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REPORT No. 25/19
PETITION 1643-07
REPORT ON INADMISSIBILITY

JACQUELINE SIMONE DE SOUZA E SILVA FERREIRA
BRAZIL

Approved electronically by the Commission on March 11, 2019.

Cite as: IACHR, Report No. 25/19. Petition 1643-07. Inadmissibility. Jacqueline Simone de Souza e Silva Ferreira. Brazil. March 11, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Jacqueline Simone de Souza e Silva Ferreira
Alleged victim:	Jacqueline Simone de Souza e Silva Ferreira
Respondent State:	Brazil ¹
Rights invoked:	Article 8 (judicial guarantees) and Article 25 (judicial protection) of the American Convention on Human Rights ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	December 22, 2007
Additional information received at the stage of initial review:	January 4, 23 and 25, April 1 and 2, May 19 and 30, June 2, and October 10, 2008
Notification of the petition to the State:	July 16, 2008
State's first response:	October 20, 2008
Additional observations from the petitioner:	October 23, November 10 and 29, and December 13, 2008; January 10, February 17, 19 and 28, April 14, 16 and 24, May 22, August 12, and September 28, 2009; May 1, June 2, 7 and, July 28, August 8 and 13, September 13, 2010; June 29, 2011; November 16, 2012; January 22, July 30, September 10, and October 2, 2013; March 23, 2014
Additional observations from the State:	December 19, 2008; April 13 and 14, and July 16 and 23, 2009; January 26, April 14, July 22, and September 16, 2010; January 22, 2014

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 (instrument deposited 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>:	N/A
Rights declared admissible:	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	No
Timeliness of the petition:	N/A

V. FACTS ALLEGED

1. Jacqueline Simone de Souza e Silva Ferreira (hereinafter "Ms. Ferreira" or "the alleged victim") alleges that she suffered harm as a result of the delay and lack of impartiality on the part of the judicial authorities in the context of a probate proceeding in respect of the property of her father, Mr. Aníbal

¹ In keeping with Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Flávia Piovesan, of Brazilian nationality, did not participate in the deliberations or decision on the instant matter.

² Hereinafter "American Convention."

³ Each party's observations were duly forwarded to the other party.

Augusto Leite da Silva, who died on August 9, 2002. The parties in the proceeding are the alleged victim and her sister, Judite Tartaro Leite da Silva (hereinafter “Ms. Silva” or “the alleged victim’s sister”); they are the forced heirs.

2. Indicates that she began a probate action in 2002 and that she did not have access to the documents that would verify all the property left by her father. She asserts that her sister, the administrator of the estate (*inventariante*)⁴, did not speak in court, yet Ms. Ferreira’s request to remove her from the position of the administrator was denied. She argues that the Judiciary benefitted her sister on handling the proceeding with partiality and delay, aiming to destroy the evidence by prescription of the obligation of the federal revenue authorities to present the income tax returns of the alleged victim’s father. She mentions that she took several steps to secure the issuance of two official notes necessary for proceeding to the findings of facts. In response to the court’s refusal to have said official notes turned over to her to request of the authorities information essential to the distribution, she pursued several remedies, all purportedly denied. Despite that decision, she states that after the official notes were issued, they took a long time to be sent and, according to her, it was done on purpose so that the evidence would be destroyed.

3. On May 15, 2008, Ms. Ferreira asked her sister to be removed as administrator and, in an attached proceeding, a motion was filed for the rendering of accounts; that proceeding was assigned on September 25, 2009. On November 26, 2008, the Superior Court of Justice (hereinafter “STJ”: Superior Tribunal de Justiça) filed to grant the special constitutional remedy known as preventive *mandado de segurança* filed by the alleged victim to get access to her father’s income tax returns based on the argument that no potential violation of a clear legal right was identified, in addition to the State not being able to grant access to the tax information of third persons, whose confidentiality enjoys constitutional protection. According to the alleged victim, that information is extremely relevant to the process, bearing in mind that it may well be the only way to list all of the assets left by the father.

