

REPORT No. 79/12
PETITION 342-07
IVETE JORDANI DEMENECK *ET AL.*
ADMISSIBILITY
BRAZIL
November 8, 2012

I. SUMMARY

1. On March 18, 2007, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a petition submitted by Fabiano Demeneck (“the petitioner”) arguing the responsibility of the Federative Republic of Brazil (“the State” or “Brazil”) for the death of his elderly mother, Ivete Jordani Demeneck¹ (“the alleged victim” or “Ms. Demeneck”), which took place at the private Nursing Home “Curitiba Park S/C” (*Casa de Repouso Curitiba Park S/C*), in the municipality of Colombo, Paraná state, on July 18, 2004. The petitioner asserts that the alleged victim’s death occurred due to negligence and improper medical treatment at the aforementioned private clinic, and that the State failed to conduct an effective investigation to prosecute and punish those responsible. Consequently, the petitioner alleges that Brazil violated Articles 4, 5, 8.1, 11, and 25.1 of the American Convention on Human Rights (“the American Convention”).

2. The State maintains that the petition is inadmissible because domestic remedies have not been exhausted, as required by Article 46.1.a of the American Convention. In that regard, the State asserts that there are a number of pending domestic remedies, which indicate that State authorities are effectively and diligently investigating the facts denounced in this petition. For instance, Brazil observes that four days after receiving a *notitia criminis* regarding the death of the alleged victim, a police inquiry was instituted (IPL n. 2005.404-0), on November 12, 2004, and this criminal investigation remains pending. Also, the State mentions that a civil inquiry (*Procedimento Administrativo P.A. n. 67/99*) led the Office of the Public Prosecutor to lodge a collective civil action (*Ação Civil Pública ACP n. 1200/2001*). The State additionally mentions pending administrative proceedings before the Prosecutor for the Defense of the Elderly (*Promotoria de Defesa do Idoso*, a division of the Office of the Public Prosecutor) – n. 029/07 – and the Permanent Council for Human Rights (CODEP – *Conselho Permanente de Direitos Humanos*, an administrative organ under the authority of the State Secretariat of Justice and Citizenship) – n. 8.314.291-0. The State thus argues that the petition was presented prematurely, and fails to meet the requirement contained in Article 46.1.a of the American Convention.

3. Without prejudging the merits of the matter, and in accordance with the provisions of Articles 46 and 47 of the American Convention, the IACHR decides to declare this petition admissible with regard to possible violations of Articles 5.1, 8.1 and 25.1 of the American Convention, in connection with Article 1.1 of that instrument. On the other hand, the Inter-American Commission declares the petition inadmissible for lack of competence *ratione personae* with respect to general claims in favor of persons who were not identified or identifiable. The IACHR also declares this petition inadmissible with respect to the claims raised concerning Articles 4 and 11 of the American Convention, since the petitioners did not state facts that tend to establish a violation of those provisions. Finally, the Inter-American Commission decides to inform the parties of this decision, to publish it, and to include it in its Annual Report to the General Assembly of the OAS.

II. PROCEEDINGS BEFORE THE IACHR

4. The IACHR received the petition on March 18, 2007. It also received additional information from the petitioner on the following dates: March 25, 2007; May 5, 2007; May 25, 2007; and

¹ In his communications, the petitioner indistinctively refers to his mother and other members of his family, including father and siblings, by the last names “Demeneck,” “Demenech” or “Demeneche,” without providing any explanation regarding the different spellings used. Having examined all the documents on file, and particularly taking into account the documents in the domestic proceedings, the IACHR will use the spelling “Demeneck” to refer to the alleged victim and other members of her family.

January 9, 2008. On June 27, 2008, the IACHR submitted the relevant parts of those communications to the State. The State replied by means of notes received on December 4 and December 29, 2008. The IACHR duly submitted Brazil's response to the petitioner.

5. The petitioner presented additional information on the following dates: August 25, 2008; March 9, 2009; July 1, 2009; October 11, 2009; December 24, 2009; June 25, 2010; July 8, 2010; August 5, 2010; November 30, 2010; and December 12, 2010. These communications were duly submitted to the State. The State submitted additional information on the following dates: April 22, 2009; August 11, 2009; April 28, 2010; and January 14, 2011. These communications were submitted to the petitioner.

