REPORT No. 60/13
PETITION 1242-07
INADMISSIBILTY
JOSÉ MARIA GUIMARÃES
(*PRECATÓRIOS*)
BRAZIL
July 16, 2013

I. SUMMARY

1. On September 16, 2007, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission" or "IACHR") received a petition lodged by José Maria Guimarães ("petitioner" or "alleged victim") in which he claimed that the Federative Republic of Brazil ("Brazil" or "the State") was internationally responsible for what he alleged was the State's failure to make proper payment of a *precatório,* which in this case was an order issued by a court for a government institution to pay compensation in the alleged victim's favor. The petitioner does not specify which articles of the American Convention on Human Rights ("American Convention") or of other applicable inter-American treaties he is claiming the State had violated.

2. The petitioner argues that, following a legal proceeding "conducted with judicial guarantees and by due process of law", the state of Minas Gerais, in the form of its Highways Department ("DER" – *Departamento de Estradas de Rodagem*), was ordered to pay him workers' compensation. The petitioner states that, as a result of a decision delivered in action No. 0024.99.021.777-0, a court order was issued for payment of the sum owed to the alleged victim (*precatório* n. 67/2002). This *precatório* was subsistence related and payable in December 2002. The petitioner, however, contends that owing to the State's lack of financial resources, *precatório* n. 67/2002 was not honored within the time frame prescribed by the court. As a consequence, on June 18, 2008, Belo Horizonte's *Precatórios* Conciliation Board "forced an illegal/illegitimate/malicious agreement upon him under which he was forced to enter into a settlement giving the DER a 30% discount on the debt it owed him, so that he would receive the sum of R$ 188,417.42 (one hundred eighty-eight thousand four hundred seventeen *reais* and forty-two cents), in other words, 70% of the amount the State owed him." Finally, the petitioner underscores the fact that the matter raised in his petition was the subject of an action he filed seeking rescission of the decision that confirmed the above-mentioned agreement, given the DER's willful misconduct and the violation of the law that had been detrimental to the alleged victim's dignity.

3. The State argues that the facts denounced in the petition "do not correspond to any provision of the American Convention" and that the petition must therefore be declared inadmissible under Article 47 thereof. The State also maintains that the petition is inadmissible on the grounds of a failure to exhaust domestic remedies, as required under Article 46(1)(a) of the American Convention. The State asserts that *precatório* n. 67, concerning the compensation that the State owed to the alleged victim, has already been paid. The State's contention, therefore, is that the grounds for the petition no longer exist and that the IACHR should close the record on the matter pursuant to Articles 48.1.b of the American Convention and 42.1.a of the Rules of Procedure of the Inter-American Commission. Brazil makes the point that the petition concerned the failure to pay the respective *precatório*, and that this matter has already been settled when the State made good on the payment ordered by the court. As for the agreement the parties reached for a 30% discount on the amount that the *precatório* ordered be

paid to the alleged victim, Brazil argues that no creditor of the State is required to agree to the terms proposed for paying off *precatórios*. Lastly, the State notes in this regard that the legality of the agreement is being challenged in Action for Rescission n. 0289321-79.2010.8.13.0000, filed by the petitioner.

4. After examining the parties' positions and checking for compliance with the requirements set forth in articles 46 and 47 of the American Convention, the Commission decides to declare the petition inadmissible for failure to exhaust the remedies under domestic law. It also decides to notify the parties of this decision, to publish it and to include it in its Annual Report to the OAS General Assembly.

II. PROCESSING WITH THE IACHR

5. The petition was filed electronically with the IACHR and received on September 16, 2007. On July 16, 2008, the IACHR forwarded the relevant parts of the petition to the State. The State responded to the petition in communications received on October 20 and 30, 2008. The petitioner sent additional information on November 29, 2008, September 4, 2010, April 10, 2011 and July 19, 2011. Those communications were duly forwarded to the State, which presented additional information on December 20, 2010, May 27, 2011 and December 1, 2011. The State's communications were duly forwarded to the petitioner.

III. THE POSITIONS OF THE PARTIES

A. The petitioner

6. Preliminarily, the Inter-American Commission points out that, as indicated below, during the admissibility phase of this petition, the petitioner changed the terms of the petition originally sent; he expressly stated that he was "submitting observations to clarify the terms of the petition previously sent."[1] Therefore, the Inter-American Commission will now do a chronological recounting of the petitioner's position based on the facts as alleged, and will take into account the "clarification" the petitioner filed concerning the purpose of his petition. On that basis, the Commission will arrive at its decision on the petition's admissibility.

