

OEA/Ser.L/V/II.  
Doc. 80  
12 March 2020  
Original: Portuguese

**REPORT No. 70/20**  
**PETITION 2326-12**  
REPORT ON ADMISSIBILITY

JONATAN SOUZA AZEVEDO  
BRAZIL

Approved electronically by the Commission on March 12, 2020.

**Cite as:** IACHR. Report No. 70/20. Petition 2326-12. Admissibility. Jonatan Souza Azevedo. Brazil. March 12, 2020.



**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner</b>	Human Rights Center of the Public Defendants' Office of São Paulo (hereinafter "DPE/SP")
<b>Alleged victim</b>	Jonatan Souza Azevedo
<b>Respondent state</b>	Brazil <sup>1</sup>
<b>Rights invoked</b>	Articles 5 (personal integrity), 8 (fair trial), and 25 (judicial protection) of the American Convention on Human Rights <sup>2</sup> in relation to its Article 1 (obligation to respect rights) and 2 (domestic legal effects); Articles 2 and 8 of the Inter-American Convention to Prevent and Punish Torture

**II. PROCEEDINGS BEFORE THE IACHR<sup>3</sup>**

<b>Filing of the petition</b>	December 21, 2012
<b>Notification of the petition to the State:</b>	December 30, 2015
<b>State's first response:</b>	January 9, 2017
<b>Additional observations from the petitioner</b>	January 18, 2013, August 7, 2014, January 25, 2018 and May 17, 2019
<b>Additional observations from the State</b>	June 18, 2018

**III. COMPETENCE**

<b>Competence Ratione personae:</b>	Yes
<b>Competence Ratione loci:</b>	Yes
<b>Competence Ratione temporis</b>	Yes
<b>Competence Ratione materiae</b>	Yes, American Convention (deposit of instrument of ratification on September 25, 1992) and Inter-American Convention to Prevent and Punish Torture (deposit of instrument of ratification on July 20, 1989)

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

<b>Duplication of procedures and International res judicata:</b>	No
<b>Rights declared admissible:</b>	Article 5 (personal integrity), 8 (fair trial), and 25 (judicial protection) of the American Convention on Human Rights in relation to Article 1.1 (obligation to respect rights); and Articles 1, 6, 8 and 10 of the Inter-American Convention to Prevent and Punish Torture
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes
<b>Timeliness of the petition:</b>	Yes, March 5, 2014

**V. SUMMARY OF ALLEGED FACTS**

1. The petitioner alleges that the State of Brazil is responsible for the violation of the rights to personal integrity, the guarantee of prohibition of torture and the rights to fair trial and due process of Jonatan Souza Azevedo (hereinafter "the alleged victim "or" Mr. Azevedo ") since he was tortured by military police officers, these facts were not investigated and those responsible for the crime were not duly punished.

2. The petitioner asserts that on March 12, 2011, the alleged victim was caught in a flagrant crime of theft of a vehicle. After being chased by two military police officers, the vehicle in which the alleged victim was in crashed into a wall. At that moment, Mr. Azevedo got out of the vehicle with his hands raised in surrender. Although he was not armed and did not represent a danger, he was shot in the back and taken

<sup>1</sup> Based on Article 17.2.a of the Rules of procedure of the Commission, Commissioner Flávia Piovesan, a Brazilian national, did not participate in the debate or decision of this matter.

<sup>2</sup> Hereinafter "the American Convention" or "the Convention".

<sup>3</sup> The observations submitted by each party were duly transmitted to the opposing party.

to a place where police officers attacked him and put gunpowder in his hands, after which he was allegedly taken to a municipal hospital.

3. On April 13, 2011, Maria José Azevedo, mother of the alleged victim, appeared before the Ombudsman of the State of São Paulo to report the facts. On April 20, 2011, this Office requested a copy of the alleged victim's medical record from the Municipal Hospital Dr. José Soares Hungria and received it on May 10. On January 13, 2012, the alleged victim and two witnesses appeared before the DPE/SP to testify; and on January 30, the facts were communicated to the Public Ministry together with a request for investigation for the crime of torture. On March 14, 2012, the prosecutor requested the archive of the request made by the DPE/SP without hearing the victim or witnesses or analyzing the evidence, after stating that the alleged victim resisted the arrest, was armed at the time he was detained and represented a danger to police officers. On June 26, 2012, the competent judge of first instance approved the request of the Public Ministry and ordered the archive of the procedure. The petitioner indicates that, after the petition was sent to the Commission, the military police officers were acquitted in a process where the judicial guarantees were not observed, maintaining the denounced facts in impunity. It is affirmed that, in the context of the investigation, the evidence was not properly analyzed since: neither the witnesses nor the alleged victims were heard; in the complaint presented by the Public Ministry the facts were described superficially, in just one paragraph, not explaining police behaviour; it was not indicated that the alleged victim was attacked after having surrendered; the Public Ministry did not question essential points in its memorials; the Public Ministry did not investigate the location of the body of the alleged victim who was shot and the physical effects of the attack; the statements of the alleged victim and witnesses affirming that he had been tortured were not be evaluated.