III. POSITION OF THE PARTIES

A. Position of the petitioner

6. The petitioner indicates that his complaint aims at reporting "occurrences involving numerous elderly people, including his mother," and refers to "thousands of cases."² These cases consist of deaths due to negligence, infection due to necrosis, disappearances and a series of violations against mentally disabled and elderly persons. The petitioner indicates that these "recurring cases" demonstrate that the State has abandoned its obligations which emanate from the judgment in the Case of Ximenes Lopes vs. Brazil concerning duties of the State relating to medical care.

7. The petitioner asserts that his mother was 66 years old³ and suffered from an "advanced neurological condition," so she was placed in the private Nursing Home "Curitiba Park S/C" (*Casa de Repouso Curitiba Park S/C*), in the municipality of Colombo, Paraná state, in February 2004. According to the petitioner, on July 18, 2004, Ms. Demeneck died due to negligence at the aforementioned private nursing home. The petitioner alleges that Ms. Demeneck died under "sudden and strange circumstances," which indicate obvious negligence in her daily care and emergency assistance. He also points out other strange circumstances, such as: a death certificate signed by Márcia Terezinha Naeser, a psychologist who was in charge of the nursing home at the time of Ms. Demeneck's death; and the fact that unidentified individuals showed up at the nursing home and attempted to remove the body before a proper autopsy was performed. The cause of death, according to the petitioner, was eventually determined as pulmonary embolism, which he characterizes as strange because the family had allegedly provided oxygen equipment to the nursing home, since Ms. Demeneck needed daily oxygen inhalation due to pulmonary problems.

8. The petitioner explains that, at the time of Ms. Demeneck's death, the private Nursing Home "Curitiba Park S/C" operated at the "Curitiba Park" Hotel in the municipality of Colombo, Paraná state. The owners of this hotel, according to the petitioner, were members of his family, namely Antonio Fabiano Demeneck (Ms. Demeneck's husband) and Tiago Demeneck (Ms. Demeneck's son). The petitioner observes that they were business partners of Vicente de Paula Muniz, the alleged owner of the nursing home, who had proposed the joint venture since the hotel had many unoccupied rooms. According to the petitioner, Mr. Muniz had committed to running the section of the hotel destined for the nursing home, as well as adapting it for that purpose. The petitioner adds that, since the nursing home operated in family property and Ms. Demeneck required special care, the family decided to place her in that nursing home, supposedly unaware of the fact that Mr. Muniz was not a real medical doctor and had previously had similar establishments closed due to irregular functioning and inadequate care of elderly and disabled persons, including the private Nursing Home "Curitiba Ltd." (*Casa de Repouso Curitiba Ltda.*), in Curitiba, capital city of Paraná state.

² The petitioner observes, in the Portuguese original, that: "*vem por meio desta, para que sejam tomadas as providências cabíveis, relatar acontecimentos ocorridos envolvendo diversos idosos, entre eles a sua mãe;*" "*a denúncia é direcionada a uma miríade de casos.*"

³ According to the petitioner, Ms. Demeneck was born on August 15, 1937.

9. The petitioner indicates that due to the “sudden and strange death” of Ms. Demeneck, he presented a request for the opening of a police inquiry before the Office of the Public Prosecutor of Colombo, on November 8, 2004. According to the petitioner, a police inquiry (*Inquérito Policial* n. 2005.404-0) was initiated to investigate Ms. Demeneck’s death, but it was archived on February 21, 2006. The petitioner alleges that he was never notified of this decision to archive the police inquiry. The petitioner adds that this police inquiry was later reopened, after this petition was presented before the Inter-American Commission, but it allegedly remains pending as of the date of the petitioner’s last communication.⁴

