REPORT No. 117/12
PETITION 86-07
INADMISSIBILITY
DEMÉTRIOS NICOLAOS NIKOLAIDIS
BRAZIL
November 13, 2012

I. SUMMARY

1. On January 24, 2007, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission" or "IACHR") received a petition submitted by the attorney Sócrates Spyros Patseas ("the petitioner") alleging that the Federative Republic of Brazil ("the State" or "Brazil") was internationally responsible for the violation of Article 7.7 of the American Convention on Human Rights ("the American Convention"), with prejudice to Demétrios Nicolaos Nicolaidis ("the alleged victim"). The petitioner claims that the Brazilian constitutional norm allowing "civil imprisonment for debt" not only for nonfulfillment of duties of support, but also for the unfaithful receiver is incompatible with Article 7.7 of the American Convention. He maintains that in tax foreclosure proceedings against a company of which the alleged victim was a partner, an order for the imprisonment of the alleged victim was issued; he had been designated as the receiver of the attached goods. The petitioner argues that the alleged victim was in fact deprived of liberty from November 11 until November 12, 2003 for the aforementioned debt, as an unfaithful receiver because he did not present the attached goods when ordered to do so. He also suffered from an "unlawful restriction of his liberty in view of the imminent threat of being arrested for the aforementioned debt." The petitioner therefore concludes that the alleged victim should be indemnified by the State due to the harm caused in the application of the aforementioned constitutional norm.

2. The State argues that, in the first place, at the time the petition was lodged, domestic remedies had not been exhausted, as required by article 46.1.a of the American Convention. In this regard, Brazil notes that the merits of the *habeas corpus* petition filed by the alleged victim had not yet been examined by domestic courts. The State argues that after the Federal Supreme Court *[Supremo Tribunal Federal]* ("the STF") handed down its decision on the *habeas corpus* filed by the alleged victim, which had been preceded by the Court's suspension, *motu proprio*, of the order for his detention, since the petition was decided in favor of the alleged victim, "it has been proven that there was no human rights violation in this case." In addition, the State affirms that, after the STF decided the *habeas corpus*, it also issued a binding jurisprudential directive (*Súmula Vinculante* 25) which determined that "civil imprisonment of an unfaithful receiver is unlawful", based on the *pro homine* principle and on the provisions of Article 7.7 of the American Convention. The State therefore concludes that this petition should be dismissed by the IACHR pursuant to Articles 48.1.b of the American Convention and 42.1.a of the Inter-American Commission's Rules of Procedure.

3. After examining the positions of the parties in the light of the admissibility requirements established by Articles 46 and 47 of the American Convention, the Inter-American Commission decides to declare the petition inadmissible because the facts presented do not tend to establish a possible violation of rights guaranteed by the American Convention, as required by Article 47.b of said instrument. The Inter-American Commission decides to notify the parties and to publish this Report on Inadmissibility and to include it in its Annual Report to the General Assembly of the OAS.

II. PROCEEDINGS BEFORE THE IACHR

4. The petition was received on January 24, 2007. In a March 27, 2007 communication, the IACHR transmitted the complaint to the State for it to respond. The State responded to the petition on May 29, 2007. The petitioner submitted additional information on the following dates: July 9, 2007, December 18, 2007, February 14, 2011, June 15, 2011, and June 12, 2012. These communications were forwarded to the State. The State, for its part, submitted additional information on the following dates: September 10, 2007, February 29, 2008, December 8, 2010, April 15, 2011, July 22, 2011, June 5, 2012, and June 28, 2012; these communications were forwarded to the petitioner.