4. The State, for its part, asserts that the Military Police initiated an investigation into the conduct of the agents with respect to the alleged victim exactly one day after the events. On May 19, 2011, the Office of Internal Affairs of the Military Police of the State of São Paulo undertook the military investigation into the behaviour of both agents. The records were sent to the Fifth Court of the Jury Tribunal of the Capital, that is, to the common justice system of the state. However, in August 2012, the Public Ministry requested that files be archived alleging the absence of crime due to legitimate defense reasons and strict compliance with the legal duty by the two state agents. The judge dissented and ordered the referral of the records to the Attorney General of the State of São Paulo, who, on September 12, 2012, concluded that the archive of the case was not the most appropriate solution and appointed another prosecutor to act in the case. In view of this situation and in view of the new evidence, on July 22, 2013, the Public Prosecutor filed a complaint against military police officers for the crime of conspiracy to commit manslaughter.

5. At the end of the regular course of the criminal process, the defendants were summarily dismissed by means of a judgment issued on March 5, 2014, in which reasons of legitimate defense and strict compliance with the legal duty resulted in the exclusion of illegality. The Public Ministry did not appeal the decision, since it had requested the acquittal of the accused. The State affirms that the alleged victim and his relatives could have appealed the acquittal, but they did not. The State adds that the DPE/SP did not initiate a civil compensation action in favor of the alleged victim or went to the Office of Internal Affairs of the Public Prosecutor's Office to report a possible undue action by the first prosecutor who had acted in the case. It points out that, even if all the remedies had been exhausted, the declaration of admissibility of the petition would violate the formula of the fourth instance, in view of the fact that the petitioner is simply unsatisfied because the Public Ministry was not convinced of the existence of the crime and its authorship. The State affirms that the eventual denial of the presence of sufficient elements to propose a criminal action, being an institutional prerogative of the Public Prosecutor's Office, does not offer interested parties the possibility of filing an appeal, while the Commission, if it admits the present petition, would act as review court.

## **VI. EXHAUSTION OF LOCAL REMEDIES AND TIMELINESS OF THE PETITION**

6. Regarding the exhaustion of local remedies, the petitioner alleges that an eventual disciplinary sanction by the prosecutor for not having filed a criminal complaint against the two police officers would not lead to the reopening of the case and the criminal sanction of the agents making this actions useless and unnecessary measure in this case. He emphasizes that the crimes of torture or attempted murder are subject to unconditional public criminal action, that is, the action must be initiated by the Public Ministry. Therefore, the State could not demand that the alleged victim act as a contingent party in view of the exclusive prerogative of the public body to file an accusation. According to the petitioner, the summary acquittal sentence of 2014 was not appealed because the investigation processed

under the jurisdiction of the Military Justice and the process referred to the attempted murder and not to the crime of torture reported to the IACHR.

7. On the other hand, the State affirms that, despite the fact that the first prosecutor who acted in the case did not file a complaint against the military police officers, the petitioner could have turned to the Internal Affairs Directorate of the institution to investigate the performance of the representative of the Public Ministry. Instead, the petitioner appealed directly to the Inter-American Commission, without exhausting domestic remedies. It indicates that the criminal action within the jurisdiction of the Jury Court that proceed before the common justice against the military police officers concluded after the petition was presented to the Commission, which shows that, at the time when the petition was filed, domestic remedies had not yet been exhausted. According to the State, in 2014 a summary acquittal decision was issued for the alleged perpetrators of the violations, but neither the alleged victim nor the petitioner appealed that decision. It also claims that the final decision was not appealed.

8. The Commission understands that, in cases of possible human rights violations that can be prosecuted *ex officio* and even more, when there could be state agents involved in the events, the State has the obligation to investigate them diligently. This burden must be assumed by the State as its own legal duty, and not as a management of private interests or that depends on the initiative of the latter or the provision of evidence by them.<sup>4</sup>In the present at bar, the Commission observes that, at first, the witnesses and the alleged victim were not heard during the investigations and the pertinent tests were not made regarding the effects of the attack on the alleged victim or the place where the victim was shot, which would have allowed to evaluate the statements presented before the Public Defender, without said facts as irrelevant. That, for the IACHR, shows that the Brazilian State did not diligently investigate the facts, generating the first archive of the complaint.

9. With regards to the second process, the Commission notes that the investigators were police officers and that the allegations involved acts of torture. However, the investigations were conducted under the jurisdiction of the Military Police. In this regard, the Commission established that military jurisdiction does not constitute an appropriate forum and therefore does not provide an adequate recourse to investigate, prosecute and punish the alleged human rights violations enshrined in the American Convention, allegedly committed by members of the public force or with their collaboration or acquiescence.