10. The petitioner also mentions several other procedures related to this case. Firstly, the petitioner observes that he denounced the psychologist who was in charge of the nursing home at the time of Ms. Demeneck’s death before the Regional Council of Psychology (*Conselho Regional de Psicologia*) – Procedure n. 009-2004.⁵ In addition, the petitioner states that he submitted communications to the Permanent Council for Human Rights (*Conselho Permanente de Direitos Humanos*) – CODEP, which is an administrative organ under the authority of the Coordination of Citizens’ Rights (*Coordenadoria dos Direitos da Cidadania*) – CODIC, which in turn is under the authority of the State Secretariat of Justice and Citizenship (*Secretaria de Justiça e Cidadania do Estado do Paraná*) – SEJU – Administrative Procedure n. 8.314.291-0. According to the petitioner, in the course of this procedure, another administrative procedure was instituted by the Prosecutor for the Defense of the Elderly (*Promotoria de Defesa do Idoso*, a division of the Office of the Public Prosecutor) – n. 029/07.

11. The petitioner alleges that, some time after that, he discovered that the Office of the Public Prosecutor had lodged a civil collective action (*Ação Civil Pública* ACP n. 1200/2001), prior to Ms. Demeneck’s death, because of irregularities observed in the functioning of the private Nursing Home “Curitiba Ltd.,” in Curitiba, which was supposedly the predecessor of the private Nursing Home “Curitiba Park S/C,” in Colombo. Both of those establishments, according to the petitioner, belonged to and/or were administered by Vicente de Paula Muniz. The petitioner argues that, once its predecessor was closed in Curitiba, by means of a judicial order issued in the context of this civil collective action, Mr. Muniz moved his establishment to the municipality of Colombo in order to evade justice. The petitioner concludes that Mr. Muniz has several other nursing homes and/or “clinics” all over the state of Paraná, all of which present the same inadequacies and irregularities that have victimized his mother and his family. However, the petitioner concludes, Mr. Muniz has remained in impunity for all of his crimes.

12. Consequently, the petitioner alleges that the State is responsible for violating Articles 4, 5, 8.1, 11, and 25.1 of the American Convention.

B. Position of the State

13. The State argues that the petition is inadmissible because domestic remedies have not been exhausted, as required by Article 46.1.a of the American Convention. According to the State, contrary to the allegations of the petitioner, State authorities are effectively and diligently investigating the facts denounced in this petition. In that regard, Brazil asserts that there are a number of pending domestic remedies, thus the petition was presented prematurely and fails to meet the requirement contained in Article 46.1.a of the American Convention.

14. As a preliminary matter, the State points out that the petitioner’s arguments are not clear, which makes it difficult to present a precise response. The State asserts that the petition aims at addressing “numerous cases in which the life and personal integrity of the elderly and mentally disabled persons are put at risk,” without making specific reference to alleged violations of the American Convention.

⁴ The IACHR observes that the petitioner also mentions another police inquiry (n. 2005-702-3), which was allegedly also archived, on May 17, 2006, but provides no further details regarding the object of this investigation.

⁵ According to the petitioner, that led to the revoking of Márcia Terezinha Naeser’s license to practice psychology, on December 8, 2006. Nevertheless, he adds that the Federal Council of Psychology overturned this decision on appeal.

15. With regard to the lack of exhaustion of domestic remedies, Brazil firstly indicates that a police inquiry (n. 2005.404-0) was instituted on November 12, 2004, four days after a *notitia criminis* was presented by the petitioner. The State observes that this police inquiry was archived on February 22, 2006, but it was reopened in April 2007 and is following its due course (the State refers to this police inquiry under a different number: n. 2005.702-3). Specifically, the State alleges that, "after finalizing some pending investigative measures, which were requested by the Office of the Public Prosecutor of Paraná state, the police inquiry should be concluded."⁶

16. Secondly, the State informs that, prior to Ms. Demeneck's death, the Office of the Public Prosecutor of Paraná state began an investigation regarding the Nursing Home in question (P.A. n. 67/99) in 1999, which led it to file a civil collective action (*Ação Civil Pública* n. 1200/2001), in 2001. With regard to this remedy, the State asserts that the action was successful, and the eventual judicial decision determined that two nursing homes belonging to Vicente de Paula Muniz should be closed.

17. In addition, the State mentions pending administrative proceedings before the Prosecutor for the Defense of the Elderly (*Promotoria de Defesa do Idoso*, a division of the Office of the Public Prosecutor) – n. 029/07 – and the Permanent Council for Human Rights (CODEP – *Conselho Permanente de Direitos Humanos*, an administrative organ under the authority of the State Secretariat of Justice and Citizenship) – n. 8.314.291-0.

