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REPORT No. 145/18
PETITION 1523-12
REPORT ON ADMISSIBILITY

EDUARDO COLLEN LEITE ET AL
BRAZIL

Approved by the Commission at its session No. 2143 held on December 7th, 2018
170th Regular Period of Sessions.

Cite as: IACHR, Report No. 145/18. Petition 1523-12. Admissibility. Eduardo Collen Leite et al.
Brazil. December 7th, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Center for Justice and International Law - CEJIL
Alleged victims:	Eduardo Collen Leite et. al. ¹
Respondent State:	Brazil ²
Rights invoked:	Articles 8 (judicial guarantees) and 25 (judicial protection), in conjunction with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the American Convention on Human Rights ³ ; Article 1 (life, liberty and personal security) of the American Declaration of the Rights and Duties of Man ⁴ ; Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture

II. PROCEEDINGS BEFORE THE IACHR ⁵

Filing of the petition:	August 22, 2012
Notification of the petition to the State:	December 9, 2015
State's first response:	March 18, 2016
Additional observations by the petitioner:	November 2 and 9; and December 21, 2017
Additional observations by the State:	July 30, 2018

III. COMPETENCE

Competence Ratione personae:	Yes
Competence Ratione loci:	Yes
Competence Ratione temporis:	Yes, as per Section VII
Competence Ratione materiae:	Yes, as per Section VII ⁶

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

Duplication of procedures and international res judicata:	No
Rights declared admissible:	Articles 5 (humane treatment/personal integrity), 8 (judicial guarantees), 18 (name) and 25 (judicial protection), in conjunction with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the American Convention; Articles I (life, liberty and personal security), VII (protection for mothers and children), XVIII (a fair trial), XXII (association), and XXV (protection from arbitrary arrest) of the American Declaration and; Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, as per Section VI
Timeliness of the petition:	Yes, as per Section VI

¹ The petitioner identifies Eduardo Collen Leite, Denise Peres Crispim, Eduarda Crispim Leite, and Leonardo Ditta as alleged victims.

² Pursuant to Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Flávia Piovesan, a Brazilian national, did not participate in the discussion or decision in this matter.

Hereinafter "American Convention".

⁴ Hereinafter "American Declaration".

⁵ The observations submitted by each party were duly transmitted to the opposing party.

⁶ American Declaration (OAS Charter deposited on March 13, 1950 American Convention (adopted on September 25, 1992) and Inter-American Convention to Prevent and Punish Torture (Instrument deposited on July 20, 1989).

V. ALLEGED FACTS

1. The petitioner states that Eduardo Collen Leite (hereinafter “Mr. Collen Leite” or “alleged victim”), known as Bacuri, was an active member and leader of various political groups⁷ during the civil-military dictatorship (*ditadura civil militar*), who was arrested arbitrarily for forming part of the democratic resistance movement, tortured, and executed by the repressive apparatus of the State. The petitioner argues that, despite acknowledgment by the State that Mr. Collen Leite was a victim of the dictatorship, those responsible for the aforementioned violations were never held responsible despite efforts by his family, because of the implementation of the Brazilian Amnesty Law and the prescription of actions with punitive intent.

2. Mr. Collen Leite was arrested in Rio de Janeiro on August 21, 1970, in an operation carried out by the Naval intelligence agency (Centro de Informação da Marinha – CENIMAR) and by district police chief Sérgio Fernando Paranhos Fleury and his team. After being kidnapped, he was taken to a clandestine prison and so brutally tortured that he was unable to move. Finally, after several transfers between State detention centers, he was confined to a cell of the Department of Political and Social Order (DOPS) in São Paulo. The petitioner alleges that on October 24, 1970, Lieutenant Chiari showed him a newspaper article reporting Mr. Collen Leite’s alleged flight, as a strategy for hiding his imprisonment and, subsequently, denying his death. At that moment, according to the petitioner, the alleged victim knew that he would be executed. On October 27, 1970m he was taken to the das Andradas barracks in Guarujá, on the coast of the state of São Paulo, where he was kept and tortured until December 7, 1970, when he was finally executed. The next day, newspapers published an official note reporting the death of the alleged victim in a shoot-out in the city of São Sebastião, on the São Paulo coast. The petitioner underscores that the autopsy reports two shots from a firearm as the sole cause of death, without mentioning the signs of torture.

