

REPORT No. 9/12
PETITION 11.996
INADMISSIBILITY
MÁRCIA CRISTINA RIGO LEOPOLDI
BRAZIL
March 20, 2012

I. SUMMARY

1. On November 5, 1996, the Inter-American Commission on Human Rights received a complaint that the Latin American and Caribbean Committee for the Defense of Women's Rights (CLADEM), the Sao Paulo Women's Union, Human Rights Watch/Americas and CEJIL/Brazil¹ (hereinafter "the petitioners") lodged against the Federative Republic of Brazil (hereinafter "the State," "the Brazilian State" or "Brazil"), in which they alleged its violation of Articles 3, 4, 5 and 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará") and of Articles 1.1, 4, 8 and 25 of the American Convention on Human Rights ("American Convention"), to the detriment of Márcia Cristina Rigo Leopoldi ("the alleged victim").

2. According to the petitioners, on March 10, 1984, the alleged victim was strangled to death in her home in the city of Santos, state of São Paulo, by her former boyfriend, José Antônio Brandão do Lago, whose alleged motive was revenge for her having ended their romantic relationship. The petitioners state that the police investigation was conducted and that, after a proper criminal trial, a verdict of conviction was delivered on March 8, 1993. Nevertheless, the petitioners contend, the order to take the convicted man into custody was not carried out because a writ of *habeas corpus* was granted to enable the convicted man to appeal the lower-court ruling while still at liberty. They further allege that the State authorities did not act with the necessary due diligence to apprehend the convicted man, who was a fugitive.

3. The State contends that the petitioners did not make the case for the alleged violations of the Convention of Belém do Pará and did not identify which acts supposedly constituted the violations being alleged. The State thus requests that the petition be declared inadmissible under articles 47.b and 47.c of the American Convention, because the petition does not state facts that tend to establish a violation of any of the rights guaranteed by the American Convention and because, based on the petitioners' own account of the facts, the petition is manifestly unfounded and obviously out of order. The State observes further that the petitioners' allegations regarding the Convention of Belém do Pará are equally inadmissible inasmuch as the definitive conviction of the perpetrator of the crime committed against the alleged victim dates back to March 8, 1993; in other words, it predates the OAS Member States' adoption of the Convention of Belém do Pará, which was on June 9, 1994; it also far predates Brazil's ratification of said treaty on November 27, 1995. Finally, the State also asserts that the petition was filed extemporaneously, inasmuch as Article 46.1.b requires that petitions be filed within six months following the date of the notification of the final judgment; in this case, the definitive judgment was delivered on March 8, 1993 and notification was in August 1993, yet the petition was not filed with the Commission until November 5, 1996, more than three years later.

4. After examining the parties' positions based on the admissibility requirements set forth in articles 46 and 47 of the American Convention, the Inter-American Commission decides to declare the petition inadmissible on the grounds that the facts set forth therein do not tend to establish a possible violation of the rights guaranteed by the American Convention. The Inter-American Commission decides to notify the parties and make the present inadmissibility report public and include it in its Annual Report to the OAS General Assembly.

¹ Human Rights Watch/Americas and CEJIL/Brazil were accredited as co-petitioners in the communication received from the petitioners on July 21, 1997.

II. PROCEEDINGS BEFORE THE IACHR

5. The Inter-American Commission received the petition on November 5, 1996. The originals and attachments were received on March 13, 1997. By note dated April 30, 1997, the IACHR requested additional information from the petitioners in order to have sufficient information to begin processing the petition. The Commission received that information on July 21, 1997.

6. Based on the information received, on April 10, 1998 the IACHR sent the relevant parts of the petition to the State, which on April 29 and 30, 1998, submitted its initial response to the petition. The relevant parts of the State's response were forwarded to the petitioners on April 30, 1998.