III. POSITION OF THE PARTIES

A. Position of the petitioner

5. The petitioner claims that the Brazilian constitutional norm allowing "civil imprisonment for debt" not only for nonfulfillment of duties of support, but also for the case of an unfaithful receiver[1] is incompatible with Article 7.7 of the American Convention. He maintains that, pursuant to said norm, the alleged victim suffered from an "unlawful restriction of his liberty in view of the imminent threat of being arrested for debt." The petitioner notes that the alleged victim was a partner in the company under tax foreclosure for not having paid the commercialization tax on merchandise [*imposto de circulação de mercadorias e serviços* – "ICMS"]. The petitioner states that, on the date of the submission of the petition, the debt owed for not having paid the ICMS was in the order of R$ 268,206.73 (two hundred sixty-eight thousand *reais* and seventy-three cents).

6. According to the petitioner, in the tax foreclosure proceedings, the alleged victim was appointed as receiver of the goods attached, which were to be auctioned to satisfy the debt, but he "could not [deliver them] because the goods had disappeared." Consequently, the petitioner states, the Fourth Court for Tax Affairs found the alleged victim to be an unfaithful receiver, and issued an order for his imprisonment on October 10, 2006, in violation of Article 7.7 of the American Convention. The information provided indicates that the alleged victim was not detained based on that order. However, the petitioner reports that the alleged victim had been previously arrested for breach of fiduciary duty as a receiver, from November 11 until November 12 of 2003, in the Belo Horizonte Traffic Police Station, in the state of Minas Gerais.

7. According to the petitioner, the alleged victim filed *habeas corpus* petitions before the Court of Justice of the State of Minas Gerais ("TJMG") and the Superior Court of Justice ("STJ"), but both were denied. The petitioner adds that the alleged victim also filed a *habeas corpus* petition before the STF, which handed down a decision in favor of the alleged victim, followed by the binding jurisprudential directive *[Súmula Vinculante]* No. 25, establishing that "the civil imprisonment of an unfaithful receiver is unlawful, regardless of the type of deposit." With respect to the prior exhaustion of domestic remedies, the petitioner claims that there was unjustified delay in the decision on the aforementioned domestic remedies; therefore, the exception provided for by Article 46.2.c of the American Convention is applicable. Lastly, the petitioner maintains that the harm suffered by the alleged victim has been proven and therefore the alleged victim should be indemnified by the State for its application of the constitutional norm *supra* mentioned.

B. Position of the State

8. The State maintains, first, that at the time of the filing of the petition, domestic remedies had not been exhausted as required by Article 46.1.a of the American Convention. In this connection, the State indicates, for purposes of providing a background, that on May 11, 1999 the state of Minas Gerais filed an action for tax foreclosure (No. 02499-053-662-5) against the Company DENIK Cosmetics, LLC, in which the alleged victim was a partner. Within this action, an attachment was ordered of the goods belonging to the company (204 pairs of shoes valued at R$ 20,400, for the purpose of paying the ICMS owed by the company, which at that time was R$ 16,270.56). According to the State, the alleged victim was appointed as receiver of the goods, and therefore charged with the obligation of presenting them when so ordered, so they could be sold at auction. However, the State says, after he was ordered to present the attached goods, the alleged victim would fail to appear or indicated that the goods were at addresses that turned out to be false. In other words, he apparently acted repeatedly in a fraudulent way.

9. Based on the foregoing, the State reports that the judicial authority issued an order for the imprisonment of the alleged victim, as an unfaithful receiver, and he was held at the detention center

[1] The petitioner refers to article 5, paragraph 67 of the 1988 Federal Constitution

of the Office of the State Secretary for Public Safety *[Secretaría Estadual de Seguridad Pública/SGPC]* from November 11 until November 12, 2003, and was released after he filed a *habeas corpus* petition. According to the State, the alleged victim continued to act in bad faith in the tax foreclosure action, and therefore a new order for his imprisonment was issued on October 10, 2006. According to the State, the alleged victim then filed a preventive *habeas corpus* petition (along with a request for a precautionary measure) before the TJMG. The State affirms that the request for a precautionary measure was denied on November 17, 2006 due to the lack of a formal requirement (the order for his imprisonment, necessary to ascertain whether there was an imminent threat of a deprivation of liberty, was not enclosed). The State goes on to say that the alleged victim filed another *habeas corpus* petition before the STJ regarding the decision on the precautionary measure, which was also denied on the grounds that it would have meant the suppression of a court instance. Therefore, Brazil states in its response to the petition, the merits of the *habeas corpus* filed by the alleged victim before the TJMG had not yet been examined by that court.

