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REPORT No. 238/24
PETITION 804-19
REPORT ON INADMISSIBILITY

BENEDITA TEREZA DA SILVA ET AL.
BRAZIL

Approved electronically by the Commission on December 4, 2024.

Cite as: IACHR, Report No. 238/24, Petition 804-19. Inadmissibility. Benedita Tereza da Silva et al. Brazil. December 4, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Clemente Sissinio Anezio da Silva
Alleged victims:	Benedita Tereza da Silva and others ¹
Respondent State:	Brazil
Rights invoked:	The petitioner does not invoke specific rights

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	April 1, 2019
Additional information during the initial study phase:	April 2, 2019; April 22, 2019; May 24, 2019; August 19, 2019; August 23, 2019; August 26, 2019; September 3, 2019; May 18, 2022; September 15, 2022; September 23, 2022; December 16, 2022; February 27, 2023
Notification of the petition to the State:	February 27, 2023
Request for extension:	May 26, 2023
State's first response:	June 27, 2023
Additional observations from the petitioning party:	May 2, 2023; November 13, 2023; December 6, 2023; February 2, 2024; February 6, 2024; February 11, 2024; March 1, 2024; March 13, 2024; April 15, 2024; May 21, 2024; June 4, 2024; June 5, 2024; June 6, 2024; June 16, 2024; August 1, 2024; September 20, 2024; October 1, 2024; October 8, 2024; October 20, 2024
Additional observations from the State:	September 14, 2023

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 on 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>:	No
Rights declared admissible:	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	No
Timeliness of the petition:	No

¹ Claudete Andrade, Esequiel Ademário da Silva, Clemente Sissinio Anezio da Silva.

² The observations of each party were duly forwarded to the other party. On February 27, 2023, the Commission notified the State and informed both the petitioner and the State about the accumulation of petitions 1008-19, 1831-19, and 1925-19 to petition 804-19, as they deal with similar matters, so all petitions became part of a single file.

V. POSITION OF THE PARTIES

The petitioner

1. The petitioner, Clemente Sissinio Anézio da Silva, denounces multiple human rights violations committed against himself; his mother, Mrs. Benedita Tereza da Silva; his aunt, Mrs. Claudete de Andrade; and his cousin, Mr. Esequiel Ademário da Silva, son of Mrs. Claudete. He alleges that these violations involved negligence and medical error, torture and ill-treatment, euthanasia, and omission by authorities to properly investigate the facts, in addition to persecutions he himself has suffered due to the complaints.

2. Regarding Mrs. Benedita, the petitioner alleges that she, an elderly person, wore a lumbar brace for fractures for five years, between 2009 and 2014, due to a medical error, even though the said brace has a maximum recommended use of fifteen days. In 2014, when the brace was finally removed, Benedita suffered from paravertebral atrophy and spinal infections. According to the petitioner, these health problems stem from the prolonged use of the brace.

3. The petitioner also denounces that in September 2016, Mrs. Benedita was a victim of medical negligence and medication overdose in a public hospital, which left her in a terminal coma for eight months. During the coma, she suffered ill-treatment and, in the end, was subjected to palliative care that the petitioner characterizes as euthanasia. In May 2017, she died and was buried without medical examination. After family complaints, exhumation of the body was requested. The petitioner alleges that the authorities are suppressing the investigations and that he is suffering threats and persecution for denouncing the case. He argues that the police investigation was "suppressed due to political influence".

4. The petitioner presents, as an annex, copies of the hospital discharge document of Mrs. Benedita. He considers that the document contains a confession of euthanasia. The content of the document refers to information about her treatment between September 6, 2016, and May 12, 2017, including the suggestion to the petitioner of residential palliative care due to the exhaustion of available medical resources, the petitioner's refusal, the continuation of Mrs. Benedita's unconscious state, and her death after cardiopulmonary resuscitation attempts by the medical team.

5. Regarding Mrs. Claudete, also an elderly person, the petitioner alleges that she became demented and tetraplegic in a coma at her home, cared for by her son and the petitioner's brother, Mr. Esequiel Ademário da Silva. He denounces that Mrs. Claudete had the right to ICU hospitalization but was never transferred. He indicates that she died in 2010 and that her death was caused by medical negligence related to the lack of hospitalization. According to the petitioner, the justice system denied the filing of a police report in 2010. An investigation was opened only in 2016 but was suppressed due to government corruption. He also denounces that his family does not have access to the investigation.