18. In conclusion, the State argues that the petition was presented prematurely, since effective domestic remedies are ongoing and have not been exhausted. Thus Brazil claims that the petition is inadmissible, in accordance with the requirement contained in Article 46.1.a of the American Convention.

⁶ The State asserts, in the Portuguese original, that: "espera-se que, após a finalização de diligências pendentes, solicitadas pelo Ministério Público do Estado do Paraná, o inquérito deva ser concluído."

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

19. The petitioner has standing to file petitions with the Inter-American Commission pursuant to Article 44 of the American Convention. The alleged victims include Ms. Demeneck and her next-of-kin, as well as “those affected by numerous cases in which the life and personal integrity of the elderly and mentally disabled persons are put at risk.” With regard to Ms. Demeneck and her next-of-kin (jointly, hereinafter “the alleged victims”), including Fabiano Demeneck (son), Deborah Demeneck (daughter), Maria Inês Demeneck Pellizzari (daughter) and Jonas Antonio Demeneck (son);⁷ they are persons regarding whom the Brazilian State agreed to respect and ensure the rights enshrined in the American Convention. Therefore, the IACHR has competence *ratione personae* as regards the allegations related to them.

20. On the other hand, as regards the general claims concerning “all elderly and mentally disabled persons whose life and personal integrity are put at risk,” the IACHR determines that it does not have competence *ratione personae* to adjudicate the present matter in accordance with jurisprudence of the inter-American system establishing the standard of interpretation for Article 44 of the American Convention.⁸ Indeed, as it has done several times in the past, the Inter-American Commission “holds the present complaint to be inadmissible since it concerns abstract victims represented in an *actio popularis*.”⁹

21. The IACHR notes that Brazil ratified the American Convention on September 25, 1992. The potential violations described in this petition allegedly took place under the jurisdiction of Brazil, a State Party to the American Convention; therefore, the IACHR has competence *ratione loci*. Finally, the Inter-American Commission has competence *ratione materiae* and *ratione temporis*, since the petition describes potential violations of rights protected by the American Convention, which allegedly occurred after that international treaty was already in force for Brazil.

B. Exhaustion of domestic remedies

22. Under Article 46.1 of the American Convention, for a petition to be admitted by the IACHR, the remedies offered by the domestic jurisdiction must have been exhausted in accordance with generally recognized principles of international law. The second paragraph of Article 46 indicates that those provisions shall not apply when 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 offered by domestic law; or when there has been an unwarranted delay in rendering a final judgment under those remedies.

⁷ The IACHR observes that the documents on file indicate that Ms. Demeneck was married to Antonio Fabiano Demeneck and had another son, Tiago Demeneck. However, it is not clear from said documents nor is it obvious from the petitioner’s allegations whether these two family members are also deemed to be alleged victims by the petitioner, or instead were somehow implicated in Ms. Demeneck’s death. In this regard, the IACHR observes, for instance, that the petitioner indicates that Antonio Fabiano Demeneck and Tiago Demeneck were the owners of the hotel “Curitiba Park,” where the Nursing Home “Curitiba Park S/C” operated, and were business partners of Vicente de Paula Muniz. Moreover, the IACHR takes note that the complaint presented by Fabiano, Deborah and Maria Inês before the Office of the Public Prosecutor indicates that Antonio and Tiago allegedly fabricated a death certificate of Ms. Demeneck (See, in this regard, *Request for the opening of a police inquiry due to the “confusing and sudden death” of Ivete Jordani Demeneck*, pgs. 17 – 22 of Disciplinary Procedure N° 009/2004 before the Regional Council of Psychology – Attachment to the petitioner’s communication of May 25, 2007).

