore, the IACHR received additional observations from the State and their annexes on November 12 and 25, 2008, respectively. These communications were duly forwarded to the petitioner.

III. POSITION OF THE PARTIES

A. Position of the petitioner

7. The petitioner relates, by way of background information, that the alleged victim—a Chilean citizen—began taking active part in opposition protests against the dictatorial government of General Augusto Pinochet Ugarte in Chile in 1976 at the age of 18 when he became part of the “*Juventudes Comunistas de Chile*” [Communist Chilean Youth] movement. Thereafter, she indicates that the alleged victim became a member of the *Frente Patriótico Manuel Rodríguez*, the body of the Chilean Communist Party charged with armed struggle against the Chilean military dictatorship. She adds that in August 1993, the alleged victim was arrested and sentenced to two terms of life imprisonment for armed acts by the *Frente Patriótico*. Finally, in December 1996, Mr. Hernández Norambuena was rescued by helicopter, together with four other political dissidents, from the Santiago maximum security prison.

8. The petitioner states that on February 3, 2002, the alleged victim was arrested in São Paulo, Brazil, together with citizens of several other countries, for extortion through kidnapping. She adds that the alleged victim was convicted in the first and second instance for the kidnapping of publicist Washington Olivetto, and sentenced to 30 years in prison in Brazil. According to the petitioner, from the very moment of his arrest in Brazil, the alleged victim was subjected to inhumane, cruel and degrading treatment by the police. In this regard, the petitioner charges that the alleged victim was tortured during interrogation by means of all kinds of torments, such as application of electric current to sensitive parts of his body, immersion in water or plastic bags over his head (the “water boarding” technique), beatings and other despicable acts. She highlights that the alleged victim did not report such acts to the competent judicial authorities given his fear of being the victim of possible reprisals in prison.

9. Additionally, the petitioner reports that since February 2002 the alleged victim was subject to a special imprisonment regime: the “differentiated disciplinary regime” (*regime disciplinar diferenciado*, hereinafter referred to by its acronym in Portuguese “RDD”). In her opinion, this regime – specifically characterized by holding the individual incarcerated in solitary confinement and incommunicado and created in São Paulo through a Decree (*Resolução SAP n. 026/01*) by the Secretary of Prison Administration on May 4, 2001—is inconsistent with prisoners’ human rights, as it constitutes

³ Article 37.3 of the Inter-American Commission's Rules of Procedure at that time corresponds to Article 36.3 in the Regulations currently in force.

cruel, inhumane and degrading treatment. According to the petitioner, the alleged victim was initially incarcerated in the Taubaté house of corrections in the state of São Paulo, where he was held in total and complete solitary confinement for several weeks and was only allowed to go out to the courtyard once a week for 30 minutes, among other restrictions.

10. According to the petitioner, on March 22, 2003, the alleged victim was transferred to the Presidente Bernardes Correctional Readaptation Center. According to the victim, at this correctional facility, the alleged victim continued to be incarcerated under RDD pursuant to an administrative decision of prison authorities. Thereafter, on December 1, 2003, the petitioner mentions that the National Congress approved Law 10,792 that amended the Brazilian Law on Execution of Penal Sanctions (Law 7,210 of July 11, 1984) and the RDD initially created in São Paulo was legally endorsed nationwide. The petitioner highlights that, of the participants in the kidnapping of the publicist Washington Olivetto, the alleged victim is the only one to whom said regime has been applied in a prolonged manner, which allegedly would constitute discriminatory treatment because he is a foreigner. As of the entry into force of Law 10,792, the petitioner indicates that judicial authorities decided that the alleged victim would be held under RDD for 360 days as of December 1, 2003 and thereafter 360 additional days as of December 1, 2004.

11. With respect to exhausting domestic remedies, the petitioner argues that the exceptions provided for in Article 46.2 of the American Convention apply. Indeed, the petitioner maintains that the alleged victim's continuation under RDD was determined by a judicial decision dating from January 28, 2005, that ruled in favor of the request of correctional authorities to extend the application of RDD to the alleged victim until November 2006. The petitioner furthermore maintains that the alleged victim filed several appeals to challenge being subject to RDD, such as, two *habeas corpus* appeals and two sentence enforcement appeals (*agravo em execução penal*); nevertheless, she notes that judicial authorities have unjustifiably delayed ruling on the aforementioned appeals.