6. Regarding himself, he denounces that after reporting the deaths of his mother and aunt to the IACHR, he is being prevented from accessing the criminal proceedings and does not receive assistance from the Public Defenders' Offices. He alleges that the government has not yet informed whether the bodies will be exhumed for examination. He argues that he is being threatened and coerced, without freedom of movement to follow the proceedings, and receiving warnings to stop denouncing. He states that he is being constantly threatened and that his life is at risk due to the complaints he made against Brazilian authorities and institutions. He declares that if the situation continues, he will be forced to seek asylum in another country. He requests international help and affirms that all human rights agencies of the Brazilian government are ineffective.

7. Regarding domestic proceedings, he mentions, without details, attempts related to police investigation 272/2016 concerning the death of Mrs. Benedita and complaints to the Regional Council of Medicine, the Federal Prosecutor's Office, and the state parliament's ombudsman. He argues that all criminal and civil instances were attempted and denied, both at the state and federal levels. He states that the competent authorities, including the State Secretary of Health, the Secretary of Public Security, prosecutors, and the Governor of the State of São Paulo, neglected their responsibilities. He alleges that there was corruption and

political influence to suppress the investigations, protecting the health professionals involved. He alleges that there was institutional racism on the part of the Brazilian government and that when the public service hurts or kills Black people, justice and the government suppress the case. He informs that the criminal and civil proceedings were archived and that no examination was ever carried out on the "weapon of the crime," the lumbar brace used by his mother.

8. The petitioner also requests that a copy of the ongoing process before the IACHR be sent to international human rights organizations linked to the United Nations, such as the United Nations High Commissioner for Human Rights, the Institute of Public Policies for Human Rights of MERCOSUR, and the International Criminal Court in The Hague. He justifies that the facts investigated typify crimes against human rights committed by the State.

The Brazilian State

9. The State seeks to delimit the main object of the petition, indicating that, according to the petitioner: i) there was negligence, ill-treatment, and homicide against a defenseless person (euthanasia) by the Sapopemba Hospital against his mother, Benedita Tereza da Silva, and his aunt, Claudete Andrade; ii) the petitioner sought a solution through police investigation and complaints to the Regional Council of Medicine, the Federal Prosecutor's Office, and the state parliament's ombudsman; iii) Mr. Clemente Sissinio Anezio da Silva, son of Mrs. Benedita, alleges he is suffering threats and persecution.

10. According to the State, Mrs. Benedita, at the time an elderly person aged eighty, was admitted to Vila Alpina Hospital, in São Paulo, presenting a condition of cerebrovascular accident (stroke) combined with advanced-stage cancer, conditions that demanded extreme care. Despite a respiratory arrest and severe pneumonia, the medical team managed to stabilize the patient, keeping her under observation. However, Mrs. Benedita did not regain consciousness after the stroke, remaining in a coma and requiring artificial respiration throughout the hospitalization period.

11. During hospitalization, the patient suffered two severe infections that were treated with antibiotics and appropriate medical procedures. Additionally, two meetings were held between the medical team and the family members of Mrs. Benedita, with the presence of a social worker and the clinical coordination of the hospital, to clarify the current and future effects of the ischemia suffered and the prospects of evolution. The medical team proposed palliative care due to the exhaustion of available medical resources, aiming to minimize the patient's suffering. The State argues that there was no intention to promote euthanasia, but rather to provide care that would minimize the patient's suffering in her final moments. It informs that the hospitalization of Mrs. Benedita lasted almost eight months. It maintains that the medical team acted promptly and professionally, following appropriate medical and ambulatory procedures suited to the patient's severe condition, without violating her rights as a user of the Unified Health System.

12. The State alleges that the petitioner did not exhaust all available domestic remedies before resorting to the international system. The police investigation was archived due to insufficient evidence of materiality and authorship, but this does not prevent the petitioner from seeking other judicial avenues, such as civil actions or appeals against the archiving. The proceedings before the Regional Council of Medicine are still ongoing; that is, there was no final decision. Without the exhaustion of domestic remedies, the State did not have the opportunity to remedy the situation through its own mechanisms.

13. Furthermore, the State asserts that the petition is inadmissible because it does not set forth facts that characterize a violation of the rights guaranteed by the Convention. Mrs. Benedita received medical care according to prevailing medical standards. The medical team acted professionally, following protocols and procedures appropriate to the severe clinical condition she presented. There is insufficient evidence to support allegations of negligence, ill-treatment, or euthanasia. The accusations are not based on proven facts.

14. The State also argues that the petitioner did not prove the alleged denial of legal assistance by the Public Defender's Office. Moreover, it presented a record from the Defensoria Online system indicating that Mr. Clemente received assistance from the Public Defender's Office of the State of São Paulo on at least ten

occasions, on the following dates: August 4, 2014; August 23, 2016; September 16, 2016; November 7, 2016; January 30, 2017; June 30, 2017; October 8, 2018; August 20, 2019; January 13, 2022; and January 19, 2022.

