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REPORT No. 83/24
PETITION 2539-16
REPORT ON INADMISSIBILITY

HANS GEORG ARNHOLD FILHO
BRAZIL

Approved electronically by the Commission on June 4, 2024.

Cite as: IACHR, Report No. 83/24, Petition 2539-16. Inadmissibility.
Hans Georg Arnhold Filho. Brazil. June 4, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioners:	Hans Georg Arnhold Filho, Irene Arnhold Moraes, Flávia Pinheiro Fróes, Ramiro Rebouças, Instituto Anjos da Liberdade
Alleged victim:	Hans Georg Arnhold Filho
Respondent State:	Brazil
Rights invoked:	Articles 5 (humane treatment), 8 (right to a fair trial), 24 (equality before the law), and 25 (judicial protection) of the American Convention; Article 3, 4, 5, and 6 of the Inter-American Convention to Prevent and Punish Torture

II. PROCEEDINGS BEFORE THE IACHR¹

Filing of the petition:	December 28, 2016
Additional information received at the stage of initial review:	January 3, 2017; January 9, 2017; May 7, 2017; February 8, 2018; February 16, 2018; January 21, 2020
Notification of the petition to the State:	April 19, 2021
Request for extension:	July 19, 2021
State's first response:	August 7, 2021
Additional observations from the petitioner:	April 22, 2021; April 26, 2021; July 1, 2021; December 28, 2021

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 ² (instrument adopted September 25, 1992) and Protocol of San Salvador (instrument adopted August 21, 1996)

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	N/A
Exhaustion of domestic remedies or applicability of an exception to the rule:	No
Timeliness of the petition:	No

V. THE PARTIES' POSITIONS*Petitioner's arguments*

1. The petitioner alleges that Mr. Hans Georg Arnhold Filho, then an older person, was taken prisoner and subjected to inhuman and degrading prison conditions, among other claims.

¹ The observations submitted by each party were duly transmitted to the opposing party.

² Hereinafter "American Convention" or "the Convention."

2. According to the petitioner, Mr. Hans Georg Arnhold Filho, over 70 years of age when the complaint was lodged with the IACHR, alleges that he was imprisoned in inhuman and degrading conditions at the Prison Complex of Gericinó (Complexo Penitenciário de Gericinó), formerly known as the Prison Complex of Bangu (Complexo Penitenciário de Bangu). Petitioner alleges that he shared a cell with more than 150 persons, without a bed or mattress, with food that was spoiled or moldy and an infestation of stink-bugs and cockroaches. Petitioner argues that no external inspection was allowed, and that the judge of criminal enforcement and members of the Attorney General's Office were aware of the facts and were collusive in their conduct. Petitioner further argues that the situation alleged has occurred in a context of poor conditions and torture that encompasses the entire Brazilian prison system. In another brief, however, the petitioner also alleges poor prison conditions, but refers to another prison, the Penal Institute of Sá Carvalho (Instituto Penal de Sá Carvalho).

3. The petitioner further alleges that Mr. Hans made multiple requests to have medical exams related to lesions resulting from insect bites. After some time, he got a medical appointment and told the physician of the inhuman prison conditions. In retaliation, he was not allowed out on temporary release, nor was he allowed to continue the progression from the incarcerated regime to a semi-open regime, which was in his sentencing terms.

4. As regards the domestic proceedings, petitioner states that Mr. Hans was represented by a court-appointed attorney in the trial that led to his imprisonment and conviction, which he considers an affront to impartiality. That attorney, they say, did not act diligently in representing Mr. Hans's interested, for he did not appeal the conviction.

5. In addition, the petitioner mentions the filing of different writs of habeas corpus with the Court of Justice, the Court of Appeals (STJ: Superior Tribunal de Justiça), and the Federal Supreme Court (hereinafter "STF" or "Supreme Court"). The motions were dismissed. The last of them, the motion before the Supreme Court, was dismissed on November 24, 2016. The petitioner alleges that the Supreme Court, by means of that decision, recused itself from hearing Mr. Hans's request to have the crimes of torture and solitary confinement committed against him cease, considering the matter closed.

6. The petitioner accuses the Supreme Court of being an accomplice to the torture to which Mr. Hans was subjected. He clarifies that what they call torture refers to the inhuman prison conditions to which Mr. Hans was subjected. He alleges that the organs of the Judicial branch, the Attorney General's Office, and the Brazilian State as a whole are comparable, *inter alia*, to Nazi fascism and the prohibition on habeas corpus during the last Brazilian military dictatorship.

7. The petitioner asks that known public figures who were also in prison in Brazil be heard by the Commission, such as former legislators Eduardo Cunha and José Dirceu. He also asks that the Commission order Brazil to: (i) amend its legislation such that members of the Judicial branch and the Attorney General's Office who collude with torture be suspended from their positions, and (ii) establish a special and independent court, with judges elected by the people, to sit in judgment of members of the Judicial branch and the Attorney General's Office.

Position of the Brazilian State

8. The Brazilian State argues that the petition should be archived on grounds of mootness, considering, in summary: i) the lack of progression in the prison regime was the central aspect of the complaint to the IACHR, for ii) shortly after the complaint was lodged with the inter-American system, while the inter-American process was still in its initial stage, Mr. Hans was benefited by progression of the regime. According to the State, the petitioners' allegation on the lack of progression of the regime concerning Mr. Hans was put forward abstractly, without any proof that there was, indeed, a violation. Once convicted, a prisoner must serve the penalty that was applied to him. The right to progression of the regime depends on complying with conditions and legal requirements not shown by the petitioner. After the complaint was lodged with the IACHR, the progression of the regime was granted to Mr. Hans in June 2017. Accordingly, he was placed in a halfway house regime (*prisão albergue domiciliar*). Subsequently, on November 4, 2019, Mr. Hans was favored by what

is known as conditional release (*livramento condicional*), a benefit granted to him so as to be able to serve the rest of the sentence in liberty.