10. According to the State, the domestic jurisdictional remedies were effective regarding the complaint, as the STF has repeatedly ordered the release of unfaithful receivers, based on the inadmissibility of this type of civil imprisonment. Indeed, in its most recent communications, the State underscores that the alleged victim filed a new *habeas corpus* petition before the STF on January 11, 2007 regarding the October 10, 2006 order for his imprisonment. In this respect, the State notes that the STF suspended *motu proprio* the order issued for the imprisonment of the alleged victim on June 15, 2007. The State also affirms that on September 23, 2008, the STF unanimously decided in favor of the alleged victim on the merits of the *habeas corpus* petition, thus vacating the October 10, 2006 order for his imprisonment; this it did based on the *pro homine* principle and on the provisions of article 7.7 of the American Convention. Subsequently, the State goes on to say, the same STF issued a binding jurisprudential directive *[Súmula Vinculante 25]* ruling that “civil imprisonment of an unfaithful receiver is unlawful.” The State maintains that therefore “it has been proven that there was no human rights violation in the instant case.”

11. Based on the foregoing, the State affirms that the grounds for the instant petition no longer exist, and requests that the IACHR close the record of the case, pursuant to Articles 48.1.b of the American Convention and 42.1.a of the Inter-American Commission’s Rules of Procedure.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

12. The petitioner has standing, in principle, pursuant to Article 44 of the American Convention to submit petitions before the IACHR. The petition names an individual person as the alleged victim, with respect to whom the State undertook to respect and guarantee the rights recognized by the American Convention. Regarding the State, the Commission notes that Brazil is a party to the American Convention since September 25, 1992, the date upon which it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition. Likewise, the Commission is competent *ratione loci* to take cognizance of the petition, because it alleges the violation of a right protected by the American Convention within the territory of Brazil, a State-Party to said treaty.

13. Regarding competence *ratione temporis*, the Inter-American Commission notes that the petitioner has filed a complaint regarding facts that allegedly occurred when the obligation to respect and guarantee rights protected by the American Convention was in force for the State. Finally, the IACHR is competent *ratione materiae* because the petition reports the possible violation of human rights protected by the American Convention.

B. Exhaustion of domestic remedies

14. Article 46.1.a of the American Convention requires, for the IACHR to admit a petition, that there be prior exhaustion of domestic remedies, in accordance with generally recognized principles of international law. Article 46.2 of the American Convention, in turn, provides that this requirement will not be applicable when: (i) the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (ii) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (iii) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

15. The central topic of this petition, as can be inferred from the arguments of the parties, is the right to personal liberty, specifically regarding the provisions of Article 7.7 of the American Convention. With respect to the exhaustion of domestic remedies linked to this right, the Inter-American Commission notes that the *habeas corpus* petition "is a judicial remedy designed to protect personal freedom or physical integrity against arbitrary detentions" so that a judicial authority can examine the detention of a person and, given the case, order his or her release.[2] Therefore, the IACHR will examine whether the complainant filed for and exhausted this domestic remedy, in accordance with Article 46.1.a of the American Convention.

16. According to the evidence available in the case file, as part of a tax foreclosure action filed by the state of Minas Gerais against the alleged victim and his company, merchandise it owned was attached to cover the ICMS owed by it, and the alleged victim was appointed as the receiver of said goods.[3] On April 22, 2002, the Fourth Court for Tax Affairs issued an edict ordering the alleged victim to present the attached goods or to indicate their location, under the penalty of civil imprisonment.[4] On June

[2] I-A Court HR, *Habeas Corpus in Emergency Situations* (arts. 27(2), 25(1) and 7(6) American Convention on Human Rights. Advisory Opinion OC-8/87 of January 30, 1987, Series A., No. 8, para. 33. Also see I-A Court HR, *Case of Velásquez-Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988, Series C., No. 4, para. 65.