7. The petitioners submitted additional observations on the following dates: June 25, 1998, January 27, 2005, February 1, 2005, December 27, 2005, August 29, 2006 and August 25, 2010. Those communications were duly forwarded to the State. Thus far the State has not submitted any additional observations.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

8. According to the petitioners, on March 10, 1984 the alleged victim was strangled to death in her home in the city of Santos, state of São Paulo, by her former boyfriend, José Antônio Brandão do Lago, who had acted out of revenge because his romantic relationship with the alleged victim had ended. The petitioners note that the alleged victim's parents, Antonio Leopoldi and Elza Rigo Leopoldi, immediately filed a complaint with the police.

9. The petitioners describe the investigation and the criminal court case as follows: the police investigation was conducted and countless investigative measures were taken: for example, the crime scene was examined; an autopsy was done on the alleged victim; and multiple witnesses were interviewed, among them the former wives of the chief suspect. These interviews revealed a history of domestic violence. The petitioners add that on the basis of this and other evidence obtained, on August 14, 1985 the Public Prosecutor's Office filed a criminal complaint against José Antônio Brandão do Lago, charging him with homicide with two aggravating circumstances, inasmuch as the crime was committed for a vile motive and by such insidious and cruel means as to leave the victim defenseless.²

10. The petitioners asserted that the accused first stood trial on March 21, 1989, the date on which a trial by jury convicted him of the crime of battery followed by death, whereupon the Public Prosecutor's Office appealed that decision on the grounds that it was inconsistent with the evidence presented at trial. The petitioners observe that the São Paulo Tribunal of Justice granted the appeal and ordered a new trial, which took place on April 10, 1992. On that day, the Jury Tribunal convicted the accused of homicide with two aggravating circumstances, which was that the killing was committed out of revenge and through asphyxiation by strangulation. The convicted man was sentenced to 15 years behind bars. However, according to the petitioners, the São Paulo Tribunal of Justice also recognized the convicted man's right to appeal the lower court judgment while still at liberty, by granting his petition of *habeas corpus* on June 8, 1992. According to the petitioners' account, on March 8, 1993, the São Paulo Tribunal of Justice upheld the lower-court's ruling and the conviction became *res judicata*.

11. According to the petitioners, although a final conviction was won through a proper criminal process, the order to take the convicted man into custody has not been carried out because a writ of *habeas corpus* was granted to enable the convicted man to appeal the lower-court ruling. In other words, the petitioners are not alleging any violations committed in the criminal case prosecuted into the alleged victim's murder, except for the June 8, 1992 decision on the petition of *habeas corpus* that the

² According to the petitioners, homicide for a vile motive and by asphyxia is criminalized in Article 121, paragraph 2, subparagraphs I, III and IV of the Brazilian Penal Code.

convicted man filed. In this regard, the petitioners observe that “had it not been for that ruling on the petition of *habeas corpus*, the [alleged victim’s] killer would be serving his sentence” and that because of the writ of *habeas corpus*, on the date the petition was filed with the Commission the killer was still a fugitive and had still not served a day of his sentence.

12. As for the State’s responsibility to apprehend the convicted man, the petitioners point out that “they know of no steps taken by the competent authorities to locate the convicted man” and add that in Brazil, countless arrest warrants are never enforced because of a lack of resources. The petitioners later elaborate upon their allegations regarding the State’s alleged failure to perform its duty to apprehend the condemned man.

13. In effect, the petitioners argue that as a consequence of the higher court’s conviction, on June 2, 1993 the Santos Sentence Enforcement Judge issued an order to have the condemned man consigned to prison. On August 18, 1993 that order had not yet been carried out because the Section for Classification of Commitment Orders and Counter-orders had not yet been established.³ The petitioners observe that on August 19, 1993, another order to have the convicted man consigned to prison was issued, but on September 8, 1993, when the bailiff attempted to carry out the order and take the convicted man into custody, he was unable to do so because “José Antônio Pereira do Lago was not found at any of the listed addresses and his whereabouts are uncertain and unknown.”