12. Additionally the petitioner asserts that holding the alleged victim under RDD in a prolonged manner has led to a deterioration of his physical and mental health. In this regard, she mentions that the alleged victim suffers symptoms of high blood pressure, dizziness, trembling, intense headaches, anxiety disorder, insomnia, mental fatigue and depression, among other health problems.

13. According to the petitioner, Hernández Norambuena—since the end of the application of RDD in November 2006, and his transfer thereafter to Avaré Prison, in the state of São Paulo, and then to Federal Prison of Catanduvas, in the state of Paraná—has, in practice, been subject to a regime of imprisonment similar to RDD, characterized by prolonged solitary confinement, restrictions on incoming food and books and inappropriate conditions of imprisonment, among other restrictions.

14. Therefore, the petitioner claims that Brazil has, to the detriment of the alleged victim, violated Articles 1, 2, 5, 24 and 25 of the American Convention, as well as rights enshrined in the American Declaration on the Rights and Duties of Man (Articles I, II and XVIII) and in other international instruments adopted by the United Nations: the Universal Declaration of Human Rights; the International Covenant on Civil and Political Rights; the Basic Principles for the Treatment of Prisoners; the Standard Minimum Rules for the Treatment of Prisoners; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; the Basic Principles on the Independence of the Judiciary; and the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

B. Position of the State

15. The State affirms that the petition is inadmissible because the petitioner has not exhausted the remedies provided for by domestic courts, pursuant to the requirements of 46.1.a of the American Convention. Additionally, the State claims that none of the exceptions to the rule provided for in

Article 46.2 of the American Convention regarding previous exhaustion of domestic remedies applies in this case. Finally, the State submits considerations on the merits of the petition by arguing that RDD and its application to the alleged victim do not constitute any violation of the American Convention.

16. Preliminarily, the State notes that the alleged victim was sentenced in a final judgment to 30 years of imprisonment for having committed extortion through kidnapping, torture and participation in a criminal group in São Paulo, Brazil. Furthermore, Brazil indicates that the Government of Chile has requested the extradition of the alleged victim so he may serve his life sentences for two serious crimes: the homicide of the Chilean Senator Jaime Guzmán in April 1991, and the kidnapping of Cristian Del Rio in February 1992. According to the State, the Federal Supreme Court (“STF”) approved the extradition of the alleged victim on August 26, 2004, under the condition that he not be subject to life imprisonment, which is prohibited in Brazil. The State indicates, therefore, that the STF conditioned the alleged victim’s extradition on the two life sentences being commuted to a maximum of 30 years in prison. In effect, the State highlights that the alleged victim has not been extradited to date, pursuant to Brazil’s existing legal prohibition regarding life imprisonment, capital punishment or incarceration for a period greater than 30 years.

17. Specifically with regard to the admissibility of the petition, the State claims that the alleged victim has not duly exhausted national court remedies, in accordance with the generally recognized principles of international law. The State observes that the alleged victim filed two *habeas corpus* appeals with regard to his inclusion in RDD (HC 464.035.3/5-00 and HC 464.315.3/3-00) on July 8, 2004, and July 29, 2004, respectively. The State adds that both *habeas corpus* appeals were rejected, on November 29, 2004 and March 10, 2005, respectively, and that under the Brazilian legal system such appeals are aimed at preventing or stopping violations of freedom of movement, resulting from unlawful acts or abuse of power, pursuant to Article 5, LXVIII of the Constitution. In this regard, Brazil affirms that the *habeas corpus* appeals lodged by the alleged victim were aimed at requesting his transfer out of RDD to another prison regime that was less strict. In other words, the State claims that the alleged victim unduly exhausted domestic appeals, inasmuch as *habeas corpus* appeals are of no use for the request that was made before judicial authorities. In any case, the State adds that the alleged victim could have appealed the denials of *habeas corpus* relief before the Superior Court of Justice (“STJ”) and the STF, but failed to do so.