⁸ See, *inter alia*, IACHR. Report No. 88/03, Petition 11.533, Inadmissibility, *Metropolitan Nature Reserve* (Panama), October 22, 2003, paras. 28, 32 and 34; Report No. 51/02, Petition 12.404, Admissibility, *Janet Espinoza Feria et al.* (Peru), October 10, 2002, paras. 34 and 35; Report No. 28/98, Petition 11.625, Admissibility, *María Eugenia Morales de Sierra* (Guatemala), March 6, 1998, paras. 11, 12, 30 and 31; and Report No. 48/96, Inadmissibility, (Costa Rica), October 16, 1996, paras. 28 and 31. See also, I/A Court H.R. *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)*. Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, paras. 45 and 49; and *Case of Genie-Lacayo v. Nicaragua*. Preliminary Objections. Judgment of January 27, 1995. Series C No. 21, paras. 50 and 51.

⁹ IACHR. Report No. 88/03, Petition 11.533, Inadmissibility, *Metropolitan Nature Reserve* (Panama), October 22, 2003, para. 34.

23. For purposes of admissibility, the first relevant step is to clarify which domestic remedies must be exhausted regarding this matter. The Inter-American Court of Human Rights has indicated that only remedies suitable for addressing the violations allegedly committed need be exhausted.¹⁰ Both the petitioner and the State have observed that a police inquiry was instituted to investigate the death of Ms. Demeneck at the private Nursing Home “Curitiba Park S/C” (*supra* paras. 9 and 15). The Inter-American Commission observes that in cases such as the one at hand, which involve an alleged criminal offense prosecutable *sua sponte* in Brazil¹¹ --namely the death of an individual-- the suitable and effective remedy is normally a criminal investigation and trial before the ordinary judicial system.¹²

24. It is undisputed that, in the context of the relevant criminal investigations, to this date there is no final determination of any criminal responsibility related to Ms. Demeneck’s death. In this regard, however, the Inter-American Commission must clarify that the parties have referred to two police investigations (n. 2005.404-0 and n. 2005.702-3).¹³ After a detailed examination of the documents on file, the IACHR observes that, on November 8, 2004, almost four months after Ms. Demeneck’s death, three of her children, Deborah Demeneck, Fabiano Demeneck and Maria Inês Demeneck Pellizzari, presented a “request for the opening of a police inquiry due to the confusing and sudden death of Ms. Ivete Jordani Demeneck” before the Office of the Public Prosecutor of Colombo, Paraná state.¹⁴ On that same date, two of Ms. Demeneck’s children, Deborah Demeneck and Fabiano Demeneck, presented a “request for the opening of a police inquiry due to [the existence of] a fake nursing home, which does not have the adequate structure and violates the dignity of the human person and the statute of the elderly” before the Office of the Public Prosecutor of Colombo, Paraná state.¹⁵ Both parties have asserted that, on November 12, 2004, a police inquiry was instituted to investigate Ms. Demeneck’s death (*supra* paras. 9 and 15).

25. Having closely examined the documents on file, the Inter-American Commission observes that two police investigations, under numbers 2005.404-0 and 2005.702-3, were initiated before the Police District of Alto Maracanã – Colombo, and both of those aimed at investigating facts relating to the “victim Ivete Jordani Demeneche.” Moreover, both were archived by means of decisions dated February 22, 2006, and were later reopened. Lastly, the IACHR observes that police inquiry n. 2005.404-

¹⁰ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988, Series C, No. 4, para. 63.

¹¹ In this regard, the IACHR observes that “homicide” is typified in the Brazilian Penal Code under its Article 121, which includes “homicide for negligence”, that is to say, without intention (*homicídio culposo*), under § 3. Also, according to Article 100 of the Brazilian Penal Code, unless otherwise specified by law, the crimes listed in that legal code are prosecutable *sua sponte*.