7. In his original petition, filed on September 16, 2007, the petitioner essentially alleged three facts that he claimed would tend to establish violations of his human rights. First, he denounced the failure to pay *precatório* n. 67, which was a court-ordered debt that the state of Minas Gerais (in the form of the DER) was to pay to the alleged victim. He also claimed that the State had allegedly made good on other *precatórios* (specifically Nos. 75-A, 81, 100 and 101) that the court ordered it to pay; according to the petitioner, in paying those *precatórios* the State had failed to follow the chronological order required by the Constitution of Brazil, since *precatório* n. 67 – issued in the victim's favor - should have been paid before the others mentioned above. Lastly, the petitioner alleged that he had filed an action (*Reclamação* No. 4926) with the Federal Supreme Court, which the latter dismissed in a decision dated March 20, 2007.

[1] Communication the IACHR received from the petitioner on July 19, 2011 (Free translation of the original Portuguese: *apresentar observações no sentido de esclarecer os termos da petição anteriormente enviada*).

8. Then, starting with his communication of November 29, 2008, and on repeated occasions in subsequent communications (*supra* para. 6), the petitioner stated that his *precatório* had already been paid, but that the State's settlement of the amount owed to the alleged victim was made improperly. Here, the petitioner's contention was that following a legal proceeding "conducted with judicial guarantees and by due process of law", the state of Minas Gerais, in the form of the DER, was ordered to pay him workers' compensation. The petitioner added that as a result of a decision delivered in action n. 0024.99.021.777-0, *precatório* n. 67/2002 was issued ordering payment of the amount owed to the alleged victim for subsistence, payable in December 2002. He alleged, however, that because of the State's lack of financial resources, *precatório* n. 67/2002 was not paid on time. Specifically, the petitioner explained to the IACHR that his petition concerned the fact that on June 18, 2008, Belo Horizonte's *Precatórios* Conciliation Board "forced an illegal/illegitimate/malicious agreement upon him under which he was forced to enter into a settlement giving the DER a 30% discount on the debt it owed him, so that he would receive the sum of R$ 188,417.42 (one hundred eighty-eight thousand four hundred seventeen *reais* and forty-two cents), in other words, 70% of the amount the State owed him."[2] According to the petitioner, the coercion that the alleged victim suffered was in the form of a verbal threat to the effect that "it's 70% or nothing."

9. The petitioner maintained that because of this, the payment of his *precatório* was not done in accordance with Brazilian law. The petitioner also reported that the matter denounced to the IACHR –in the course of the clarifications made during the petition's processing- is the subject of Action for Rescission n. 0289321-79.2010.8.13.0000, which he filed seeking to have the decision that confirmed the aforementioned settlement (para. 8) rescinded on the basis of Article 485, subparagraphs III and VIII of Brazil's Code of Civil Procedure, in view of the DER's willful misconduct and the violation of the law, to the detriment of the alleged victim's dignity.

B. The State

10. Preliminarily, and as it did when summarizing the petitioner's claims (*supra* para. 6), the IACHR will now recount the State's position based on the facts as alleged, focusing on the purpose of the petition as explained in the petitioner's "clarification". Concerning the allegation the petitioner made in his original petition, the State emphasized that the facts denounced did not tend to establish a violation of the rights guaranteed by the American Convention, which meant that the petition was inadmissible under Article 47.b of the American Convention. Addressing the petitioner's three specific allegations (*supra* para. 7), the State asserted that there was no violation of the order of precedence established by the Brazilian Constitution. In effect, the State observed that *precatórios* Nos. 75-A, 81, 100 and 101 were in fact "small claims requisitions" (*requisições de pequeño valor* – "RPV") which, under Brazil's Constitution (Article 100, §3), do not follow the same order of precedence established for *precatórios* involving amounts in excess of the legally established limit; hence, RPVs of more recent date (and hence bearing a higher number in the numerical sequence) can, by law, be paid before a lower-numbered *precatório* is paid. According to the State, this was the Federal Supreme Court's reasoning for denying the claim (*Reclamação)* filed by the petitioner.

[2] Communication the IACHR received from the petitioner on July 19, 2011 (Free translation of the original Portuguese: *foi imposto ao peticionário um acordo ilegal/ilegítimo/maldoso, no qual o peticionário foi coagido a realizar um acordo no qual concedeu ao DER um desconto de 30% sobre o valor que lhe pertencia por direito, como forma de receber o valor de R$ 188.417,42, ou seja, 70% do valor que lhe era devido*).