14. According to the petitioners, and although on April 30, 1998 the State told the IACHR that “the Brazilian authorities continue to seek” the convicted fugitive, between 1993 and 2001 no step was taken to carry out the arrest warrant. Therefore –the petitioners contend – on June 10, 2001, the alleged victim’s sister, Generosa Deise Rigo Leopoldi, sent a letter to the Governor of São Paulo in which she requested that efforts be made to arrest her sister’s murderer. The petitioners add that the Governor of São Paulo responded to her request and on March 25, 2002 sent a report prepared by the São Paulo Civil Police (Apprehensions Section). The petitioners add that because of the efforts and pressure exerted by the alleged victim’s family, the authorities started to move on the case again and that on February 7, 2002, the Sentence Enforcement Judge ordered that a new arrest warrant be issued, which was done on February 8, 2002. The petitioners, however, emphasize that on May 17, 2002, that order produced no results, since the addresses listed in the order were the same as those checked by the bailiff ten years earlier. The petitioners therefore contend that the measures taken by the State were mere formalities and that it failed to demonstrate any real willingness to apprehend the condemned fugitive.

15. On December 27, 2005, the petitioners informed the IACHR that the perpetrator of the crime committed against the alleged victim, José Antônio Brandão do Lago, had been arrested on September 21, 2005, in the city of São Luís, state of Maranhão, thanks to an anonymous telephone tip.⁴ They also reported that the convicted man was carrying false identification papers and was taken to a prison in São Vicente, state of São Paulo, where he was serving his sentence for the murder of the alleged victim in this case. Despite the capture of the author of the crime committed against the alleged victim, the petitioners maintain that the IACHR should issue its decision on the admissibility of this petition, because the grounds for filing the petition have not changed. The petitioners maintain that those grounds will continue to exist until the State makes proper reparations and acknowledges its responsibility.

16. Based on the foregoing, the petitioners allege that the State is responsible for violations of Articles 3, 4, 5 and 7 of the Convention of Belém do Pará, and Articles 1.1, 4, 8 and 25 of the American Convention. They also contend that the petition was filed within six months of the date on which the Convention of Belém do Pará entered into force for Brazil, which they claim was August 2, 1996.

³ The petitioners state that the section was created pursuant to Resolution 08/1984 of the São Paulo Tribunal of Justice; its purpose is to send the orders for consignment to prison to the “Ricardo Gumbleton Daunt Identification Institute” (IIRGD).

⁴ The petitioners observe that the perpetrator’s capture was solely attributable to the private efforts made by the alleged victim’s sister, who appeared on a television program to tell her sister’s story and how the family had suffered because her killer had not been punished. According to the petitioners, that television appearance triggered the anonymous telephone tip a few days later.

B. Position of the State

17. In its communications of April 29 and 30, 1998, the State maintained that the petitioners did not properly substantiate the alleged violations of the Convention of Belém do Pará or identify the acts that were the supposed violations. The State, therefore, requests that the petition be declared inadmissible under Articles 47.b and 47.c of the American Convention, inasmuch as the petition does not state facts that tend to establish a violation of the rights guaranteed by the American Convention and because, from the petitioners' own account, the petition is manifestly unfounded and obviously out of order.

18. The State alleges that the flight of the author of the crime was an unforeseeable event and cannot be blamed on the State. It denies the petitioners' allegations to the effect that the perpetrator of the crime committed against the alleged victim is a fugitive as a result of the writ of *habeas corpus*. The State observes that in a democratic system that guarantees fundamental rights and freedoms, *habeas corpus* is an essential tool to combat abuses against individual liberty and that in the instant case, the State merely guaranteed the convicted man's right to file an appeal and remain free until a final judgment was delivered against him. The State therefore rejects the petitioners' assertions that the perpetrator of the crime committed against the alleged victim is free because of a writ of *habeas corpus* and the assertion that "had it not been for that ruling on the petition of *habeas corpus*, the [alleged victim's] killer would be serving his sentence."

19. The State also makes the argument that its international responsibility cannot be engaged by the fact that the perpetrator was a fugitive from justice, since the authorities were doing everything possible to apprehend him. In this regard, the State argues that the perpetrator was at large because of his own conduct –fleeing justice– and again underscores the fact that the competent authorities will continue to pursue the convicted man to take him into custody so that he serves his 15 years in prison.