9. The State also argues that the petition does not state facts that tend to establish violations of rights guaranteed by the American Convention, in addition to being manifestly groundless or obviously out of order. It reports that before he was placed in a halfway house regime and conditional release, Mr. Hans was arrested on November 7, 2015, and entered the prison system on November 9, 2015, at the José Frederico Marques Prison. In the prison system there are records of two occasions on which Mr. Hans was taken to the Dr. Hamilton Agostinho V. de Castro Hospital, in addition to being given leave to make periodic visits to his family.

10. In addition, the State considers that the petition had not exhausted domestic remedies as of the moment it was filed with the IACHR. Accordingly, it mentions once again that the petitioner protested the lack of progression of the regime, while the progression was granted him just a few months after the complaint was lodged with the IACHR, showing that there is no need to trigger the inter-American system to solve domestic issues in relation to which the State has the right to exercise its legitimate sovereignty. The State also considers that the petition seeks to have the IACHR act as a court of fourth instance in relation to the domestic proceedings, such as those that led to the progression of the regime and the conditional release of Mr. Hans, which is not permitted by the Convention.

11. In addition to the foregoing, the State asserts that the petition is incoherent and makes allegations that lack any causal nexus. It mentions that the petitioner, due to having met with no success in his initial writ of habeas corpus, accuses the Supreme Court of being a direct accomplice with the practice of torture and the imposition of insalubrious conditions. In addition, throughout his narrative he draws parallels between his situation and that of the dictator Fujimori, in Peru, the convictions of Serbians in the tribunals for the war in the Balkans, Nazism, and Institutional Act No. 5 (the legal act that toughened the Brazilian military dictatorship that held power from 1964 to 1985), among others, in addition to accusing the Brazilian State, the Judicial branch, and the Attorney General's Office of criminal fascism and medieval practices. The State denounces the dishonorable references by petitioner to the Brazilian public bodies and affirms that the far-fetched comparisons related to authoritarian, extremist, and anti-democratic experiences reveal inferences without any connection to reality.

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

12. The Inter-American Commission recalls that the objective or aim of the prior exhaustion rule is to afford the domestic authorities the opportunity to take cognizance of the alleged violations of human rights argued by the petitioner before an international decision is issued on the matter. In the terms of Article 46 of the American Convention and Article 28(8) of the Commission's Rules of Procedure, the petitioner has the duty to provide information on all initiatives taken to exhaust domestic remedies or on the impossibility of doing so.³

13. The Commission observes that the petitioner referred to several situations that he considers violate his rights. Nonetheless, many of them were not presented clearly, coherently, or with the precision necessary as regards the facts, the pursuit of domestic remedies, and timely filing of the petition. This was the case, for example, of the petitioner's arguments that the Brazilian State has Nazi-fascist and dictatorial characteristics, or the requests for public figures not directly related to the case of Mr. Hans Georg Arnhold Filho to be heard as witnesses.

14. The petitioner also denounces the inhuman and degrading conditions to which Mr. Hans Georg Arnhold Filho was subjected and the alleged lack of progression of the regime governing his punishment. The petitioner's briefs mention different prison units (Gericinó, Bangu, Sá Carvalho), without explaining when Mr. Hans was deprived of liberty at each of them. In the section on "exhaustion of domestic remedies" of the initial

³ IACHR, Report No. 242/23. Petition 1459-12. Inadmissibility. Wolf Gruenberg and Betty Guendler Gruenberg. Brazil. September 23, 2023, para. 29; IACHR, Report No. 371/22. Petition 1957-15. Celso Jacques da Rocha. Brazil. December 19, 2022, para. 20.

petition, the petitioner mentions the remedies of appeal of criminal conviction, habeas corpus before the Court of Justice of the State of Rio de Janeiro, habeas corpus before the Court of Justice of Minas Gerais, habeas corpus before the federal Court of Appeals (Superior Tribunal de Justiça), and habeas corpus before the Supreme Court. The petitioner also included, in some briefs, excerpts of decisions and general assertions and comparisons of the Judicial branch with Nazi-fascism, gas chambers, and dictatorships. There is, however, no clear and detailed information about the remedies pursued, such as, for example, dates and places they were filed, the content and purpose, or the dates and content of the decisions.

15. This omission was not cured, even though the petitioner has filed many briefs and exhibits, many of which do not specifically address the case of Mr. Hans Georg Arnhold Filho, but rather have to do with other actions of the Brazilian Judicial branch not directly related to the petition. The exhibits having to do with the remedies related to the possible victim were not accompanied by writings that recounted their relevance in a clear, precise, and detailed manner. The Commission can and should examine the arguments and evaluate whether the exhibits corroborate them, but it cannot make up for omissions in the explanations of those writings. In light of the failure to meet the minimal procedural burden on one who turns to the inter-American system to spell out the domestic remedies pursued and exhausted, in the terms of Article 46(1)(a) of the Convention, the petition cannot be admitted.⁴

VII. DECISION

1. To find the instant petition inadmissible.
2. To notify the parties of this decision, and to publish 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 4th day of the month of June, 2024. (Signed:) Roberta Clarke, President; Carlos Bernal Pulido, Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.

⁴ Similarly, see IACHR, Report No. 228/23. Petition 318-14. Inadmissibility. Renato das Neves et al. Brazil. October 20, 2023, para. 38; IACHR, Report No. 84/22. Petition 2334-12. Inadmissibility. Diana Patricia Pérez Tobón and family. Colombia. April 12, 2022, para. 14.