11. Thereafter, starting with its December 20, 2010 communication and on repeated occasions in subsequent communications dated May 27 and December 1, 2011, the State informed the IACHR that it had already honored *precatório n*. 67, by making good on the payment the court had ordered. Therefore, the State's contention was that the grounds for the petition no longer existed and that the IACHR should order the record closed, in keeping with Article 48.1.b of the American Convention and Article 42.1.a of the Commission's Rules of Procedure. Summarizing, Brazil made the point that the petition concerned a failure to pay the respective *precatório*, and that this matter had already been settled when the State made good on the payment ordered by the court.

12. Furthermore, the State again asserted that the facts denounced in the petition "do not correspond to any article of the American Convention" and that the petition should therefore be declared inadmissible under Article 47 thereof. The State also maintained that the petition was inadmissible on the grounds of a failure to exhaust domestic remedies, as required under Article 46.1.a of the American Convention. Here, the State asserted that the petitioner himself had acknowledged that the lawfulness of the agreement was being litigated in petitioner's Action for Rescission n. 0289321-79.2010.8.13.0000. As for the agreement the parties reached for a 30% discount on the amount that the court ordered be paid to the alleged victim, Brazil asserted that in conciliation hearings, no creditor of the State is required to agree to the terms proposed for settling *precatórios*.

13. Summing up, the State concluded that either the record on the petition should be closed as its grounds no longer existed, or the petition should be declared inadmissible because it did not meet the admissibility requirements stipulated in articles 46 and 47 of the American Convention, specifically its Article 46.1.a (failure to pursue and exhaust remedies under domestic law) and Article 47.b (the facts denounced do not tend to establish a violation).

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

14. Under Article 44 of the American Convention the petitioner is, in principle, authorized to lodge petitions with the IACHR. The alleged victim named in the petition is a person whose Convention-protected rights the State undertook to respect and ensure. In the case of the State, the Inter-American Commission notes that Brazil has been a State party to the American Convention since September 25, 1992, the date on which it deposited its instrument of ratification. Therefore, the IACHR has competence *ratione personae* to examine the petition. The Inter-American Commission also has competence *ratione loci* to take cognizance of the petition, inasmuch as it alleges human rights violations said to have occurred within the territory of Brazil, a State party to the Convention. The IACHR observes that the violations alleged in this petition concern the supposedly improper payment of *precatório* n. 67 on June 18, 2008, by which time the American Convention was already in force for Brazil; therefore, the IACHR has competence *ratione temporis*. Finally, the Inter-American Commission has competence *ratione materiae* because the petition primarily claims possible violations of human rights protected by the American Convention.

B. Exhaustion of domestic remedies

15. Under Article 46.1.a of the American Convention, the IACHR's admission of a petition is subject to a number of requirements, one of which is that the remedies under domestic law be pursued and exhausted in accordance with generally recognized principles of international law. Article 46.2 of the Convention provides that the rule requiring prior exhaustion of domestic remedies does not apply 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.

16. Preliminarily, the IACHR notes that, on the subject of the State's payment of *precatórios,* it has repeatedly held that "Brazilian legislation does not contain effective and adequate judicial remedies for ensuring payment of the *precatórios* owed by the State." On that basis, it has declared a number of petitions admissible, on the grounds of the exception allowed under Article 46.2.a of the American Convention to the rule requiring exhaustion of domestic remedies.[3] Nevertheless, both parties observed (*supra* paras. 6-13) -particularly the petitioner in the "clarification" he filed subsequent to his original petition- that he had, in effect, amended his original complaint once the *precatório* ordered for him had been paid (*supra* para. 8).[4] In other words, the purpose of this petition, whose admissibility the IACHR must decide, is the allegedly improper settlement arrived at through a conciliation agreement that the attorneys for the alleged victim and the State signed on June 18, 2008, in the presence of the Minas Gerais Court's *Precatórios* Conciliation Board.

17. The IACHR notes that the matter of payment of *precatórios* through "direct agreements with creditors" is currently regulated by State Law 19,407 of December 30, 2010, which "authorizes the state of Minas Gerais to pay court-ordered debts (*precatórios)* through direct agreements with its creditors" (Article 1). At the federal level, Constitutional Amendment No. 62 of December 9, 2009, introduced Article 97 to the Temporary Constitutional Provisions Act (*Ato das Disposições Constitucionais Transitórias* – "ADCT"); paragraph 8 (III) concerns "payment through direct agreement with creditors". The IACHR is aware that the payment in question, made on June 18, 2008, predates this constitutional amendment. At the time of the payment of the *precatório* ordered for the alleged victim, Constitutional Amendment No. 30 of September 13, 2000, had added Article 78 to the ADCT, concerning payment of court-ordered debts (*precatórios*), "the assignment of credits being permitted." On this same subject, Section VI ("*Precatórios),* Article 9 of State Law 14,699 of August 6, 2003, provided that