20. The State further contends that the petitioners' allegations regarding the Convention of Belém do Pará are equally inadmissible because the definitive verdict convicting the perpetrator of the crime committed against the alleged victim was delivered on March 8, 1993, in other words, prior to the OAS Member States' adoption of that treaty on June 9, 1994, and long before Brazil's ratification of it on November 27, 1995. Finally, the State observes that the petition was also presented extemporaneously, i.e., well after the period of six months from the date on which the final judgment was delivered on March 8, 1993, as Article 46.1.b of the American Convention prescribes; the petition was not filed with the Commission until more than three years later, on November 5, 1996.

21. In conclusion, the State contends that the present petition is inadmissible under Articles 46.1.b, 47.b and 47.c of the American Convention; it also contends that the Convention of Belém do Pará was not in force for Brazil at the time of the events and cannot, therefore, be examined in connection with this petition.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

22. Under Article 44 of the American Convention, the petitioners are authorized to lodge petitions with the IACHR, as they are legally recognized nongovernmental organizations. The person named as the alleged victim in the petition is Márcia Cristina Rigo Leopoldi, a Brazilian citizen, age 24,⁵ whose rights under the American Convention the Brazilian State undertook to respect and ensure. The

⁵ From the documents on record, the IACHR has confirmed that the alleged victim was 24 years old on March 10, 1984, the date of her death. (Cf. Identity document of the alleged victim, which gives February 15, 1960 as her date of birth – Attachment to the petitioners' communication of July 13, 1997).

State, for its part, is a member of the Organization of American States⁶ and therefore has the obligations and duties that the American Declaration and the OAS Charter impose upon it. Brazil is also a State party to the American Convention, which it ratified on September 25, 1992. It also ratified the Convention of Belém do Pará on November 27, 1995. The Commission is, therefore, competent *ratione personae* to examine the petition.

23. As for its competence *ratione temporis*, the IACHR believes that some clarifications are in order. By virtue of the American Declaration, the Inter-American Commission has competence *ratione temporis* with respect to the alleged victim's death, which was on March 10, 1984, and with respect to the bulk of the criminal case prosecuted into this crime, including the lower-court conviction for homicide delivered on April 10, 1992, and the writ of *habeas corpus* the court granted on June 8, 1992. Nevertheless, the Commission must emphasize that the petitioners have not presented arguments alleging possible violations of due process and of judicial guarantees in that criminal case, except with respect to the writ of *habeas corpus* (*supra* paragraph 11) and the subsequent lack of due diligence in apprehending the convicted man once the definitive judgment was delivered on March 8, 1993 (*supra* paragraphs 11-13).

24. Moreover, the IACHR observes that with respect to events that occurred subsequent to September 25, 1992, the IACHR has competence *ratione temporis* under the American Convention as well. It also has competence *ratione temporis* to examine the petition under the Convention of Belém do Pará with respect to events that occurred subsequent to December 27, 1995.⁷ The IACHR previously held that because an alleged failure to guarantee due process was an ongoing violation, it, too, would be covered under the American Convention and the Convention of Belém do Pará; the IACHR therefore found that "the alleged tolerant attitude of the State constituted an ongoing denial of justice, to the detriment of [the alleged victim], which could make it impossible to convict the perpetrator and compensate the victim."⁸

25. Lastly, the Inter-American Commission finds that it has competence *ratione materiae* and *ratione loci* to examine the present petition as it alleges violations of human rights protected in the American Declaration, the American Convention and the Convention of Belém do Pará, said to have occurred within the jurisdiction of Brazil, a State party to those international instruments. This is confirmed by Articles 1.2.b and 20 of the Commission's Statute and Article 23 of its Rules of Procedure.

B. Exhaustion of domestic remedies

26. Article 46.1.a of the American Convention provides that prior exhaustion of the remedies under a State's domestic laws is one of the conditions for a petition to be admissible.