18. According to the State, the appropriate appeal to challenge the alleged victim being held under RDD is the appeal of sentence enforcement (*agravo em execução penal*), provided for in Article 197 of the Law on Execution of Penal Sanctions. The State notes that the alleged victim also filed an *Agravo em Execução Penal* (Nº 1.492, 379-8/0 – later renumbered as 830.320.3/9) regarding his being subject to RDD. Additionally, he filed another *Agravo em Execução Penal* on December 26, 2005, challenging the judicial ruling of December 20, 2005, which extended the period he was subject to RDD. According to the State, said appeals have still not been ruled on and there are still appeals possible. Consequently, the State claims that domestic remedies have not been previously exhausted and the petition should be declared inadmissible, in accordance with Article 46.1.a of the American Convention.

19. The State argues that keeping the alleged victim in RDD was justified given that he represents a significant risk to the correctional institution’s public order and security. In this regard, the State notes that the alleged victim was initially put in RDD on February 4, 2002, based on the decree from the Secretary of Prison Administration of São Paulo. Then, after Law 10,792 was enacted on December 1, 2003, the alleged victim continued to be subject to RDD until November 23, 2006, in accordance with the decision of the Sentence Enforcement Judge on December 20, 2005. The State adds that the alleged victim has been incarcerated in the Federal Penitentiary of Catanduvas in the state of Paraná since February 3, 2007. According to the State, during his incarceration, the alleged victim has received appropriate medical care, has suffered no serious physical and mental health problems and his human rights have been respected. Finally, the State argues that RDD is an imprisonment regime established under the law, and that it is not incompatible with the American Convention or other international standards regarding the rights of individuals who are incarcerated, inasmuch as it does not suspend, rather merely restricts, some rights due to security reasons.

20. In sum, the State requests that this petition be declared inadmissible under Article 46.1.a of the American Convention because domestic legal remedies have not been exhausted.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

21. The petitioner in principle is eligible under Article 44 of the American Convention to file petitions before the IACHR. In the petition, Mauricio Hernández Norambuena appears as the alleged victim, with regard to whom the State committed to respecting and ensuring the rights enshrined in the American Convention. As to the State, the Inter-American Commission notes that Brazil has been a party to the American Convention since September 25, 1992, when it deposited its ratification instrument. Therefore the IACHR has jurisdiction *ratione personae* to study the petition. The IACHR likewise has jurisdiction *ratione loci* to hear the petition as it is alleged that violations of rights protected under the American Convention took place in Brazil, a State party to said treaty.

22. Finally, the Inter-American Commission has jurisdiction *ratione materiae*, because the petition primarily charges violations of human rights protected under the American Convention. The IACHR notes in this regard that the petitioner also claims violations of Articles I, II and XVIII of the American Declaration. The IACHR notes that for Brazil, as a State party to the American Convention, “the specific source of its obligations regarding the protection of human rights is, in principle, the Convention itself,”⁴ where the petition refers to an alleged violation of identical rights in both instruments, as is the case in this petition. Consequently, said allegations shall be solely examined in light of the American Convention. Furthermore, the IACHR has decided that it does not have jurisdiction *ratione materiae* to rule on alleged violation of treaties or other international instruments adopted by the United Nations, although it may take them into account in order to interpret and apply those regional instruments.

B. Exhaustion of domestic remedies

23. Article 46.1.a of the American Convention sets forth as a requirement for a petition’s admissibility the previous exhaustion of available remedies provided by the State’s domestic courts. Said requirement applies when remedies are effectively available under the national system and such remedies are appropriate and effective in remedying the alleged violation. In this regard, Article 46.2 stipulates that this requirement does not apply when the domestic legislation does not afford due process of law for the protection of the right in question; when the alleged victim has been denied access to the remedies under domestic law; or, when there has been unwarranted delay in rendering judgment as regards the aforementioned remedies.

24. In this case, the IACHR observes first of all that the petitioner reports a series of acts that would correspond to different domestic remedies, some of which were filed, and others of which were not even sought, according to the information the parties submitted in the file.

