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REPORT No. 228/19
PETITION 1056-10
REPORT ON ADMISSIBILITY

BRIGIDO IBANHES AND ELISANGELA DOS SANTOS DE SOUZA
IBANHES
BRAZIL

Approved electronically by the Commission on December 31, 2019

Cite as: IACHR, Report No. 228/19, Petition 1056-10 Admissibility. Brígido Ibanhes and Elisangela dos Santos de Souza Ibanhes. Brazil. December 31, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioners:	Brígido Ibanhes and Elisangela dos Santos de Souza Ibanhes.
Alleged victims:	Brígido Ibanhes and Elisangela dos Santos de Souza Ibanhes.
State denounced:	Brazil ¹
Rights invoked:	Unspecified ²

II PROCEDURE BEFORE THE IACHR³

Filing of the petition:	July 22, 2010
Additional information received at the initial review stage:	November 29, 2010; October 11, 2011; December 4, 2012; October 25, 2013.
Notification of the petition to the State:	March 2, 2015
State's first response:	July 22, 2015
Additional observations from the petitioners:	September 14, 2015; January 6 and 18, March 25 and 29, April 4, 2016; January 17, 2019; December 8, 2019
Additional observations from the State:	July 2, 2018

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention on Human Rights ⁴ (instrument adopted on September 25, 1992)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL RES JUDICATA, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and international <i>res judicata</i>	No
Rights declared admissible:	Articles 5 (personal integrity), 8 (judicial guarantees), 13 (freedom of thought and expression), and 25 (judicial protection) of the American Convention, all in conjunction with Article 1.1 thereof.
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes
Timeliness of the petition:	Yes, October 16, 2012

V. ALLEGED FACTS

1. Brígido Ibanhes (hereinafter "Mr. Ibanhes") states that he is a writer and human rights defender, and a person who has been actively engaged in combating corruption in the state of Mato Grosso Sul (hereinafter "MS") since the 1970s, when he worked for Banco do Brasil. He states that in the course of his life he has published various literary works depicting corruption, police links, and human rights violations in

¹ Pursuant to Article 17.2 of the Rules of Procedure of the Commission, Commissioner Flavia Piovesan, a Brazilian national, did not participate in the discussion or decision of this case.

² The alleged victims merely list articles of the Universal Declaration of Human Rights.

³ All observations were duly relayed between the Parties.

⁴ Hereinafter "American Convention" or "Convention".

the Grande Dourados region in MS. He maintains that, as a result of those activities and of his affiliation with the Partido Democrático Trabalhista (hereinafter "PDT") during the dictatorship, he has for decades been the victim of threats and attacks, without the State ever diligently investigating the facts or identifying and punishing the perpetrators.

2. First, he points out that in 1973, he competed for and won a job in Banco do Brasil and was granted job security as a member of the bank employees' trade union. While working as an auditor of the Bank's agrarian investments, he reported a number of money laundering and corruption schemes relating to the bank and local landowners. On October 4, 1993, owing to those reports and his active part in combating corruption, he was allegedly summarily and unjustly dismissed, despite the job stability to which he was entitled at the time as a member of the trade union. He then filed a suit for compensation against Banco do Brasil in 1999, requesting that he be reinstated, annulment of the dismissal, payment for the difference in wages, and recognition of material and non-material damages. He claims, however, that all his appeals were denied because of the denunciations he had filed, terminating the proceedings. Mr. Ibanhes maintains that the State acted via Banco do Brasil in retaliation for his acts, given the involvement of influential landowners in the Bank's policy and agricultural investments in the region.

3. On May 14, 2006, a makeshift bomb was allegedly tossed at his home, injuring both him and his wife, Elisangela dos Santos de Souza Ibanhes (hereinafter "Mrs. Ibanhes"). On that occasion, neighbors came to their aid and they reported the incident to the Fire Brigade. Mr. Ibanhes maintains that even after months of treatment, his wife and he still suffered from the sequels of the burns to their bodies. Mr. Ibanhes indicates that those responsible for tossing the bomb allegedly took advantage of a moment of panic in the town of Dourados triggered by a riot at a local prison and attacks on police stations. In that context, he argues that the State was guilty of omission, because the police failed to comply with its duty to patrol the streets and, rather, had left the population unprotected and vulnerable.

4. As regards the attack, a police inquiry was reportedly initiated on May 31, 2006 and, according to Mr. Ibanhes, never achieved any definitive findings. Due to the delays in the investigation, in 2012, he filed a complaint for lack of activity (*Inércia*) or Failure to Meet Deadlines before the National Council of the Public Prosecutors' Office. That body maintained that the police inquiry and the complaint had been shelved for lack of substantiation of good cause for criminal proceedings. He had then resorted to the Federal Public Prosecutors' Office (hereinafter "MPF"), and had asked that the Federal Police investigate the facts, due to an alleged lack of impartiality on the part of the state authorities. According to the petitioner, that request had been ignored.