[3] Initial petition in the action for tax foreclosure, dated May 11, 1999, lodged by the *Fazenda Pública do Estado de Minas Gerais*; and Writ of Attachment, Evaluation and Deposit of August 17, 1999 – Annexes to the January 24, 2007 petition. The first document states that the amount of ICMS owed by the alleged victim is R$ 16,270.56 (sixteen thousand two hundred and seventy-two *reais* and fifty-six cents). The second document states that the attached goods consisted of 204 pairs of shoes: 44 pairs of shoes of the Siloer brand; 21 pairs of shoes of the Romanelli brand; 49 pairs of shoes of the Alanase brand; 90 pairs of shoes of the Di Fatto brand, and that the value of said goods was estimated to be R$ 20,400 (twenty thousand four hundred *reais*.)

[4] *Edital de Intimação* of April 22, 2002. Fourth Court for Tax Affairs of Minas Gerais, District of Belo Horizonte – Annex to the petition of January 24, 2007.

27, 2002, the state of Minas Gerais, through its attorney general, requested an order for the civil imprisonment of the alleged victim, on the grounds that he had not presented the attached goods nor had he indicated their whereabouts.[5] On August 6, 2002, a judge found the alleged victim to be an unfaithful receiver, as he had not presented the merchandise when ordered to do so and ordered his civil imprisonment for six months.[6]

17. According to the documents in the case file, pursuant to the order of imprisonment No. 121.595, issued on August 22, 2003, the alleged victim was in fact detained at 15:00 hours on November 11, 2003 at the Civil Police Station located in the Traffic Department (DETRAN) building, when he arrived to pick up his driver's license.[7] That same day the alleged victim filed a *habeas corpus* petition, in which he argued that he was not an unfaithful receiver and stated that the attached goods to guarantee the tax foreclosure were to be found in two depositories located in the city of Contagem, state of Minas Gerais.[8] On November 12, 2003, the alleged victim was released following a court order.[9] The IACHR notes, therefore, that the alleged victim exhausted the *habeas corpus* remedy at this time.

18. According to the reports received, the merchandise was later not found at the addresses given by the alleged victim and he continued to fail to present the goods, thus hindering the tax foreclosure.[10] Therefore, on September 26, 2006, the judge of the Fourth Court for Tax Affairs issued a new order for a 60-day civil imprisonment of the alleged victim.[11] The petitioner, on behalf of the alleged victim, filed a preventive *habeas corpus* petition (n. 1.0000.06.446237-7/000), with a request for a precautionary measure *[liminar]* before the TJMG, on November 1, 2006.[12] The TJMG dismissed the

---

[5] Petition of the *Fazenda Pública do Estado de Minas Gerais* of June 27, 2002, signed by Attorney General Celso de Oliveira Ferreira, in Tax Foreclosure Proceedings 024.99.053.662-5 – Annex to the petition of January 24, 2007.

[6] Decision of Judge Renato Luis Dresch of August 6, 2002 – Annex to the January 24, 2007 petition.

[7] Official Communication No. 1485/2003/C.O.P./DETRAN/MG, of November 11, 2003. Civil Police of Minas Gerais, Traffic Department, Office of the Coordinator for Police Operations – Annex to the January 24, 2007 petition.

[8] Habeas corpus petition of November 11, 2003, signed by the attorneys Tereza Cristina Bertachini Filizzola and Eliana Maria Henriques Scapin – Annex to the January 24, 2007 petition. According to the habeas corpus petition, the attached goods were in two depositories located on João Gomes Cardoso Avenue, Nos. 1286 and 1144, Contagem, Minas Gerais.

