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REPORT No. 112/20
PETITION 606-10
REPORT ON ADMISSIBILITY

JORGE VIEIRA DA COSTA AND FAMILY
BRAZIL

Approved electronically by the Commission on April 24, 2020.

Cite as: IACHR, Report No. 112/20. Petition 606-10. Admissibility. Jorge Vieira da Costa. Brazil.
April 24, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioning Party:	Sociedade Interamericana de Imprensa [Inter-American Press Society]
Alleged victim:	Jorge Vieira da Costa and family
State denounced:	Brazil ¹
Rights invoked:	Articles 4 (life), 8 (judicial guarantees), 13 (freedom of thought and expression) and 25 (judicial protection) of the American Convention on Human Rights. ²

II. PROCEDURE BEFORE THE IACHR³

Filing of the petition:	April 26, 2010
Notification of the petition to the State:	April 20, 2015
State's first response	August 21, 2015
Additional observations from the petitioner:	July 14, 2017
Additional observations from the State:	June 25, 2018

III. COMPETENCE

<i>Ratione personae</i>	Yes
<i>Ratione loci</i>	Yes
<i>Ratione temporis</i>	Yes
<i>Ratione materiae</i>	Yes, American Convention (adopted on September 25, 1992)

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

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible:	Articles 4 (life), 8 (judicial guarantees), 13 (freedom of thought and expression) and 25 (judicial protection) of the American Convention on Human Rights, all of which are related to Article 1.1 (obligation to respect rights) of the American Convention.
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes
Timeliness of the petition:	Yes, March 15, 2010

V. ALLEGED FACTS

1. The petitioning party claims that the State of Brazil is responsible for violating the rights to life and freedom of expression of Jorge Vieira da Costa (hereinafter, "alleged victim" or "Mr. Vieira"), a radio personality who broadcast political criticism on his radio program. The petitioning party alleges that the murder may be tied to the mayor of the city of Timon and that no effective investigations were conducted. The investigations and proceedings related to the intellectual authors of the crime were closed; therefore, there were no guarantees of due legal process and judicial protection.

¹ As provided in Article 17.2.a of the Regulations of the Commission, Commission Member Flávia Piovesan, a Brazilian national, did not participate in the debate or in the decision on this matter.

² Hereinafter, "American Convention".

³ Each party's observations were appropriately delivered to the opposing party.

2. According to the petitioning organization, Mr. Viera had a program on Rádio Tropical, which no longer exists. The program was broadcast in the city of Teresina, in the state of Piauí, and in neighboring cities. On his program, he would criticize the administration of Francisco Rodrigues de Sousa, then-mayor of the neighboring city of Timon, in the state of Maranhão. The alleged victim had purportedly condemned anonymous threats he had been receiving on his program, though he never reported them to the authorities. The petitioning organization claims that on March 20, 2001, Mr. Vieira heavily criticized the aforementioned mayor and, on March 23, 2001, was struck by four gunshots fired by two individuals on a motorcycle. The alleged victim died while still in the hospital seven days later.

3. The petitioner states that the investigation located the firearm and the motorcycle that were used to commit the crime. Witnesses said the firearm had been delivered to one of the murderers by an employee of the Timon mayor's office. On April 15, 2002, Geraldo da Silva e Silva (municipal public servant), João Matias Pinheiros (military police officer), and Raimundo Teles de Sousa Vidal were charged as the material authors of the crime. On June 5, 2002, the Public Ministry (hereinafter, the PM) additionally charged Maria Deusa Pires da Silva, Maria Bernadete Ferreira de Sousa (the mayor's wife), and Dolival Ferreira de Andrade, all of whom were municipal public servants, as intellectual authors of the crime.

4. On August 5, 2002, defense counsel for the six defendants filed a writ of *habeas corpus* with a request for preliminary injunction to stay the criminal proceedings against them, pending a ruling on the writ. The *habeas corpus* was partially granted and appealed by the PM, as the ruling absolved the intellectual authors of the murder based on Article 43 of the Code of Criminal Procedure in force at that time.⁴ However, protestations by the Federal and State Public Ministries indicate that presumably there was sufficient evidence to find the intellectual authors responsible, but because they were "influential" people, that evidence might disappear. Thus, the Supreme Tribunal of Justice (hereinafter, "STJ") ruled that the criminal prosecution of Geraldo, Raimundo, and João Matias should proceed, while staying the prosecution of the individuals charged as intellectual authors of the crime. On September 29, 2003, the verdict was issued against the defendants to the Jury Tribunal, and in a session held on September 28, 2005, Messrs. Geraldo da Silva e Silva (municipal public servant), João Matias Pinheiros (military police officer), and Raimundo Teles de Sousa Vida (driver) were found guilty of the murder of the alleged victim. All appeals presented thereafter by the three convicts were denied, the final ruling having been issued on February 23, 2010.

5. Despite the guilty verdict against the material authors, the petitioner calls attention to the impunity of the intellectual authors of the crime since their prosecution was stayed by the writ of *habeas corpus*. On December 2009, the STJ purportedly ruled that a special appeal filed by the PM, seeking to have the stay lifted in the prosecutions of Maria Deusa, Maria Bernadete, and Dolival, was unfounded. Lastly, the petitioner reports that a context of impunity exists in Brazil in cases of extrajudicial executions of reporters, and states that Mr. Vieira's murder is one more case in that context that sees those responsible go unpunished.