5. Mr. Ibanhes also filed a suit for compensation against the State of Mato Grosso do Sul in 2007. Nevertheless, all bodies had reportedly rejected his claims, including a Special Appeal (hereinafter "REsp") rejected by the Court of Justice in 2009. He states that, for lack of information regarding the case on the Court's website, he missed the deadline for filing a bill of review appeal (*Agravo de Instrumento*) against the ruling that rejected the REsp. As a last judicial resort, Mr. Ibanhes had turned to the National Council of Justice (hereinafter "CNJ") to report suspicion of one of the judges allegedly involved in the acts of corruption that Mr. Ibanhes denounced. However, the petitioner alleges that once again his request was shelved. He then turned to the Special Secretariat for Human Rights of the Office of the President of the Republic, a body that, he said, never replied to his letters. He had asked to be included in the National Program to Protect Human Rights Defenders (hereinafter "Protection of Defenders Program"), but his request had been denied.

6. Additionally, Mr. Ibanhes further stresses that he was a victim of political persecution by the Dictatorship because of his work as a human rights defender and membership of the PDT. In 2004, he filed a petition with the Amnesty Commission of the Ministry of Justice to be recognized as eligible for political amnesty. Nevertheless, he alleges that the proceeding has been archived pending a decision on a request for review. Finally, the petitioner maintains that the injuries caused by the bomb attack have led to a medical recommendation that he undergo heart surgery to remedy complications arising from the burns he suffered during that attack. That procedure would, however, have to be carried out in a specialized public hospital in São Paulo: a request he had filed with the Office of the General Manager of the Unified Health System. He

emphasizes that he has been requesting Federal or State Government assistance to enable him to undergo that procedure, to no avail.

7. Initially, the State maintains that a policy inquiry was initiated in 2006, following news of a fire at the home of the alleged victims and that, once the police stage had concluded, the file on the case had been forwarded to the State Justice system. On July 31, 2012, given that no conclusive evidence had been obtained regarding those responsible, the inquiry had been archived by court order, in line with the position, in the same vein, taken by the Public Prosecutors' Office. The State stresses, nonetheless, that the shelving of the case is not final and the inquiry could resume if new evidence is submitted. The State adds that the alleged victim does not meet the requirements for inclusion in the Defenders Protection Program, which is why his request had been denied on April 27, 2011. It also points out that, on June 8, 2015, the Secretariat for Justice and Public Safety of the State of Mato Grosso do Sul had presented a map of threats and an analysis of risks that could potentially affect Mr. Ibanhes. It concluded that "no crime had been committed against the aforementioned person in the past nine years and there was no concrete fact indicating that he had been, or could potentially have been, the victim of any crime in the past 9 years,"

8. Regarding the suit for compensation against Banco do Brasil, the State asserts that it was ruled inadmissible in a court of first instance on August 21, 2002, because it was deemed that Mr. Ibanhes had not produced sufficient evidence to corroborate his allegations and that the financial institution was entitled to dismiss any employee without just cause. The appeal filed by Mr. Ibanhes had been judged inadmissible on August 3, 2006, a decision that became *res judicata* (final) on September 11, 2006.

9. The State further maintains on May 24, 2007, a court examined the action against the State of Mato Grosso do Sul for compensation for material and immaterial damages. On October 18, 2007, the suit was declared inadmissible by a first-instance court. The alleged victims filed an appeal with the Court of Justice (*Tribunal de Justiça*), which upheld the lower court's ruling on June 23, 2009. Subsequently, the State points out that the alleged victims filed a REsp for their case to be heard by the Higher Court of Justice. That appeal was declared inadmissible on September 2, 2009. The State maintains that the alleged victims could have filed a bill of review appeal (*Agravo de Instrumento*) against that ruling. However, the procedural deadline for so doing had expired on September 18, 2009, without such an appeal being filed. The State also maintains that the motion filed with the CNJ was shelved, because that body is not the appropriate organ for amending judicial rulings.

10. Finally, the State claims that the alleged victims, in their additional observations, presented facts at odds with and different from those contained in the petition initially submitted to the Commission, such as the need for the operation of the heart; the fact that Mr. Ibanhes' "Silvino Jaques, O Último dos Bandoleiros" was censored and that there would be an excessive delay in the examination of his process before the Amnesty Commission. Consequently, there being no temporal or spatial connection between the alleged violations, the State requests that the facts be analyzed in separate petitions.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

11. The alleged victims maintain that those responsible for the attack were never effectively investigated and charged. They point out that domestic remedies were exhausted with respect to the two compensation proceedings: against the state of Mato Grosso do Sul and against Banco do Brasil; in addition to the request to be included in the Defenders Protection Program and attempts to contact the Secretariat for Human Rights. Regarding proceedings before the Amnesty Commission, the alleged victims indicated that there was unwarranted delay in reviewing the decision handed down in 2011. In short, they claim that the facts are connected and constitute a State reprisal against Mr. Ibanhes for his actions as a human rights defender.