[9] *Alvará Judicial de Soltura* of November 12, 2003, signed by Judge Fernando Neto Botelho – Annex to the January 24, 2007 petition.

[10] On March 17, 2004, the Court Officer certified that he could not find the attached goods at the addresses given by the alleged victim (*Certidão* of March 17, 2004, signed by the Court Officer Armanda da Silva Veloso – Annex to the January 24, 2007 petition), so the State of Minas Gerais requested that a new order for imprisonment be issued against the alleged victim, which was in fact issued by a judicial authority on June 24, 2004 (Petition of the Attorney General of the State of Minas Gerais, Nilce Madureira Leão, of June 18, 2004, and decision of Judge Fernando Neto Botelho, of June 24, 2004 – Annexes to the January 24, 2007 petition). On August 13, 2004, the alleged victim requested that the order for his imprisonment be revoked and offer to accompany the court officer to the depository of the attached goods, which was so ordered by the judicial authority (Petition of August 13, 2004, signed by attorney Tereza Cristina B. Filizzola, and the decision of the judge (illegible signature) of October 7, 2004 – Annexes to the petition of January 24, 2007). On October 17, 2005, the alleged victim gave the addresses of the two depositories to the Court for Tax Affairs, which were located in the city of Contagem, State of Minas Gerais, where the attached goods were stored. The depositories were supposed to be located on João Gomes Cardoso Avenue, nos. 1286 and 1144, Contagem, Minas Gerais; that is, the alleged victim gave the same addresses he had offered previously (October 17, 2005 brief signed by attorney Tereza Cristina B. Filizzola – annex to the January 24, 2007 petition). On December 20, 2005, the Attorney General of the State of Minas Gerais informed the judicial authority that the addresses provided by the alleged victim were the same ones given before, where the court officer could not find the attached goods. According to the attorney general, one of the addresses does not even exist and the other is the place of residence of Ms. Marta Anunciação Lopes, who says she does not know the alleged victim. Consequently, the judicial authority ordered the alleged victim to present the attached goods or to say where they were located, under the penalty of civil imprisonment (December 20, 2005 brief signed by the Attorney General of the State of Minas Gerais, Melissa de Oliveira Duarte; and court order issued by Judge José Augusto de Sousa Brandão – Annexes to the January 24, 2007 petition).

[11] Decision of Judge Fernando Neto Botelho of September 26, 2006, and Order of Imprisonment of October 10, 2006 – Annexes to the January 24, 2007 petition.

[12] Preventive habeas corpus of November 1, 2006 – Annex to the January 24, 2007 petition.

habeas corpus petition on December 19, 2006.[13] The petitioner then filed another *habeas corpus* petition before the STF ("HC 90450-5") on January 11, 2007.[14]

19. According to the available evidence in the record, on June 15, 2007, the Minister-Rapporteur charged with HC 90450-5 at the STF, Celso de Mello, granted "*sua sponte* a precautionary measure to suspend, until the final judgment of the '*habeas corpus*' petition, the order of civil imprisonment issued against the petitioner, who is in the record of Tax Foreclosure No. 024.99.053.662-5."[15] Shortly thereafter, on September 23, 2008, the STF handed down a judgment on the merits of HC 90450-5 and, unanimously, decided in favor of the alleged victim, pursuant to Article 7.7 of the American Convention, which was recognized as the most favorable norm to the person.[16] The IACHR notes, therefore, that the alleged victim also exhausted the *habeas corpus* remedy at this time.

20. In conclusion, the IACHR decides that both when he petitioned the judicial authorities because of his arrest on November 11, 2003 and when he lodged a preventive petition due to the court order of September 26, 2006, the alleged victim filed and exhausted the *habeas corpus* remedy, as established by Article 46.1.a of the American Convention.