27. As to the question of exhaustion of domestic remedies, the IACHR preliminarily observes that, in cases of homicide –i.e., a criminal offense prosecutable *sua sponte*– the proper remedy is normally a criminal investigation and prosecution. It is an uncontested fact that in the case of the alleged

⁶ Brazil is a founding member of the Organization of American States. It signed the OAS Charter in 1948 and deposited its instrument of ratification in 1950.

⁷ The relevant part of Article 21 of the Convention of Belém do Pará reads as follows: "For each State that ratifies or accedes to the Convention after the second instrument of ratification is deposited, it shall enter into force thirty days after the date on which that State deposited its instrument of ratification or accession."

⁸ IACHR. Report No. 54/01, Admissibility and Merits, Case 12.051, Maria da Penha Maia Fernandes (Brazil), April 16, 2001, paragraph 27. The IACHR also recalls that Article 12 of that Convention provides that:

Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Inter-American Commission on Human Rights containing denunciations or complaints of violations of Article 7 of this Convention by a State Party, and the Commission shall consider such claims in accordance with the norms and procedures established by the American Convention on Human Rights and the Statutes and Regulations of the Inter-American Commission on Human Rights for lodging and considering petitions.

victim's homicide, the State conducted a criminal investigation and prosecution and that on March 8, 1993, the Brazilian courts delivered a final verdict of conviction for the crime of homicide with two aggravating circumstances (*supra* paragraphs 9 and 20).

28. The Inter-American Commission also observes that the principal claim of the petitioners concerns the alleged lack of due diligence to arrest and thus punish the perpetrator, during the twelve years he was at large. In this regard, they allege an ongoing failure of the State to exercise due diligence; and the IACHR considers that the situation complained of would not normally be subject to any further domestic remedies available to the petitioners.

C. Timeliness of the petition

29. Under Article 46.1.b of the American Convention, a 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. Both parties have reported that the final ruling in the alleged victim's death came down on March 8, 1993. According to the State, notification of the verdict was done in August 1993 (*supra* paragraph 19). The petitioners did not controvert that information; however, they stated that the petition was lodged within six months of the date on which the Convention of Belém do Pará entered into force for Brazil.

30. In its analysis with respect to timely filing, the IACHR necessarily takes into account that the criminal process resulted in a final decision against the perpetrator in 1993. However, the petitioners essentially allege a delay of 12 years in enforcing that decision until the arrest of the convicted perpetrator in 2005. Given that the petition was filed during this 12 year lapse, the Inter-American Commission considers that it was timely filed.

D. Duplication of proceedings and international *res judicata*

31. Nothing in the case file suggests that the petition lodged with the Inter-American Commission is currently pending settlement in another international proceeding or that it is substantially the same as another petition already examined by the IACHR or another international body, as stipulated in Articles 46.1.c and 47.d of the American Convention, respectively.

E. Colorable claim

32. With regard to the subject matter of this petition, the IACHR observes that, according to the allegations of the parties and the documents on file, the presiding judge in the Santos District Court of Trial by Jury and Sentence Enforcement issued an arrest warrant (*Mandado de Prisão*) against José Antônio Brandão do Lago on June 2, 1993. That order states that the final verdict became *res judicata* on May 23, 1993, and six addresses are listed, all in the city of São Paulo⁹ for the apprehension of the convicted man.¹⁰

33. Because the judicial authority that issued the order was in the district of Santos and the order was to be enforced in the district of São Paulo, the order was re-issued on August 19, 1993, with the specific instruction that the order was to be enforced by means of a letter rogatory.¹¹ That same day, a letter rogatory was issued, addressed to the Combined Sector of Letters Rogatory for the city of São

⁹ Four residential addresses: Calle Cardeal Arcoverde, 1663, apt. 01; Avenida Higienópolis, 360, 10th floor; Calle Patápio Silva, 241, apt. 61; Calle Mateus Grou, 65, apt. 01; and two work addresses: Avenida Europa, 887 and Calle Ministro Ferreira Alves, 1001.

¹⁰ *Mandado de Prisão* – arrest warrant, at page number 1259 in Annex 1 of the petitioners' February 1, 2005 communication

¹¹ *Certidão* – document bearing page number 1260 (v), in Annex 1 of the petitioners' February 1, 2005 communication. The letter rogatory is the document through which the court authority of one district delegates enforcement of an order issued by that court to a court authority in another district.