¹² In this regard, the IACHR also notes that in similar cases of deaths allegedly caused by medical negligence, it has repeatedly taken this type of remedies into consideration when examining the admissibility of petitions. See, *inter alia*, Report No. 85/08, Petition 162-061, Admissibility, *Melba del Carmen Suárez Peralta* (Ecuador), October 30, 2008, para. 39; Report No. 70/08, Petition 12.242, Admissibility, *Pediatric Clinic of the Region of Los Lagos* (Brazil), October 16, 2008, para. 38; and Report No. 69/02, Petition 419-01, Admissibility, *Laura Albán Cornejo* (Ecuador), October 23, 2002, paras. 31 and 32. In its Admissibility Report regarding the *Case of Ximenes Lopes*, the IACHR did not specify which remedy needed to be taken into account, since the State did not allege failure to exhaust domestic remedies, and tacitly waived the right to invoke the objection of failure to exhaust domestic remedies. In any case, the IACHR also referred to the State obligation to carry out the judicial investigation in order to determine the responsibility for the alleged victim’s death, (See IACHR. Report No. 38/02, Petition 12.237, Admissibility, *Damião Ximenes Lopes*, Brazil, October 9, 2002, paras. 23 and 17, respectively). The Inter-American Court, in its merits judgment, also took this type of remedy into account (See I/A Court H.R., *Case of Ximenes-Lopes v. Brazil*. Merits, Reparations and Costs. Judgment of July 4, 2006. Series C No. 149, para. 194, among others).

¹³ The IACHR notes, in this regard, that during the admissibility stage neither party has presented copies of these police investigations, so it has not been possible to precisely determine their object.

¹⁴ See, *Request for the opening of a police inquiry due to the “confusing and sudden death” of Ivete Jordani Demeneck*, pgs. 17 – 22 of Disciplinary Procedure N° 009/2004 before the Regional Council of Psychology – Attachment to the petitioner’s communication of May 25, 2007.

¹⁵ See, *Request for the opening of a police inquiry due to a fake nursing home, which does not have the adequate structure and violates the dignity of the human person and the statute of the elderly*, pgs. 11 – 16 of Disciplinary Procedure N° 009/2004 before the Regional Council of Psychology – Attachment to the petitioner’s communication of May 25, 2007.

0 was appended to police inquiry n. 2005.702 for joint processing under the latter number.¹⁶ Under the circumstances of this petition, the Inter-American Commission finds that this period (eight years since Ms. Demeneck's death and the initiation of the criminal investigations) exceeds what might be considered reasonable for an initial police inquiry to take place so that a judicial process may, if pertinent, eventually commence.¹⁷ Therefore, in the case at hand, the prior exhaustion requirement cannot be interpreted in a way that would cause a prolonged or unjustified hindrance of access to the inter-American system,¹⁸ so the IACHR decides that there has been an unwarranted delay in rendering a final judgment, and that the exception provided for in Article 46.2.c of the American Convention is applicable in this matter.

26. Having decided above that the exception set forth in Article 46.2.c of the American Convention is applicable to this matter, the IACHR does not find it necessary to refer at length to the other domestic remedies mentioned by the parties. Notwithstanding the foregoing, the IACHR observes that, with regard to pending administrative proceedings before the Prosecutor for the Defense of the Elderly – n. 029/07 – and the Permanent Council for Human Rights (CODEP) – n. 8.314.291-0, the IACHR does not find elements that indicate that such remedies might be suitable to remedy the alleged human rights violations described in the instant case, thus the petitioner was under no obligation to exhaust them.¹⁹ Moreover, with regard to civil collective action n. 1200/2001, the IACHR notes that the objective of this civil action was to close the private Nursing Home “Curitiba Ltd.,” in Curitiba, due to irregularities in its functioning. In addition to that, this civil procedure originated from an investigation (P.A. n. 67/99) that began in 1999, and the civil collective action was lodged by the Office of the Public Prosecutor of Paraná state, on September 14, 2001; that is to say, years prior to Ms. Demeneck's death at another nursing home in another municipality (Nursing Home “Curitiba Park S/C,” in Colombo).²⁰ At the merits stage, the IACHR may consider the allegations and facts related to this *ação civil pública* only insofar as they relate to the facts and alleged victims considered admissible in this report.

27. Lastly, it should be made clear that Article 46.2, based on its nature and subject, is an autonomous provision *vis-à-vis* the substantive provisions of the American Convention. Therefore, the determination as to whether an exception to the exhaustion of domestic remedies rule is applicable to the case in question should be made prior to and separate from the analysis of the merits of the case, insofar as it depends on a different standard of assessment. At the merits stage, the IACHR will examine whether or not this unwarranted delay in the domestic investigations also constitute violations of certain rights protected by the American Convention, specifically under Articles 8 and 25 therein.