C. Timeliness of the petition

21. Pursuant to the provisions of Article 46.1 of the American Convention, for a petition to be admissible it must be lodged within the stipulated time period, i.e., within a period of six months from the date on which the party alleging violation of his rights was notified of the final domestic judgment.

22. As indicated in the foregoing section, final judgments regarding the *habeas corpus* petitions filed by the alleged victim were handed down on November 12, 2003 and September 23, 2008. In other words, the second judgment was handed down after the petition was submitted before the IACHR, on January 27, 2007. However, it is at the time it decides on the admissibility of a petition that the IACHR must verify if the admissibility requirements have been met. In the instant case, therefore, the requirement established by Article 46.1.b of the American Convention has been met.

C. Duplication of proceedings and international *res judicata*

23. It cannot be inferred from the case file that the petition is pending in another intenational proceeding for settlement, nor that it is substantially the same as one previously studied by this or by another international organization. Therefore, the requirements established by Articles 46.1.c and 47.d of the American Convention should be considered as having been met.

D. Colorable claim

---

[13] Record of the Proceedings (Habeas corpus 1.0000.06.446237-7/000) of the TJMG – Annex to the petitioner's July 9, 2007 communication. The IACHR notes that the petitioner did not submit a copy of this decision and therefore does not know the reason for the denial. The IACHR also notes that previously the TJMG had also denied the related request for a precautionary measure, since he had not included the order for his imprisonment. See Decision of the Judge [signature illegible] of November 17, 2006 (verbatim in the original Portuguese: *Indefiro a liminar porque o decreto de prisão não foi juntado)* – Annex to the January 24, 2007 petition. The petitioner appealed the denial of the temporary injunctive relief *[liminar]* through another habeas corpus petition, which was preliminarily denied on January 8, 2007, because "there cannot be a habeas corpus against a decision that denied a *liminar* in another habeas corpus, as it would constitute an unlawful suppression of a judicial instance" (Decision of Minister Barros Monteiro, President of the STJ, of January 8, 2007 – Annex to the petition of January 24, 2007); the habeas corpus was denied definitively on May 20, 2007 because the decision of the President of the STJ had become *res judicata*, and because there was already another habeas corpus before the STF pending (Decision of Minister Eliana Calmon of May 20, 2007 – Annex to the petitioner's July 9, 2007 communication).

[14] Record of the Proceedings (*Habeas corpus* 90450) of the STF – Annex to the petitioner's July 9, 2007 communication.

[15] Decision of Minister Celso de Mello of June 15, 2007 (Free translation of the original Portuguese: *concedo, de ofício, medida cautelar, para, até final julgamento desta ação de "habeas corpus", suspender a eficácia da ordem de prisão expedida, contra o ora paciente, nos autos da Execução Fiscal nº 024.99.053.662-5*) – Annex 2 of the State communication of December 8, 2010.

[16] *Acórdão* of the STF of September 23, 2008 – Annex 3 of the State communication of December 8, 2010.

24. For the purposes of admissibility, the Commission must decide whether the facts alleged tend to establish a violation of rights, pursuant to the provisions of Article 47.b of the American Convention, or, pursuant to paragraph (c) of same, if the petition is "manifestly groundless" or "obviously out of order." The criterion for the evaluation of these requirements is different from the one used to decide on the petition's merits, since the Commission only carries out a *prima facie* evaluation to determine whether the petitioners provide grounds for a possible or potential violation of a right guaranteed by the American Convention. 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.