4. Based on the documents in the record for this petition, the Commission observes that the alleged victim pursued more than ten remedies before the superior courts (Tribunais Superiores) and the Court of Justice (Tribunal de Justiça) of the state of Rio de Janeiro (hereinafter “TJRJ”), in addition to filing requests for amendment of judgment (*embargos de declaração*) in the three forums. Moreover, she questioned the judicial authorities before the Administrative Judicial Department (Corregedoria de Justiça) of the state of Rio de Janeiro (hereinafter “Corregedoria”) and the National Judicial Council (hereinafter “CNJ”). Neither oversight body, however, found any inadequate action by the judicial authorities. The alleged victim also presented complaints to the TJRJ, the Minister of Justice, the Public Ministry of Rio de Janeiro (hereinafter “MPRJ”), the Federal Supreme Court (hereinafter “STF”: Supremo Tribunal Federal) and the STJ. She asserts that all her efforts to complain about the judges’ actions were fruitless, resulting in partial decisions to archive or dismiss the matter.

5. Finally, the alleged victim argues that she developed physical and psychological illnesses due to the adversities she faces in the process. Also, reports that she has an incurable disease, as a result of which she argues that the proceedings should be processed with priority. Also, she reports that in 2016 she faced general family problems and that in 2017 she had severe depression, yet she has now recovered.

6. The State, in turn, alleges that domestic remedies were not exhausted, bearing in mind that the various petitions filed and remedies pursued by the alleged victim before many national organs continue to be pending. Besides, it reports that the alleged victim and Ms. Silva agreed that the latter would be the administrator, in addition to both having the same lawyer at the outset of the proceeding. It alleges that in response to the purported neglect on the part of her sister, Ms. Ferreira only turned to the provision on “removal of the administrator,” provided for in the Code of Civil Procedure, in June 2008, six years after filing the action. Moreover, it notes that in the course of the proceeding there was any number of decisions curing problems cited and that those decisions were verified by the Corregedoria, in addition to the considerable unilateral activity by the alleged victim, drawing out the processing of the matter. The State argues that “the petitioner places in check the conduct of any number of authorities, of different organs, without any factual or

⁴ Responsible for administering the successors’ property until the process of distributing it has been completed.

legal backing, her statements completely lacking any plausibility or good sense.” Along similar lines, it states that on several occasions before the Commission the alleged victim merely made statements regarding her purported precarious health conditions, brought on by psychological disorders stemming from the delay in the resolution of the proceeding, but she did not refute the arguments presented by the State.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES

7. In relation to admissibility, Ms. Ferreira argues that her petition should be admitted based on application of the exceptions provided for at Article 46(2)(a) and (c) of the American Convention, in light of the unwarranted delay in the resolution of the probate proceeding and for failure to respect due process guarantees, respectively.

8. The State also argues that the alleged victim did not meet the requirement established at Article 46(1)(a) of the American Convention, bearing in mind that due to her own conduct, namely filing innumerable petitions and remedies, the probate proceeding has yet to conclude. It says that “there being property still subject to probate and the open litigation between the heirs, the closing out of probate does not depend only on the action of the judge; it depends much more on the correct and good-faith activity of the administrator and the heirs.” According to the State, Ms. Ferreira pursued many remedies before various mechanisms within the scope of the probate action and the motions in relation to it, as well as multiple representations to the administrative judicial bodies. In particular, before the National Justice Council (CNJ) she filed a motion due to the delay in resolving the case; however, she filed 13 remedies or procedural motions while the action was before the court. It states that some of the alleged victim’s claims were dismissed, while others were granted, all based on the law, which proves that the authorities acted adequately. The State also rejects the application of the exception provided for at Article 46(2)(a) of the American Convention.

9. According to the exception established on Article 46.2.c of the American Convention, the Commission highlights that the lack of judicial remedies is related to the inexistence of a landmark law that foresees the appropriate remedies to a given situation or the lack of minimal conditions to these existing remedies to be effective. In this instance, the Commission notes the alleged victim has had access to judicial and administrative remedies and some are still pending. In this sense, and due to the nature of the motions, the Commission does not consider any exception to the exhaustion of domestic remedies to be applicable if they were submitted and denied based on procedural arguments that does not seem arbitrary, or if they are still pending and the alleged victim does not hands out specific information aiming to demonstrate that due to her activity, there is an unjustified delay from the authorities.

10. According to that, the Commission understands that the petition does not satisfy the requirement of exhaustion of domestic remedies provided by Article 46.1(a) of the American Convention, and therefore deems it unnecessary to analyze further admissibility criteria.

VIII. DECISION

1. To find the instant petition inadmissible; and
2. To notify the parties of this decision, 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 11th day of the month of March, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren Praeli, and Luis Ernesto Vargas Silva, Commissioners.