[3] See in this regard, IACHR, Report No. 144/11, Admissibility, Petition1050-06, *Pedro Stábile Neto and other officials of the Municipality of Santo André (Precatórios)*, Brazil, October 31, 2011, paragraph 26. See also the following *per curiam* decisions of the Inter-American Commission: Report No. 145/11, Petition 1140-04, *Clélia de Lourdes Goldenberg and Rita de Cassia da Rosa (Precatórios)*, Brazil, October 31, 2011, paragraph 17; and Report No. 10/12, Petition 341-01, *Márcio Manoel Fraga and Nancy Victor da Silva, (Precatórios)*, Brazil, March 20, 2012, paragraph 16.

[4] The IACHR also observes that the evidence on file fully confirms that the *precatório* ordered for the alleged victim was paid. (See attachment to the petitioner's September 4, 2010 communication – *Termo de Audiência perante a Central de Conciliação de Precatórios – CEPREC [Transcript of the hearing before the Precatórios Conciliation Board – CEPREC]*). That document shows that on June 18, 2008, the legal representatives of the petitioner/alleged victim presented their powers of attorney to enter into agreements and receive payment, as the law in force required, and then signed a conciliation agreement whereby the creditor, José Maria Guimarães, received payment of R$ 188,417.42, a 30% discount on the amount owed (number 25 of the aforementioned *Termo de Audiência perante a Central de Conciliação de Precatórios – CEPREC [Transcript of the hearing before the Precatórios Conciliation Board – CEPREC]*).

"the Executive Branch is authorized to regulate payment of the *precatórios* to which Article 78 of the Temporary Constitutional Provisions Act of the Constitution refers." The IACHR further observes that according to the information available, the first *Precatórios* Conciliation Board was created in Minas Gerais to settle, by means of conciliation, the court-ordered debts (*precatórios)* that state institutions had amassed.[5] The Minas Gerais *Precatórios* Conciliation Board was established under Resolution No. 417/2003 of the Minas Gerais Court of Justice, approved on June 26, 2003; that resolution was implemented in practice through Decree (*Portaria*) No. 1477/2003 of August 11, 2003, issued by the President of the Minas Gerais Court of Justice.

18. Neither party contests the fact that the subject of this petition is also the subject of Action for Rescission n. 0289321-79.2010.8.13.0000, which the petitioner filed seeking rescission of the decision that confirmed the June 18, 2008 conciliation agreement that the petitioner and the State signed (*supra* paras. 9 and 12). Nor does either party contest the fact that a final decision on said Action for Rescission is still pending. The Commission notes that there are no records or information in the file suggesting that the remedies under domestic law have been pursued and exhausted with respect to the subject matter of this petition. Nor does the information supplied by the parties establish grounds for the Commission to apply any of the exceptions provided in Article 46.2 of the American Convention.

19. The IACHR therefore deems that the petitioner did not exhaust the remedies under domestic law, as required under Article 46.1.a of the American Convention. The IACHR refrains from examining the other admissibility requirements set forth in the American Convention, as this petition is not a matter properly before it.[6]

V. CONCLUSIONS

20. The IACHR concludes that it has competence to examine the petitioner's claims and that the petition is inadmissible under articles 46.1.a and 47.a of the American Convention. Therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS DECIDES:

1. To declare the present petition inadmissible for failure to comply with the requirement stipulated in Article 46.1.a of the American Convention.

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

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

Done and signed in the city of Washington, D.C., on the 16th day of July 2013. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Rosa María Ortiz, Second Vice-President; Felipe González, Rodrigo Escobar Gil and Rose-Marie Belle Antoine, Commissioners.

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[5] See, in this regard, the information published by the Minas Gerais Court of Justice, available [in Portuguese] at: http://ftp.tjmg.jus.br/presidencia/central_precatorios/.

[6] See, *inter alia*, IACHR, Report No. 135/09, Inadmissibility, Petition 291-05, *Jaime Salinas Sedó et a*l., Peru, November 12, 2009, paragraph 37; Report No. 42/09, Inadmissibility, Petition 443-03, *David José Ríos Martínez*, Peru, March 27, 2009, para. 38; Report No. 73/99, Inadmissibility, Case 11.701, *"Ojo de Agua" Cooperative,* Mexico, May 4, 1999.