15. In conclusion, the State argues that there is insufficient information to verify the other allegations of the petitioner.

VI. ANALYSIS OF COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

16. The characteristics of the petition examined make it necessary to address the analysis of the characterization of human rights violations and the exhaustion of domestic remedies jointly, rather than in separate stages of the analysis, as is the usual practice.³

17. The Inter-American Commission observes that the petitioner presented a large number of situations that he considers violative of his rights and the rights of his family members, including negligence and medical error, ill-treatment, euthanasia, omission of authorities to investigate the facts, and persecution or reprisals. However, the petitioner submitted numerous writings and annexes without the necessary detailing in the accounts. Several of the annexes, in particular, were sent with generic accounts and scant information or simply without an account or explanation, which made it difficult or impossible to include them in the description of the petitioner's position.

18. Furthermore, many of the alleged situations were not presented with the clarity, coherence, and precision necessary regarding the facts, the activation of domestic remedies, and the requirements of timely submission. This was the case, for example, with the petitioner's allegations about the alleged medical error in the prolonged use of the lumbar brace by Mrs. Benedita; the alleged euthanasia against Mrs. Benedita; the supposed medical negligence that resulted in the death of Mrs. Claudete; the persecutions and threats that the petitioner claims to be suffering due to his complaints; the accusations of institutional racism, corruption to suppress investigations, and persecutions and reprisals allegedly suffered for attempting to denounce the situations.

19. When referring to domestic remedies, the petitioner mentioned in a generic way, e.g., the police investigations related to the deaths of Mrs. Benedita and Mrs. Claudete, as well as complaints to the Regional Council of Medicine, the Federal Prosecutor's Office, and the state parliament's ombudsman. The generic nature of these mentions makes it difficult or impossible for the Commission to assess the effective exhaustion of internal avenues. The process consultation screens from the São Paulo State Court's website related to the police investigations did not compensate for the lack of specific information.

20. Specifically concerning police investigation 272/2016, related to Mrs. Claudete, the petitioner indicated, in one of his writings, the virtual address that allows consultation of information about the investigation and even the relevant decisions. However, it is the petitioner's duty to present more details about the fact or situation denounced, including the internal processes activated, under the terms of Articles 28(d) and 31 of the IACHR Rules of Procedure. The Inter-American Commission cannot substitute the petitioner's work in presenting the necessary information. In any case, the virtual consultation of the police investigation through the general information presented by the petitioner did not change the difficulties mentioned here. According to the consultation, in summary: i) the police investigation referred to the complaint, made by the petitioner, that doctors were responsible for the death of Mrs. Claudete; ii) the Public Prosecutor's Office requested the archiving of the investigation due to lack of sufficient evidence that the medical conduct caused the death of Mrs. Claudete; iii) on May 15, 2019, the Court of the Criminal Division of the Regional Forum X – Ipiranga, District of São Paulo, granted the request for archiving due to lack of evidence made by the Public Prosecutor's Office; iv) the petitioner filed a complaint against the Public Prosecutor's Office, which prompted a new judicial decision by the Court of the Criminal Division of the Regional Forum X – Ipiranga (final decision

³ Similarly: IACHR, Report No. 228/23. Petition 318-14. Inadmissibility. Renato das Neves and others. Brazil. October 20, 2023, paragraph 36; IACHR, Report No. 146/22. Petition 69-12. Inadmissibility. Desiderio Bonilla Lamprea. Colombia. June 24, 2022, paragraph 12.

regarding the investigation); v) the said final decision, issued on February 26, 2020, emphasizes that Mrs. Claudete died due to her debilitated health condition, and not as a result of medical error, a conclusion reinforced by the evaluation of the Regional Council of Medicine of the State of São Paulo regarding the conduct of the doctors related to the case.⁴ Police investigation 717/2016, related to Mrs. Benedita, is not available for virtual consultation by third parties.⁵

21. The allegations of "suppression" of investigations due to "political influence" and "corruption," without the presentation of concrete elements to support them, do not constitute a sufficient argument to demonstrate the ineffectiveness of domestic remedies. The petitioner also does not present, in his account, sufficient explanations and elements about the "institutional racism" he denounces. Additionally, regarding the petitioner's allegation of difficulty in accessing the Public Defender's Office, the Commission observes that the State presented records proving assistance provided to the petitioner on several occasions. Although the petitioner claims to have been prevented from accessing the services of the Public Defender's Office, he did not present concrete elements about the specific acts that would have prevented his access, nor did he challenge the records presented by the State. In this context of contrary elements presented by the State, the mere assertion of difficulty of access is not sufficient to configure an exception to the requirement of exhaustion of internal remedies.