Paulo.¹² According to the bailiff's record, dated September 8, 1993, he went to all six indicated addresses and was told by the residents or neighbors with whom he spoke either that they did not know José Antônio Brandão do Lago or that he had moved more than a year earlier.¹³ The bailiff concluded, therefore, that the convicted man's whereabouts were "uncertain and unknown."

34. From the allegations of the parties and the documents in the case file, the IACHR is unable to verify whether any measures were taken to apprehend the convicted man between 1993 and October 30, 2001. According to an October 30, 2001 report prepared by the Arrests Division of São Paulo's Civil Police, two police investigators from that division went again to the convicted man's known addresses (*supra* paragraph 37), interviewed a number of people about the whereabouts of José Antônio Brandão do Lago, but did not manage to locate him. There are also indications that the records of the São Paulo State Data Processing Company (PRODESP), the Ricardo Gumbleton Daunt Identification Institute (IIRGD) and the National Traffic Department (DETRAN) were checked, but no information concerning his whereabouts could be found. Lastly, it was noted that no vehicle was registered in the name of José Antônio Brandão do Lago and that his driver's license had expired on March 5, 1998 but was not renewed, which is why DETRAN did not have a current address for that person.¹⁴

35. Then, on February 7, 2002, a court order was issued to have the arrest warrant re-issued, which was done on February 8, 2002.¹⁵ On May 17, 2002, the bailiff made a record to the effect that the convicted man could not be arrested because he could not be found at the known addresses; he again stated that the man's whereabouts were "uncertain and unknown."¹⁶

36. It is an uncontested fact that José Antônio Brandão do Lago was arrested on September 21, 2005, in the city of São Luís, state of Maranhão, and was carrying false papers at the time; he was then taken to a prison in São Vicente, state of São Paulo, where he was serving his sentence for the alleged victim's homicide.

37. Given the circumstances of this petition and taking into consideration the steps taken by the State authorities, as described above, the eventual capture of the convicted fugitive, and the fact that he was at the time living under a false identity in the state of Maranhão, which made finding and subsequently arresting him more difficult; the IACHR concludes that the facts alleged do not establish, *prima facie*, any potential or apparent violation of the American Convention or of the Convention of Belém do Pará.

38. Therefore, in accordance with Article 47.b of the American Convention, the IACHR decides that the petition is inadmissible.

V. CONCLUSIONS

39. The IACHR concludes that it is competent to examine the allegations made by the petitioners and that the petition is inadmissible, in keeping with Article 47.b of the American Convention. Therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

¹² *Carta Precatória Criminal* – letter rogatory in a criminal matter, bearing page number 1265, in Annex 1 of the petitioners' February 1, 2005 communication.

¹³ *Certidão* – document bearing page number 1268, in Annex 1 of the petitioners' February 1, 2005 communication. At the Calle Mateus Grou, 65, apt. 01 address, the bailiff spoke with the resident in apartment 2, who told him that José Antônio Brandão do Lago had lived in apt. 01, but had moved away "a year ago, maybe more" and that the apartment in question was vacant.

¹⁴ *Relatório* – document at pages 19 and 20, in Annex 3 of the petitioners' February 1, 2005 communication.

¹⁵ *Mandado de Prisão* – order of consignment to prison, at page number 1259 in Annex 1 of the petitioners' February 1, 2005 communication.

¹⁶ *Certidão* – document bearing page number 1260 (v), in Annex 1 of the petitioners' February 1, 2005 communication.

DECIDES:

1. To declare the petition inadmissible in conformity with Article 47.b of the American Convention;
2. To notify the State and the petitioners of this decision;
3. To publish this decision and include it in the Annual Report to be presented to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 20th day of the month of March 2012.
(Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González, Second Vice-President; Dinah Shelton, Rodrigo Escobar Gil, Rosa María Ortiz, and Rose-Marie Antoine, Commissioners.