25. In the instant case, it is alleged that the Brazilian constitutional norm allowing "civil imprisonment for debt" not only for nonfulfillment of duties of support, but also in cases of unfaithful receivers, and which was applied to the alleged victim, is incompatible with Article 7.7 of the American Convention. The IACHR observes in this regard that the aforementioned norm, i.e., Article 5, paragraph 67 of the Brazilian Constitution, provides that "there shall be no civil imprisonment for indebtedness, except in the case of a person responsible for voluntary and inexcusable nonfulfillment of duties of support and in the case of an unfaithful receiver."[17]

26. The IACHR emphasizes that, in application of said norm in tax foreclosure proceedings in which the alleged victim was appointed as receiver of attached merchandise, orders for his detention were issued against him on the grounds that when the receiver/alleged victim was ordered to present said goods he failed to do so. As a result, as described in *supra* paragraph 17, the alleged victim was arrested on November 11 and released on November 12, 2003, following a court order issued in response to a *habeas corpus* petition filed by the alleged victim. In addition, as also described *supra* (paragraphs 18 and 19), the foreclosing court again issued, on September 26, 2006, an order for the civil imprisonment of the alleged victim, who in turn lodged new *habeas corpus* petitions arguing, based on Article 7.7 of the American Convention, that the order for his imprisonment was unconstitutional. The TJMG denied the habeas corpus petition (n. 1.0000.06.446237-7/000) that had been submitted to it, and the alleged victim filed yet another *habeas corpus* petition (HC 90450-5) before the STF on January 11, 2007. The STF, in turn, suspended *sua sponte* the order for imprisonment on June 15, 2007 and subsequently decided HC 90450-5 in the alleged victim's favor, on September 23, 2008. The IACHR notes that it is an undisputed fact that following the court decision of September 26, 2006, the alleged victim was never incarcerated, while the judicial authorities examined his *habeas corpus* petitions.

27. The IACHR also underscores that, in its decision, the STF found that:

---

[17] Free translation of the original Portuguese: *não haverá prisão civil por dívida, salvo a do responsável pelo inadimplemento voluntário e inescusável de obrigação alimentícia e a do depositário infiel* (article 5, paragraph 67 of the Federal Constitution of 1988). The petitioner has also mentioned article 652 of the Brazilian Civil Code as a legal norm regulating civil imprisonment of the unfaithful receiver, and which establishes a maximum prison term of one year (*Seja o depósito voluntário ou necessário, o depositário que não o restituir quando exigido será compelido a fazê-lo mediante prisão não excedente a um ano, e ressarcir os prejuízos*). The IACHR notes that the laws of other countries in the region also establish the incarceration of an unfaithful receiver, e.g. article 112 of the Fiscal Code of the Federation (Mexico), which establishes imprisonment for the receiver or trustee *[depositario o interventor]* who disposes of the property deposited, hides it, or does not place it at the disposal of the authorities ("The receiver or trustee appointed by fiscal authorities who, with prejudice to the federal treasury, disposes for himself or for another of the deposited property, of its products or of collateral offered for any fiscal credit, shall receive a sentence of three months to six years imprisonment when the value of the property disposed of does not exceed $109,290.00; when that value is exceeded, imprisonment shall be from three to nine years"); and article 255 ("The person who steals, alters, hides, destroys, or renders useless in whole or in part objects destined to be evidence before a competent authority, registries or documents entrusted to the custody of a public official or another person in the interest of public service, shall receive a sentence of a month to four years imprisonment. If the perpetrator were the receiver himself, he will also be subject to special disqualification for twice the time") and 263 ("Those who administer or hold in custody goods belonging to establishments of public instruction or charity, as well as the administrators and receivers of attached moneys, seized or deposited by a competent authority, even if they belong to private citizens, shall be subject to the foregoing provisions") of the Criminal Code of the Argentine Republic, among others.