12. The State, on the other hand, indicates that domestic remedies were not exhausted in relation to the action for compensation brought against the state of Mato Grosso do Sul in connection with the facts surrounding the bomb attack, given that the alleged victim did not file a bill of review appeal (*Agravo de*

Instrumento) against the ruling of the Court of Justice (*Tribunal de Justiça*) that did not admit the Special Appeal. In the same vein, the State maintains that the alleged victim did not appeal the decision of the Court of Justice that refused to admit the petition in the action brought against Banco do Brasil on August 25, 2006. It points out that the arguments before the Commission regarding that action missed the six months deadline. Moreover, the State argues that remedies relating to the proceedings before the Amnesty Commission were not exhausted and explains that said proceedings were administrative, not judicial, whereby the former did not exclude the latter. Contrary to the alleged victim's argument, the State maintains that on September 11, 2015 a ruling was issued on the petition to review the decision handed down in those proceedings, when the decision to shelve the case was upheld. In addition, the State argues that the alleged victim could have resorted to a judicial action to review the administrative decision of the Amnesty Commission and did not do so. Finally, as regards the surgical procedure, the State points out that no application was filed by the alleged victim to secure access to that health care service.

13. The Commission deems it appropriate first to pronounce on the State's request to split the petition. On this matter, the Commission has previously established that Article 29.4 of its Rules of Procedure does not require that the facts, victims, and alleged violations referred to in a petition be strictly interconnected in time and place in order to be joined and processed in a single case. The Commission has already processed individual cases involving innumerable alleged victims claiming violations committed at different times and places but supposedly stemming from the same origin, such as the application of legal provisions or the existence of one and the same pattern or practice.⁵ The facts alleged in the instant petition refer to failure to investigate and charge the perpetrators of the attack on Mr. Ibanhes and his wife, an alleged lack of impartiality on the part of judicial authorities, and alleged ineffectiveness of the investigations. Therefore, the Commission concludes that, based on the information provided, the facts may be connected as each being consequences of Mr. Ibanhes' denunciations of corruption, and that Article 29.4 of the Rules of Procedure does not apply in this case.

14. The Commission observes that in situations such as this, involving potential violation of personal integrity, the remedies that have to be taken into account for admissibility of the petition purposes are those relating to the criminal investigation and punishment of the perpetrators.⁶ In short, in cases such as this, that fact that the alleged victims did or did not have recourse to civil jurisdiction to seek pecuniary compensation is not a determining factor for analysis of the exhaustion of domestic remedies.⁷ In light of the above, the Commission considers that domestic remedies were exhausted with the ruling handed down on October 16, 2012, archiving the police investigation into the attack on the alleged victims. Finally, the Commission stresses that the date taken into consideration for the purposes of the requirement set forth in Article 46.1.b of the American Convention is the date corresponding to the analysis of admissibility stage, not the date on which the alleged victims filed the petition. Similarly, given the context and characteristics of this petition, the Commission considers that it was filed within a reasonable period of time and that the admissibility requirement in Article 46.1.b of the American Convention regarding the timeliness of the filing of the petition should be considered met.

VII. ANALYSIS OF COLORABLE CLAIM

15. The Commission observes that the petitioner has submitted allegations of threats and persecutions against the alleged victims and lack of effective judicial protection and investigation of such facts. In view of the elements presented by the parties and the nature of the matter brought to their attention, the IACHR considers that such facts are not manifestly unfounded and could characterize possible violations of Articles 5 (personal integrity), 8 (judicial guarantees), 13 (freedom of thought and expression), and 25 (judicial protection) of the American Convention, all in conjunction with Article 1.1 thereof.

⁵ CIDH, Report No. 113/17. Petition 1141-07. Admissibility Alfredo Manuel Martínez Meza and others. Colombia. September 7, 2017, par. 2 y 3.

⁶ IACHR, Report No.72/18. Petition 1131-08 Admissibility. Moisés de Jesús Hernández Pinto and family. Guatemala. June 20, 2018, par. 10.

⁷ IACHR, Report No.105/17. Petition 798-07 Admissibility. David Valderrama Opazo et al. Chile September 7, 2017, par. 11.

16. Finally, regarding the Universal Declaration of Human Rights, the IACHR lacks competence *ratione materiae* to pronounce on violations of rights upheld in treaties outside the inter-American system, even though it may resort to patterns established in other treaties in order to interpret the provisions of the Convention pursuant to Article 29 of the Convention.⁸

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 8, 13, and 25 of the American Convention, in conjunction with Article 1.1 thereof;

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 31th day of the month of December, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández, First Vice President; Antonia Urrejola, Second Vice President; Margarete May Macaulay, Francisco José Eguiguren, and Luis Ernesto Vargas Silva.

⁸ IACHR. Report No. 26/17, Petition 1208-08. Admissibility. William Olaya Moreno and family. Colombia. March 18, 2017, par. 9.