¹⁶ See *Certificate* issued by the Criminal branch of the Colombo Tribunal, dated October 13, 2008 and signed by judicial officer Edemir Bozeski – Attachment to the petitioner's communication received on March 9, 2009.

¹⁷ See, *mutatis mutandi*, IACHR. Report No. 70/12. Petition 1330-07, Admissibility, *Pedro Augusto da Silva, Inácio José da Silva et al.* (Brazil), July 17, 2012, para. 17; Report No. 11/12, Petition 6-07, Admissibility, *Jurandir Ferreira de Lima et al.* (Brazil), March 20, 2012, para. 20. See also IACHR. Report No. 9/00, Case 11.598, Admissibility and Merits, *Alonso Eugênio da Silva* (Brazil), February 24, 2000, para. 25; and Report No. 10/00, Case 11.599, Admissibility and Merits, *Marcos Aurélio de Oliveira* (Brazil), February 24, 2000, para. 23.

¹⁸ See I/A Court H. R., *Velásquez Rodríguez Case*. Preliminary Objections, Judgment of June 26, 1987, Series C No. 1, para. 93.

¹⁹ See, *mutatis mutandi*, IACHR. Report No. 36/05, Petition 12.170, Inadmissibility, *Fernando A. Colmenares Castillo* (Mexico), March 9, 2005, paras. 36 and 37; and Report No. 73/99, Petition 11.701, “*Ojo de Agua*” Cooperative (Mexico), May 4, 1999, para. 16.

²⁰ See *Petition of the Office of the Public Prosecutor of Paraná state*, pgs. 2-23 of copies of *Ação Civil Pública* n. 1200/2001 – Attachment to the petitioner's communication of May 25, 2007. The IACHR takes note, however, that it was verified that this nursing home was no longer in business, on December 12, 2003 (pgs. 836-838 of copies of *Ação Civil Pública* n. 1200/2001). After that, in the course of these proceedings, on March 22, 2004, the Office of the Public Prosecutor indicated that officials from the Department of Sanitation had visited another nursing home at the Hotel “Curitiba Park,” in Colombo, on March 16, 2004. During this visit, they noticed that the owner of this facility was Vicente de Paula Muniz, who had allegedly opened another nursing home in Colombo “to continue the services provided at the previous nursing home,” under the same irregularities (pgs. 893-899 of copies of *Ação Civil Pública* n. 1200/2001). According to the documents on file, from here onwards, Nursing Home “Curitiba Park S/C” became part of the object of this civil collective action, which eventually had a decision issued on June 27, 2005, ordering the facility be closed (pgs. 949-956 of copies of *Ação Civil Pública* n. 1200/2001). After that, however, it was verified that this nursing home was no longer in business, on May 17, 2006 (pg. 989 of copies of *Ação Civil Pública* n. 1200/2001), so *ação civil pública* n. 1200/2001 was archived, by means of a judicial decision issued by Judge Luciane R.C. Ludovico, on October 9, 2006 (pg. 998 of copies of *Ação Civil Pública* n. 1200/2001).

C. Timeliness of the petition

28. Article 46.1.b of the American Convention requires that petitions be lodged within a period of six months following notification of the final judgment. On the other hand, Article 32.2 of the IACHR's Rules of Procedure provides that:

In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the [Inter-American] Commission. For this purpose, the [Inter-American] Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

29. Having ruled above that an exception to the rule requiring the exhaustion of domestic remedies is applicable; the Inter-American Commission must now determine whether the petition was lodged within a reasonable time. The petition was filed on March 18, 2007, that is to say, less than three years after Ms. Demeneck's death took place. In the specific circumstances of this petition, particularly the allegations of denial of justice related to the police investigation and judicial process, the Inter-American Commission concludes that the petition was lodged within a reasonable period of time. Accordingly, the requirement set by Article 32.2 of the IACHR's Rules of Procedure has been met.

D. Duplication and international *res judicata*

30. Nothing in the present file indicates that the subject of this petition is pending in any other international proceeding for settlement, or that it is substantially the same as another petition previously studied by the Inter-American Commission or by any other international organization. Hence, the requirements set forth in Articles 46.1.c and 47.d of the American Convention have been met.