25. The IACHR highlights that the petitioner has reported acts of torture and mistreatment of the alleged victim upon his arrest by the police (*supra*, par. 8). In this regard, the petitioner only generically mentions an alleged fear of reprisals and has expressly recognized that said acts were not reported to State authorities. Furthermore, the IACHR observes that after November 2006, when RDD was no longer applied to the alleged victim, the petitioner reports violations related to the conditions under which the alleged victim was incarcerated at the Avaré and Catanduvás prisons (*supra*, par. 13). The petitioner does not refer to any remedy filed to challenge or report the supposedly inappropriate conditions of incarceration. The IACHR has established that, in order to examine compliance with the requirements for previous exhaustion of domestic remedies, the petitioner must first list the domestic

⁴ The Inter-American Court of Human Rights. *Interpretation of the American Declaration on 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, par. 46.

remedies lodged or, alternatively, the specific circumstances that made it impossible to pursue the pertinent legal channels.⁵ In this case, specifically as regards the two allegations mentioned above, the petitioner has not fulfilled this initial requirement for admissibility. Consequently, the IACHR has decided that the allegations of torture during his arrest and inappropriate imprisonment conditions that are unrelated to RDD are inadmissible inasmuch as there is no evidence that the same were reported to the authorities, as required by Articles 46.1.a and 47.a of the American Convention.

26. Regarding RDD and its specific application to the alleged victim, the petitioner referred to *habeas corpus* appeals and *agravos em execução penal* filed before the competent judicial authorities. She alleged that such remedies have not been effective and there has been an unwarranted delay in render judgment thereon. The State, in turn, maintained that the *habeas corpus* appeals were not the appropriate remedy to challenge the application of RDD, rather that *agravo em execução penal* is and that the latter had not been previously exhausted.

27. The IACHR observes in this regard that according to the information provided by both parties (*supra*, pars. 9 and 19), the alleged victim was subject to RDD as of February 4, 2002, when he was incarcerated in the Taubaté Correctional Facility. Thereafter, as of March 22, 2003, the alleged victim continued to serve his 30-year prison sentence (*supra*, pars. 8 and 16) under RDD in the Presidente Bernardes Correctional Readaptation Center. Furthermore, a fact no one disputes⁶ is that the alleged victim was imprisoned under RDD until November 23, 2006, as is indicated in the documents of the proceedings.⁷ Having determined above that the petition does not meet the requirement of having exhausted domestic remedies concerning the other allegations, the Inter-American Commission must at this time determine whether this petition fulfills this requirement as regards the alleged violations related to the characteristics of RDD and its specific application to the alleged victim from February 4, 2002 until November 23, 2006.

28. The IACHR observes that RDD was initially created in the state of São Paulo, by means of an administrative decree (*Resolução* SAP-026) issued by the State Secretary of Prison Administration on May 4, 2001, and published on May 5, 2011 in the Official Gazette of São Paulo, Vol. 111, n. 84. In its relevant parts, the *Resolução* SAP-026 sets forth that RDD is “applicable to leaders and members of criminal groups, as well as prisoners whose behavior requires specific treatment,”⁸ for “a maximum period of 180 days the first time; and subsequent times, for 360 days.”⁹ As far as its specific features are concerned, the *Resolução* SAP-026 stipulated the possibility of solitary confinement 23 hours a day and the right to be outside at least one hour a day¹⁰ and the right to visits two hours a week,¹¹ among other restrictions. Additionally, it established that the request to include a prisoner in RDD should be submitted to the regional coordinator of correctional institutions, who could forward the request to the Deputy Secretary of Prison Administration, who would have final decision making power.¹² The Deputy Secretary would then “communicate” his decision to the Sentence Enforcement Judge¹³ within 48 hours.

⁵ See, *mutatis mutandis*, IACHR, Report No. 44/09, Inadmissibility, Petition 12,161, Ciro Abdías Boderó Arellano (Peru), March 27, 2009, par. 28; and Report No. 45/09, Inadmissibility, Petition 12,079, María Mercedes Zapata Parra (Peru), March 27, 2009, par. 34.

⁶ See Reply from the State submitted on March 6, 2007, par. 42; and Communication from the Petitioner submitted on May 23, 2008, p. 4.

⁷ Copies of the court decisions from the Court of Justice of the State of São on *Agravos em Execução* n° 00951052.3/8-0000-000 and n° 00830320.3/9-0000-000 – Annex V of the Communication from the State submitted on November 12 and 15, 2008.