6. The State, in turn, points out that the fact that the investigation followed paths that did not align with the petitioner's expectations does not constitute denial of justice. It draws attention to the fact that the STJ observed in its ruling of December 15, 2009, that the stay of criminal prosecution through *habeas corpus* is an exceptional measure that is only allowed when unequivocal evidence attests to the atypical nature of the conduct, the occurrence of a cause that extinguishes punishability, or the absence of evidence of authorship. Regarding the defendants Maria Deusa, Maria Bernadete, and Dolival, the STJ reasoned that [the evidence] did not carry the minimum probative weight needed to support the charge. With that ruling on March 15, 2020, the case became *res judicata*. In the State's view, by admitting this petition the Commission would analyze anew a matter already disposed through domestic law, thus violating the fourth instance formula.

⁴ Pursuant to Article 43 of the Code of Criminal Procedure: "Art. 43. The charge or complaint will be rejected when: I - the narrated fact does not evidence a crime; II - punishability is already extinguished, by statute of limitations or other cause; III - the party is manifestly illegitimate, or a condition required by law for taking criminal action is lacking. Single paragraph: In cases under No. III, rejection of the charge or complaint will not impair criminal prosecution insofar as it be conducted by a party that is legitimate or satisfies the condition. The Commission underscores that the reference article was repealed by Law No. 11.719, of 2008.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

7. Regarding the exhaustion of domestic remedies, the petitioner claims that the intellectual authors of the alleged victim's murder have filed a variety of appeals to keep from being prosecuted, for more than a decade after the facts. The State counters, stating that domestic appeals have not been exhausted given that the criminal prosecution is still in the execution phase, that three defendants were found guilty by the Jury Tribunal and, additionally, that it is not proper that the Commission analyze anew the merits of domestic rulings issued.⁵

8. In this case, according to the petitioner's allegations, six individuals were involved in the death of the alleged victim, given that the three potential intellectual authors of Mr. Vieira's execution were employees of the Timon city hall and have not been held responsible for the crime. According to the information available, prosecution of these three public servants was stayed by the STJ ruling of December 15, 2009 and became *res judicata* on March 15, 2010. On the issue of domestic remedies not having been exhausted, the Commission reminds that when the State raises this point, the State itself must indicate which remedies are still pending or not yet exhausted and demonstrate their good standing. The Commission observes, however, that the State did not indicate which remedies these are.

9. The Commission has also established that any time an alleged crime is committed that could be prosecuted by the State's own initiative, the State has the obligation to prosecute and drive the criminal proceedings. In those cases, that is the proper way to clarify the facts, try those responsible, and determine fitting sanctions for the crime, in addition to making possible other forms of pecuniary reparation. Likewise, the Commission has already determined that, as a general rule, a criminal investigation must be conducted in a timely manner to protect the interests of the victims, preserve evidence, and safeguard the rights of every individual who might be considered a suspect in the criminal investigation⁶.

10. The Commission further observes that the facts alleged in the petition involve the arbitrary deprivation of life for reasons presumably related to the alleged victim's freedom of expression. On this issue, the Commission reiterates that the States have the duty to investigate, identify, try, and punish all authors of these crimes, including intellectual authors. This process must be conducted within a reasonable period of time, because it is fundamental that the causes of the crime be uncovered so as to protect and wholly repair not only the right to life, but also the right to freedom of expression.⁷

11. In light of the foregoing, the Commission considers that the requirements of Article 46.1 of the American Convention have been fulfilled, given that the petitioner exhausted all domestic remedies and, further, filed the petition within the six-month time frame. Regarding the latter, the Commission reiterates its position that the situation considered when establishing the exhaustion of domestic legal remedies is the situation that exists at the time the decision of admissibility is made, given that the moment a claim is filed and the moment a ruling of admissibility is handed down are not the same.

VII. COLORABLE CLAIMS

12. The Commission considers that this petition includes allegations regarding the murder of Mr. Vieira, a journalist and radio broadcaster who voiced strong political criticism against the mayor of the city of Timón on his radio program, and regarding the absence of investigations into the intellectual authors of the crime. In this respect, the Commission highlights that the petition indicates that the family of the alleged victim has not received reparations. Furthermore, the petition includes allegations regarding the violation of the right to freedom of expression as a result of the murder and its ties to state authorities.

⁵ The Commission indicates that, according to information that is publicly available on the Brazilian judiciary's website, it can be observed the Criminal Action 0000742-84.2003.8.10.0060 was definitively closed on November 9, 2011, after issuance of the orders of the definitive imprisonment of João Matias Pinheiro and Raimundo Vidal.

⁶ IACHR, Report n° 151/11, Petition 1077-06, Admissibility, Luis Giován Laverde Moreno et al, Colombia, November 2, 2011, par. 28.

⁷ IACHR, Report n° 63/15, Petitions 1344-08 and 60-09, Admissibility, Reinaldo Coutinho da Silva and Luiz Otávio Monteiro, Brazil, October 27, 2015, par. 40.

13. Having addressed these considerations, and after examining the elements of fact and law presented by the parties, the Commission believes that the allegations of the petitioning party are not manifestly unfounded and require a study of the merits, because the alleged facts, if corroborated as true, could constitute violations of the rights protected under Articles 4 (life), 8 (judicial guarantees), 13 (freedom of thought and expression), and 25 (judicial protection), all of which are related to Article 1.1 (obligation to respect rights) of the American Convention.

14. Lastly, regarding the State's claim that the admission of this petition constitutes a violation of the fourth instance formula, the Commission reiterates that in the framework of its mandate, it is competent to declare a petition admissible and to decide on the merits when the petition refers to domestic proceedings that could violate the rights guaranteed by the American Convention.

VIII. DECISION

1. To declare admissible this petition as it relates to Articles 4, 8, 13, and 25, related to Article 1.1 of the American Convention;

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

Approved by the Inter-American Commission on Human Rights on the 24th day of the month of April, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.