3. The petitioner alleges that Denise Peres Crispim (hereinafter “Mrs. Crispim”) formed part of groups opposed to the military regime, together with Mr. Collen Leite, at which time they got to know each other and began a relationship. In July 1970, when she was six months pregnant, she was arbitrarily arrested and, one month later, taken for a few minutes to the cell where he husband was: that was the last time they saw each other. On October 11, 1970, Eduarda Crispim Leite (hereinafter “Ms. Crispim Leite”) was born, while her mother was under Army custody. The petitioner alleges that, 15 days after giving birth, Mrs. Crispim was released on bail. In August 1971, both mother and daughter sought asylum in the Chilean embassy, where they lived for eleven months until they left the country in July 1972. Months later, they moved to Italy, where they lived for 30 years. The petitioner stresses that Mrs. Crispim Leite was only able to register the name of the child’s father on her birth certificate in 2009, due to a decision by the Amnesty Commission

4. The petitioner further alleges that the Amnesty Law (Law 6683/1979) prevents the identification and prosecution of the State agents responsible for the arbitrary arrest, torture, and execution of Eduardo Collen Leite. For that reason, the petitioner maintains, it was only after the judgment handed down by the Inter-American Court of Human Rights in the case of Gomes Lund et al v. Brazil, that Mrs. Crispim and Ms. Crispim Leite filed a *delatio criminis* application (representation) to the Federal Public Prosecutors’ Office (Ministério Público Federal - hereinafter “MPF”) on July 1, 2011, requesting an investigation into the facts. However, on February 3, 2012, the MPF requested that the judicial inquiry be archived based on the [impunity law’s] prescription of actions with punitive intent: a request that was granted on February 22, 2012, thereby causing the case to be archived definitively.

5. The petitioner emphasizes that the case of Eduardo Collen Leite was the first to be analyzed by the Special Commission on Missing and Deceased Political Persons (hereinafter “CEMDP”) and that, on January 18, 1996, it had concluded that the State was responsible. In the same vein, in 2014, the National Truth Commission (hereinafter “CNV”) published its final report, which concluded that Eduardo Collen Leite had been executed by State agents, recommended that his death certificate be rectified, and found the State agents involved responsible. Nevertheless, the petitioner alleges that none of that was done. It also mentioned

⁷ They were: Política Operária (Polop), Vanguarda Popular Revolucionária (VPR), Resistência Democrática (REDE), and Ação Libertadora Nacional (ALN).

that, through the CEMPD and the Amnesty Commission, the State did pay compensation to Mrs. Crispim and Ms. Crispim Leite for the death of Mr. Collen Leite and for the individual harm each of them suffered: the former for having been persecuted, arbitrarily arrested, and kept, while pregnant, in State custody; the latter, for having been born in a military hospital and for having been the victim of persecution perpetrated by the State police. That notwithstanding, the Commission remains liable for denial of justice.

6. Finally, in a written communication received on November 2, 2017, the petitioner requested the inclusion in the petition of Leonardo Ditta (hereinafter “M. Ditta”) as an alleged victim. It mentions that Mr. Ditta, a companion of Mrs. Crispim and foster father of Ms. Crispim Leite who also suffered the effects of seeking and being denied justice in respect of his wife and foster child.

7. The State, for its part, asserts that, based on the work done by the CNV, it recognized the arbitrary imprisonment, torture and execution of Eduardo Collen Leite. On the other hand, it argues that the Inter-American Commission on Human Rights (hereinafter “Commission”) lacks competence *ratione temporis* to analyze the present petition because the alleged facts occurred prior to Brazil’s ratification of the American Convention and are characterized as one-off, not ongoing, violations (*violações de efeito instantâneo e não permanente*). The State further maintains that the Commission lacks competence *ratione temporis* and *ratione materiae* to examine violations of the Inter-American Convention to Prevent and Punish Torture. As regards the former, it states that the aforementioned treaty was only ratified by Brazil on September 6, 1989. As regards the latter, it alleges that the Commission’s competence is limited to the content of the American Convention and does not enable it to determine responsibilities of the Brazilian State in respect of other treaties.

8. In addition, the State argues that the petition is inadmissible because of the petitioner’s failure to comply with the requirement to lodge the petition within a reasonable period of time. Accordingly, it asserts that the Amnesty Law did actually preclude the filing of complaints by alleged victims, but that, following internal adoption of the American Convention in 1992 the victims could have lodged their petition to the Commission. Thus, the State points out that the petitioner took 20 years to lodge the complaint and therefore did not do so within a reasonable period of time. It emphasizes that the petitioner only resorted to the Federal Public Prosecutors’ Office in July 2011 as a way of opening up a new six-month deadline for lodging the petition within the inter-American human rights system.

9. As regards the reparation requested by the petitioner, the State points out that Denise Peres Crispim and Eduarda Crispim Leite received compensation. Moreover, it alleges that, on that occasion, they undertook not to go to court to claim or challenge the amount or form of payment. In the State’s view, the present petition, therefore, constitutes a violation of the ban on resorting to a fourth instance (*violação à fórmula da quarta instância*) and is intended to alter a matter already resolved domestically. Alternatively, the State alleges that, under domestic law, it already recognized the imprescriptibility of civil suits brought on account of imprisonment or torture for political reasons, so that it argues that that channel is still open to the petitioner and therefore domestic remedies have not been exhausted.