> The judges and the courts, in the exercise of their interpretive activity, especially relative to international human rights treaties, must observe a basic hermeneutical principle (such as the one established by Article 29 of the American Convention on Human Rights), which gives primacy to the norm most favorable to the human person, in order to grant him or her the broadest legal protection.[18]

28. The STF therefore concluded that "in the case *sub judice*, Article 7.7 of the American Convention, in connection with Article 29 thereof, is applicable to the instant case, as it is a typical case of the primacy of the rule most favorable for the effective protection of a human being."[19] In addition, after its decision on HC 9450-5 filed by the alleged victim, on December 23, 2009 the STF issued a binding jurisprudential directive *[Súmula Vinculante 25]*, to all federal, state, and municipal organs of the Judiciary,[20] establishing that "civil imprisonment of an unfaithful receiver is unlawful regardless of the type of deposit."[21]

29. In the instant petition's particular circumstances, the IACHR notes that the procedures of the judicial authorities described *supra* specifically ensured that the alleged victim's right to personal freedom was an effective right, particularly regarding Article 7.7 of the American Convention. Indeed, the IACHR particularly underscores that the alleged victim was always able to petition the appropriate judicial authorities for a decision on the lawfulness of his arrest or, as the case could be, of the legal foundation to order his imprisonment for being an unlawful receiver. It is also noteworthy that he was successful both in obtaining his release within 24 hours (from his November 11, 2003 arrest), and in obtaining a declaration regarding the unconstitutional nature of civil imprisonment of an unfaithful receiver, as a result of the application of Article 7.7 of the American Convention in connection with Article 29 thereof. Therefore, the IACHR concludes that the petition does not state facts that *prima facie* tend to establish a violation of the American Convention and that consequently, it is inadmissible, pursuant to Article 47.b of the American Convention.

V. CONCLUSIONS

30. The IACHR concludes that it is competent to examine the complaint submitted by the petitioner and that, pursuant to article 47.b of the American Convention, it is inadmissible. Therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS DECIDES:

1. To declare the instant petition inadmissible, pursuant to article 47.b of the American Convention;

---

[18] *Acórdão* of the STF, of September 23, 2008 – Annex 3 of the State communication of December 8, 2010, p. 2 (Free translation of the original Portuguese: *Os magistrados e Tribunais, no exercício de sua atividade interpretativa, especialmente no âmbito dos tratados internacionais de direitos humanos, devem observar um princípio hermenêutico básico [tal como aquele proclamado no Artigo 29 da Convenção Americana de Direitos Humanos], consistente em atribuir primazia à norma que se revele mais favorável à pessoa humana, em ordem a dispensar-lhe a mais ampla proteção jurídica*).

[19] *Acórdão* of the STF of September 23, 2008 – Annex 3 of the State communication of December 8, 2010, p. 2 (Free translation of the original Portuguese: *Aplicação, ao caso, do Artigo 7º, n. 7 c/c o Artigo 29, ambos da Convenção Americana de Direitos Humanos [Pacto de São José da Costa Rica]: um caso típico de primazia da regra mais favorável à proteção efetiva do ser humano*).

[20] The *Súmula Vinculante* was created by Constitutional Amendment No. 45 of 2004; article 103-A of the Brazilian Constitution provides that "it shall be binding for all the other organs of the Judiciary and direct and indirect public administration, at the federal, state, and municipal levels." (Free translation of the original Portuguese: *O Supremo Tribunal Federal poderá, de ofício ou por provocação, mediante decisão de dois terços dos seus membros, após reiteradas decisões sobre matéria constitucional, aprovar súmula que, a partir de sua publicação na imprensa oficial, terá efeito vinculante em relação aos demais órgãos do Poder Judiciário e à administração pública direta e indireta, nas esferas federal, estadual e municipal, bem como proceder à sua revisão ou cancelamento, na forma estabelecida em lei*).

[21] Proposal of a *Súmula Vinculante* and Record of the Vote of December 12, 2009 – Annex 5.2 of the State communication of December 8, 2010. Among other precedents, the proposal of *Súmula Vinculante* also refers to the STF decisions in Special Appeals RE 466.343/SP and RE 349.703/RS.

2. To notify the State and the petitioner of this decision;

3. To publish this decision and include it in its Annual Report to be submitted to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 13th day of the month of November, 2012. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González, Second Vice-President; Rosa María Ortiz, and Rose-Marie Antoine, Commissioners.