22. The Commission also observes that, according to the facts presented, the specific situation of Mrs. Benedita appears to have been the suggestion of palliative care intended to minimize her suffering, and not a practice of euthanasia, as alleged by the petitioner. As informed by the State, the medical team proposed palliative care due to the exhaustion of available therapeutic resources, aiming to minimize suffering in her final moments. The hospital discharge document, presented by the petitioner as a confession of euthanasia, actually contains information about her treatment between September 6, 2016, and May 12, 2017, including the suggestion to the petitioner of residential palliative care due to the exhaustion of available medical resources, the petitioner's refusal, the continuation of Mrs. Benedita's unconscious state, and her death after cardiopulmonary resuscitation attempts by the medical team. Although the practice of euthanasia could be, *prima facie*, a violation of the right to life, particularly if contrary to the will of the patient and her family members, in the specific case, the elements presented indicate that there was considerable effort by the hospital and the medical team, over many months, in preserving the life of Mrs. Benedita.

23. The Commission observes, moreover, that the latest submissions from the petitioner contain annexes unaccompanied by explanations and accounts of the facts or situations denounced, which represents a failure to comply with the petitioner's duty to present more details about the fact or situation denounced, including the internal processes activated, under the terms of Articles 28(d) and 31 of the IACHR Rules of Procedure. From the annexes and how they were titled by the petitioner, it can be inferred that they refer to new situations regarding possible lack of access, by the petitioner and by Mr. Esequiel Ademário da Silva, to medications and health treatments. These situations occurred after the State's response. Apparently, they were reported to national authorities, particularly in the last year, which indicates that, even if they had been presented in a clearer and more organized way, they would not meet the prior exhaustion requirement.⁶

24. The Commission notes, finally, that the petitioner requested that a copy of the ongoing process before the IACHR be sent to other international human rights bodies, such as the United Nations High Commissioner for Human Rights, the Institute of Public Policies for Human Rights of MERCOSUR, and the International Criminal Court in The Hague. The Commission recalls that its mandate is limited to the Inter-American Human Rights System and that it is not within its competence to forward cases or procedural information to other international bodies. It is not for the Commission to comply with the petitioner's request.

⁴ Public information about police investigation 272/2016, process 0001945-07.2016.8.26.0052, available at <https://esaj.tjsp.jus.br> (consulted on November 12, 2024).

⁵ Public information about police investigation 717/2016, process 0004762-73.2016.8.26.0010, available at <https://esaj.tjsp.jus.br> (consulted on November 12, 2024).

⁶ Similarly: IACHR, Report No. 119/24. Petition 1179-15. Inadmissibility. A.R.G. and his son P.H.R.G. Brazil. August 8, 2024, paragraph 33 (on the inadmissibility of new situations in relation to which the domestic remedies are of recent activation).

25. The deficient drafting of the petition exposed in the previous paragraphs prevents the Commission from assessing compliance with the rule of prior exhaustion of domestic remedies, or whether exceptions to the requirement of exhaustion of domestic remedies would be applicable to some of the complaints, besides making it impossible to verify possible violations of the American Convention by virtue of its Article 47. The information provided by the State is not sufficient to compensate for the deficiencies of the petition. The Inter-American Commission has several recent precedents in which it declared petitions inadmissible when the lack of coherence and complete and organized information of what is alleged was of such nature that it prevented the correct understanding of the object of the petition and the fulfillment of the admissibility requirements established in Articles 46 and 47 of the American Convention.⁷

VII. DECISION

1. To declare the inadmissibility of the petition.
2. To notify the present decision to the parties, publish it, 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 4th day of the month of December, 2024. (Signed:) Roberta Clarke, President; Carlos Bernal Pulido, Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.

⁷ See, for example: IACHR, Report No. 228/23. Petition 318-14. Inadmissibility. Renato das Neves and others. Brazil. October 20, 2023, paragraph 40; IACHR, Report No. 161/21. Petition 1542-16. Inadmissibility. Roger Doña Angulo. Nicaragua. July 15, 2021, paragraphs 8–9; IACHR, Report No. 359/21. Petition 682-10. Inadmissibility. Luiz Eduardo Auricchio Bottura. Brazil. December 2, 2021, paragraph 21; IACHR, Report No. 155/22. Petition 1102-09. Inadmissibility. Ernesto Armando Ortiz Martínez. Colombia. July 5, 2022, paragraph 22.