10. Lastly, the State requests the State not to accept the inclusion of Leonardo Ditta as an alleged victim in the present petition, as that petition was not filed in a timely manner, but rather five years after the petitioner lodged its petition in 2012. In addition, the State asserts that there is no connection between him and Eduardo Collen Leite.

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

11. In similar cases, the Commission has held that prescription in cases of grave human rights violations, including crimes against humanity, and application of the Brazilian Amnesty Law, prevent investigation of the individual liability, and punishment, of the State agents involved in the case.⁸ That being

⁸ IACHR, Report No. 80/12. Petition 859-09. Admissibility. Vladimir Herzog et al. Brazil. November 8, 2012, par. 28.

so, in its understanding, the exception provided for in Article 46.2.a of the American Convention, in respect of the exhaustion of domestic remedies, is applicable.

12. Concerning the timeliness of the petition, the Commission considers that in all these years there was the expectation that the State would, using its resources, resolve the obstacle caused by the Amnesty Law. It further stresses that the family members of Mr. Collen Leite have set other State mechanisms in motion with respect to reparation and continue actively to await truth, justice, and reparation for what happened. Thus, the Commission considers that the ongoing impunity of the violations perpetrated against the alleged victim due to the finding that actions with a punitive intent have prescribed and due to application of the Amnesty law, combined with the constant efforts by his family to hold the State agents involved responsible, meet the criteria needed for timely presentation of the petition.⁹

13. Finally, regarding the State's allegation with respect to the use of a fourth instance, the Commission acknowledges that it is not competent to revise judgments handed down by national bodies acting within their sphere of competence and in accordance with due process and judicial guarantees. Nevertheless, it reiterates that, within the framework of its mandate, the Commission is competent to declare a petition admissible and to decide on its merits when that petition refers to domestic processes that could violate rights guaranteed by the American Convention. Furthermore, it underscores that the objective pursued by the petition is not to revise the compensation granted under domestic remedies but to appraise the potential international responsibility of the State for the arbitrary detention, torture, and extrajudicial execution of the alleged victim, as well as the denial of justice and ongoing impunity of the agents responsible.

VII. COLORABLE CLAIM ANALYSIS OF THE ALLEGED FACTS

14. In light of the elements of fact and law presented by the Parties, the Commission considers that, if proved, the allegations submitted could constitute international responsibility of the State for the arbitrary imprisonment, torture, and execution of Eduardo Collen Leite, as well as for the failure to investigate and punish the State agents responsible for those violations, and for the arbitrary detention of Mrs. Crispim, the birth of their daughter in captivity, the lack of recognition of the name of Ms. Crispim Leite and the impact of impunity and denial of justice on their family.¹⁰

15. As regards its competence *ratione temporis*, the Commission recognizes that the detention, torture, and execution of the alleged victim occurred prior to the State's ratification of the American Convention and the Inter-American Convention to Prevent and Punish Torture. In numerous cases, the Commission has insisted, in pertinent cases, on applying Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture in order to establish failure to investigate acts of torture, even when they occurred prior to ratification. Both the Commission and the Inter-American Court of Human Rights have declared in other cases violations of those provisions, in the understanding that the third paragraph of Article 8 of that treaty incorporates a general clause on competence accepted by the States when they ratify or accede to that instrument.¹¹

16. If proved, the facts could constitute violations of the rights protected under Articles 5 (humane treatment/personal integrity), 8 (judicial guarantees), 18 (name) and 25 (judicial protection), in conjunction with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the American Convention; Articles I (life, liberty and personal security), VII (protection of mothers and children), XVIII (a fair trial), XX (association) and XXV (protection from arbitrary arrest) of the American Declaration and; Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

VIII. DECISION

⁹ IACHR, Report No. 80/12. Petition 859-09. Admissibility. Vladimir Herzog et al. Brazil. November 8, 2012, par. 38.

¹⁰ IACHR, Report No. 84/17. Petition 188-11. Admissibility. Marcos Luis Abarca Zamorano et al. Chile. July 7, 2017, par. 14; CIDH. Report No. 35/18. Petition 31-07. Admissibility. Juan Carlos Menanteau Aceituno and Yasmín Eriksen Fernández Acuña. Chile. May 4, 2018, par. 8.

¹¹ I/A Court of H.R.. Case of Favela Nova Brasília v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 16, 2017. Series C N° 333, par. 61. See, *mutatis mutante*: I/A Court of H.R.. Case of "Street Children" (Villagrán Morales et al) v. Guatemala. Merits. Judgment of November 19, 1999. Series C N° 63.

1. To declare the present petition admissible in respect of Articles 5, 8, 18, and 25 of the American Convention, in conjunction with Articles 1.1 and 2 thereof; Articles I, VII, XVIII, XXII and XXV of the American Declaration of the Rights and Duties of Man; and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture

2. To notify the Parties of the present decision; continue analysis of 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 in the city of Washington, DC, United States of America on the 7th day of the month of December, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García and Antonia Urrejola, Commissioners