⁸ *Resolução* SAP-026, Article 1 (Freely translated from the original Portuguese: “*aplicável aos líderes e integrantes das facções criminosas, bem como aos presos cujo comportamento exige tratamento específico*”).

⁹ *Resolução* SAP-026, Article 4 (Freely translated from the original Portuguese: “*O tempo máximo de permanência, na primeira inclusão, é de 180 dias; nas demais, de 360 dias*”).

¹⁰ *Resolução* SAP-026, Article 5, II.

¹¹ *Resolução* SAP-026, Article 5, IV.

¹² *Resolução* SAP-026, Article 2.

¹³ *Resolução* SAP-026, Article 8.

29. The IACHR take notes that the alleged victim was incarcerated under the RDD created by *Resolução* SAP-026 from February 4, 2002 until Law 10,792 was enacted on December 1, 2003, instituting RDD nationwide. As of the enactment of said Law, which amended the Law on Execution of Penal Sanctions (Law 7,210 of June 11, 1984) and the Code of Criminal Procedure (Decree Law 3,689 of October 3, 1941), the alleged victim continued to be incarcerated under RDD until November 23, 2006. The Inter-American Commission notes in particular that, in its relevant parts, Law 10,792 provides that inclusion in RDD should stem from a prior, well-founded judicial order, issued by the competent judicial authority¹⁴ after [hearing] statements by the Public Prosecution Ministry and the prisoner's defense counsel.¹⁵ Furthermore, it amended Article 52 of the Law on Sentence Enforcement in the following terms:

Art. 52. The commission of an act defined as a malicious crime constitutes a serious offense and when it undermines internal order or discipline, the prisoner or the convict shall be subject, notwithstanding the criminal penalty, to the differentiated disciplinary regime, with the following characteristics:

I – maximum duration of three hundred and sixty days, without prejudice to renewal of the penalty for committing another similar offense, up to a limit of 1/6 of the sentence handed down;

II – holding in an individual cell;

III – weekly visits by two individuals, in addition to children, for a duration of two hours;

IV – right to leave the cell for 2 hours a day to be outside.

30. With regard to exhaustion of domestic remedies, the IACHR highlights firstly that during the alleged victim's incarceration under RDD as per *Resolução* SAP-026, said decree did not seem to provide for any possibility of legal remedies in order to challenge holding an individual under this regime. The IACHR would particularly highlight that, pursuant to the provisions of the aforementioned administrative decree, the decision as to whether include a prisoner in RDD fell to an administrative authority that merely had the obligation to inform a judicial authority about it. The IACHR rules, therefore, for purposes of the admissibility of the allegations referring to the RDD created in São Paulo, the State's domestic legislation did not provide for the due legal process for the protection of the rights which have allegedly been violated.

31. Moreover, with the enactment of Law 10,792, the Brazilian Congress effectively instituted RDD as a regime for serving a prison sentence that was legally recognized in Brazil, up to the deadline established and under the assumptions stipulated in said Law. The IACHR observes that the alleged victim was sentenced to 30 years of incarceration and therefore, in accordance with Law 10,792 could be legally subject to RDD during 1/6 of his sentence (*supra*, par. 29), i.e., 5 years as of December 1, 2003. In this case, the alleged victim filed several *habeas corpus* appeals¹⁶, as well as *Agravos em Execução Penal*¹⁷, with respect to being subject to RDD under Law 10,792. Although the information in the record of proceedings indicates that there has been a ruling on said appeals and that the alleged victim has not been incarcerated under RDD since November 23, 2006 (*supra* para. 27), the IACHR notes that

¹⁴ Law 7,210 (pursuant to the amendments introduced by Law 10,792), Article 54.

¹⁵ Law 10,792, Article 54(2).

¹⁶ With regard to the scope of the *habeas corpus* appeal, the IACHR observes that, pursuant to Article 5, LXVIII, of the Brazilian Constitution, "*habeas corpus* shall be granted whenever an individual is subject to or is threatened to be subject to violence or coercion regarding their freedom of movement, due to illegal acts or abuse of power (Freely translated from the original Portuguese: "*conceder-se-á habeas corpus sempre que alguém sofrer ou se achar ameaçado de sofrer violência ou coação em sua liberdade de locomoção, por ilegalidade ou abuso de poder*").