E. Colorable claim

31. For purposes of admissibility, the Inter-American Commission must determine whether the facts denounced in the petition tend to establish a violation of the rights guaranteed by the American Convention, as required by Article 47.b thereof, or whether the petition should be rejected as "manifestly groundless" or "obviously out of order." At this stage in the proceedings it falls to the IACHR to carry out a *prima facie* evaluation, not to establish alleged violations of the American Convention or other applicable treaties, but to examine whether the petition describes facts that could tend to establish violations of rights protected by the inter-American instruments. This examination in no way constitutes a prejudgment or preliminary opinion on the merits of the case.

32. Neither the American Convention nor the IACHR's Rules of Procedure require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Inter-American Commission, although petitioners may do so. It is for the Inter-American 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.

33. Preliminarily, the IACHR takes notes that it is undisputed that Ms. Demeneck's death took place at a private facility, which operated within a hotel owned and managed by members of her family (*supra* para. 8). In view of the foregoing, as it has done in other cases of alleged violations that supposedly took place at private care facilities, the IACHR concludes that "the issue to be decided is whether the petitioner [] [was] afforded due process and access to the appropriate judicial remedies in clarifying the facts of the case and in seeking justice before the [Brazilian] judicial system, pursuant to Articles 8 and 25 of the American Convention."²¹

²¹ IACHR. Report No. 69/02, Petition 419-01, Admissibility, *Laura Albán Cornejo* (Ecuador), October 23, 2002, para. 32. See also IACHR. Report No. 85/08, Petition 162-061, Admissibility, *Melba del Carmen Suárez Peralta* (Ecuador), October 30, 2008, paras. 1 and 47.

34. Consequently, the Inter-American Commission will not consider the alleged violations of the right to life under Article 4 of the American Convention, nor the allegations with regard to violations of the right to humane treatment under Article 5 of the same instrument with respect to Ms. Demeneck, since the petitioner did not present a sufficient basis to require an examination of State responsibility. Likewise, the IACHR finds that the petitioner has not sufficiently substantiated his allegations regarding a potential violation of Article 11 of the American Convention. These allegations, therefore, are deemed inadmissible in conformity with Article 47.b of the American Convention.

35. On the other hand, the IACHR finds that the allegations of the petitioner regarding denial of justice could tend to establish violations of Articles 8.1 and 25.1 of the American Convention, in conjunction with Article 1.1 of the same instrument.²² Likewise, the IACHR also admits this petition with regard to a possible violation of Article 5.1 of the American Convention to the detriment of Ms. Demeneck's next-of-kin, due to their alleged suffering stemming from presumed actions, omissions and the general response given by State authorities to the steps and procedures taken to seek justice and judicial relief.

V. CONCLUSIONS

36. The Inter-American Commission concludes that it is partially competent to examine the merits of this case, as it relates to the facts denounced with respect to Ms. Demeneck and her next-of-kin, and decides that the petition is admissible under Articles 46 and 47 of the American Convention. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition admissible with respect to Articles 5.1, 8.1 and 25.1 in connection with Article 1.1 of the American Convention;
2. To declare this petition inadmissible with respect to Articles 4 and 11 of the American Convention, as well as due to the lack of competence *ratione personae* with respect to the allegations detailed *supra*;
3. To inform the parties of this decision;
4. To continue with analysis of the merits of the case;
5. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 8 day of the month of November, 2012.
(Signed): Felipe González, Second Vice-President; Dinah Shelton, Rodrigo Escobar Gil, Rosa María Ortiz, and Rose-Marie Antoine, Commissioners.

²² See IACHR. Report No. 85/08, Petition 162-061, Admissibility, *Melba del Carmen Suárez Peralta* (Ecuador), October 30, 2008, para. 47/ and Report No. 69/02, Petition 419-01, Admissibility, *Laura Albán Cornejo* (Ecuador), October 23, 2002, para. 43. In similar terms, see the decision of the Inter-American Court in the Case of Albán Cornejo *et al.* vs. Ecuador (I/A Court H.R., *Case of Albán Cornejo et al. v. Ecuador*. Merits, Reparations and Costs. Judgment of November 22, 2007. Series C No. 171, paras. 38 and 42).