10. Likewise, as indicated by the petitioner, the police officers involved in the violations of the alleged victim were not reported for acts of torture (subject to the petition under examination) but for the possible violation of the right to life (attempted murder). On the subject, the Commission observes that, according to Brazilian legislation,<sup>5</sup> criminal actions involving torture are of private initiative, which does not allow the alleged victim or the petitioner to expand the characterization of the Public Prosecutor's complaint and neither file a complaint about the crime of torture.

11. In addition, the Commission observes that, in situations related which involves crimes against life and integrity, the domestic remedies that must be taken into account for the purposes of the petition's admissibility are those related to the criminal investigation and punishment of the persons responsible.<sup>6</sup>Therefore, as regards the need to exhaust domestic remedies in civil reparation in cases of serious human rights violations, the alleged victims do not need to go to the civil jurisdiction for reparation before resorting to the Inter-American system, in view of the fact that such a remedy would not respond to the main request of the petition.<sup>7</sup>

12. Regarding the State's questioning about the fact that the exhaustion occurred after the petition was presented, the IACHR reiterates its constant position according to which the situation that must be taken into account to establish whether the domestic remedies have been exhausted is that existing when deciding on the admissibility.

13. Based on the foregoing, the Commission considers that the requirements of Article 46.1 of the American Convention have been met, in view of the fact that the petitioner exhausted domestic

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<sup>4</sup> IACHR, Report No. 159/17, Petition 712-08. Admissibility. Sebastián Larroza Velázquez and family. Paraguay. November 30, 2017, para. 14.

<sup>5</sup> Law N. 9.455/97.

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

<sup>7</sup> IACHR, Report N. 105/17. Case 798/07. Admissibility. David Valderrama Opazo and others. Chile. September 7, 2017, par. 11; IACHR. Report N. 78/16. Case 1170-09. Admissibility. Amir Muniz da Silva. Brasil. December 30, 2016, par. 32.

remedies and filed the petition within a period of six months. Regarding the latter, the Commission reiterates its position that the situation taken into account to determine whether domestic remedies have been exhausted is that which exists at the moment when the Commission decides on admissibility, since the moment when the complaint is filed and the timing of the ruling on admissibility is different.

## **VII. ANALYSIS ON COLORABLE CLAIM AND COMPETENCE ON THE ALLEGED FACTS**

14. The Commission notes that this petition includes allegations regarding the acts of torture practiced by military police officers against Jonatan Souza Azevedo, and the lack of diligence in the investigations carried out against the police officers that allegedly tortured him, due to the archive of the request for investigation made by the DPE/SP to the Public Ministry.

15. Initially, the Commission values the State's allegation that the IACHR does not have *ratione materiae* competence to declare violations of the Inter-American Convention to Prevent and Punish Torture. According to the State, the Brazilian State only recognized the competence of the Inter-American Court to evaluate violations of the American Convention, and not to evaluate other treaties of the Inter-American System. Likewise, it affirms that Article 8 of the Inter-American Convention to Prevent and Punish Torture provides for the optional recognition of international competence, that is, for the State, a specific declaration on the recognition of the bodies of the Inter-American System would be necessary to evaluate said treaty.

16. On the subject, both the Commission and the Inter-American Court have already declared violations of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture in order to determine the scope of the State's responsibility in cases related to the lack of investigation of acts of torture. Therefore, they understand that the Article 8 incorporates a general clause of jurisdiction that the States accept at the time they ratify or adhere to said instrument. Consequently, as regards the other articles of said treaty indicated by the petitioner, the Commission recalls that it may take them into account as part of its interpretation of the norms of the American Convention at the merits stage, in accordance with your Article 29.

17. In view of these considerations and after examining the factual and legal elements presented by the parties, the Commission considers that the claims of the petitioner are not manifestly unfounded and require a substantive study on the merits as the alleged facts, to be corroborated as certain could characterize violations of Articles 5 (right to personal integrity), 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to Article 1.1 (obligation to respect rights), and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

18. Finally, with respect to the State's fourth instance allegation, the Commission observes that in admitting this petition it does not intend to substitute the competence of domestic judicial authorities. But it will analyze in the merits stage of the present petition, if the domestic judicial processes complied with the guarantees of due process and judicial protection, and offered the due guarantees of access to justice for the alleged victims under the terms of the American Convention.

## **VIII. DECISION**

1. To find the instant petition admissible in relation to Articles 5, 8 and 25 of the American Convention, in accordance with Articles 1 and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

2. To find the instant petition inadmissible in relation to Article 2 of the Inter-American Convention to Prevent and Punish Torture; and

3. To notify the parties of the decision; to continue with the analysis on the merits and to publish this decision and to 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 12<sup>th</sup> day of the month of March, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.