¹⁷ Pursuant to Article 197 of the Law on Sentence Enforcement, "an *agravo* appeal may be lodged against the decisions issued by the [sentence enforcement] judge, without suspending execution (Freely translated from the original Portuguese: "*Das decisões proferidas pelo juiz caberá recurso de agravo, sem efeito suspensivo*").

presumably the application of RDD to the alleged victim was suspended not because of any of the appeals lodged, rather because the competent authorities did not go forward with its renewal on the aforementioned date. The petitioner charges that the RDD, its characteristics, and corresponding legal framework are incompatible with the American Convention, specifically, with the general obligations stemming from Articles 1.1 and 2 of said Convention, as well as Article 5 and 25 thereof. The IACHR, after having analyzed the pleadings of both parties and the particular circumstances of this petition, considers that in relation to the application of RDD to the alleged victim within the timeframe set forth under Law 10,792, the *habeas corpus* appeals and *agravo em execução penal*, for purposes of the petition's admissibility, were inadequate and ineffective in remedying the alleged violations, inasmuch as its legal scope does not provide for challenging the compatibility of an imprisonment regime established under the law with the American Convention.

32. In light of the foregoing, the Inter-American Commission stipulates that, as regards RDD and its specific application to the alleged victim from February 4, 2002 to November 23, 2006, this petition is admissible in accordance with the exception provided for in Article 46.2.a of the American Convention.

C. Timeliness of the petition

33. The IACHR has decided above that the exception to previous exhaustion of domestic remedies provided for in Article 46.2.a is applicable to this situation. In such cases, Article 32.2 of the Inter-American Commission's Rules of Procedure sets forth that the petition shall be submitted in a reasonable period of time, at the discretion of the Inter-American Commission. To that end the IACHR must consider the date in which the alleged violation of rights occurred and the circumstances of each case. The IACHR rules, in this regard, that the petition's submission on March 18, 2005, as regards RDD's inconsistency with the American Convention, was done in a reasonable period of time, especially bearing in mind that the alleged victim was subject to RDD from February 4, 2002 to November 23, 2006.

D. Duplication and international *res judicata*

34. There is no evidence in the case file that the subject of the petition is pending in another international proceeding or reproduces a petition already examined by this or any other international body. Thus, it is considered that the requirements established in Articles 46.1.c and 47.d of the American Convention have been fulfilled.

E. Colorable claim

35. 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.

36. In this case, in relation to the arguments considered admissible as regards exhaustion of domestic remedies, in particular as regards the characteristics of RDD and its specific application to the alleged victim, the Inter-American Commission deems that, were the allegations of the petitioner proved to be true, they would tend to characterize, *prima facie*, a violation of the rights ensured under Articles 5, 8¹⁸ and 25 of the American Convention, in relation to Articles 1.1 and 2 thereof. Furthermore, the Inter-American Commission finds that the arguments presented by the petitioner regarding supposed discrimination against the alleged victim because he is a foreigner have not been sufficiently developed so as to constitute, *prima facie*, a violation of the right ensured under Article 24 of the American Convention. Consequently, and in accordance with Article 47.b of the American Convention, the IACHR declares this petition inadmissible with regard to Article 24 and admissible with regard to Articles 5, 8 and 25 of the American Convention, in accordance with Article 1.1 and 2 of the same treaty.

¹⁸ The IACHR admits this Article of the American Convention pursuant to the principle *iura novit curia*.

V. CONCLUSIONS

37. The IACHR concludes that it has jurisdiction to hear this complaint, in accordance with the requirements set forth in Articles 46 and 47 of the American Convention. Pursuant to the arguments in fact and in law mentioned above, and without prejudging the merits of the matter,

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

1. To declare this petition admissible with regard to Articles 5, 8 and 25 [of the American Convention] and in accordance with Articles 1.1 and 2 thereof;
2. Declare this petition inadmissible with regard to the allegations described in Paragraph 25 hereof, as well as with regard to Article 24 of the American Convention;
3. Notify this decision to the State and the petitioner;
4. Continue its analysis on the merits of the matter; and
5. 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.