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## **REPORT No. 5/25**

## **PETITION 219-15**

### **REPORT ON ADMISSIBILITY**

**WESLEY BELZ GUIDONI & FAMILY MEMBERS  
BRAZIL**

Approved electronically by the Commission on March 3, 2025.

**Cite as:** IACHR, Report No. 5/25. Petition 219-15. Admissibility.  
Wesley Belz Guidoni and Family Members. Brazil. March 3, 2025.

## I. INFORMATION ABOUT THE PETITION

<b>Petitioner:</b>	Necilda Simoura Belz
<b>Alleged victims:</b>	Wesley Belz Guidoni and Family Members <sup>1</sup>
<b>State accused:</b>	Brazil
<b>Rights invoked:</b>	The petitioner does not invoke specific rights; however, from her account, it is inferred that the petition fundamentally refers to the rights to life, integrity, and personal liberty

## II. PROCEEDINGS BEFORE THE IACHR<sup>2</sup>

<b>Petition submitted:</b>	April 1, 2015
<b>State notified about petition:</b>	April 30, 2019
<b>State request for extension:</b>	July 30, 2019
<b>First response from the State:</b>	August 9, 2019
<b>Additional observations made by the petitioner:</b>	June 30, 2016; July 8, 2016; July 12 and 13, 2016; October 21, 2016; and May 29, 2020
<b>Additional observations made by the State:</b>	March 10, 2021
<b>Warning of Possible Archive</b>	July 11, 2024, and August 6, 2024
<b>Petitioner's Response to Warning of Possible Archive:</b>	August 11, 2024

## III. COMPETENCE

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, the American Convention on Human Rights <sup>3</sup> (deposit of instrument made on July 31, 1973) and the Inter-American Convention to Prevent and Punish Torture (deposit of instrument of ratification made on July 20, 1989)

## IV. DUPLICATION OF PROCEEDINGS AND INTERNATIONAL RES JUDICATA, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES, AND TIMELY SUBMISSION

<b>Duplication of proceedings and international res judicata:</b>	No
<b>Rights declared admissible:</b>	Articles 4 (life), 5 (personal integrity), 7 (personal liberty), 8 (judicial guarantees), and 25 (judicial protection) of the American Convention, in relation to Article 1.1 (obligation to respect rights); Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture
<b>Exhaustion of domestic remedies or granting of an exception:</b>	Yes, the exception of Article 46.2.c) of the American Convention applies
<b>Timely submission:</b>	Yes, under the terms of Section VI

<sup>1</sup> Necilda Simoura Belz (mother) and Eduarda Altoé Guidone (daughter).

<sup>2</sup> The observations of each party were duly considered and forwarded to the other party. The IACHR warned the petitioning party about the possible archiving of the petition, by means of a physical letter on July 11, 2024, and an email on August 6, 2024. The petitioning party responded to the warning and expressed its interest in the continuation of the claim on August 11, 2024.

<sup>3</sup> Hereinafter "American Convention" or "Convention".

## V. POSITIONS OF THE PARTIES

### The petitioner

1. The petitioner alleges the arbitrary detention, torture, and extrajudicial execution of Wesley Belz Guidoni (hereinafter also "the alleged victim" or "Wesley"), as well as the lack of reparation and the impunity of the facts.

#### *Wesley's Detention and Death*

2. According to the petitioner, Wesley Belz Guidoni had suffered from epilepsy, 70% vision loss, hypertension, cardiac arrhythmia, and alcoholism since childhood. On January 9, 2015, he was arrested after being reported by his father for disturbing customers at his bar. He was taken to the Judicial Police Department of Colatina, where his pre-trial detention was registered without the possibility of bail. The petitioner argues that the detention was unnecessary, ignoring Wesley's health problems and his low level of dangerousness, and that he was not allowed to communicate with his family. Furthermore, she claims that the detention was justified based on Wesley's alleged "extensive" criminal record, which did not correspond to reality.

3. Wesley was transferred the same day to the Santa Fé Provisional Detention Center (CDP) in the city of Colatina. After being informed of the detention, his mother, Necilda Simoura, tried to obtain information about him on January 10, 2015, without success. At 3:00 PM, CDP agents told her to return on January 16. Aware of his health condition, Ms. Necilda left medication for her son. Subsequently, the family was informed by other inmates and CDP staff that Wesley suffered several seizures and had no access to water since his arrival.

4. Between January 10 and 14, 2015, Ms. Necilda and other family members visited the CDP regularly. On January 14, 2015, Ms. Necilda learned of Wesley's death through an anonymous phone call. Upon examining his body, the family found multiple signs of torture: bruises, fractured wrists, strangulation marks, lash marks on wrists and ankles, burns on his back, and fractures in his neck, spine, and ribs. However, the CDP's narrative changed after Wesley's death, initially indicating that he was with other inmates, but later stating that he was alone and died without external intervention. The autopsy performed by the Medical Legal Institute indicated acute respiratory failure and cervical spinal cord compression as causes of death, without specifying the means used. The petitioner states that the medical examiner verbally confirmed the deplorable state in which Wesley was found, but disagrees about his nutritional status, considering that he went five days without water. The mother had difficulty accessing the autopsy report, which she only obtained on January 29, 2015. Likewise, the petitioner received information that Wesley was transferred to Silvio Alvídos Hospital on two occasions, although hospital officials did not confirm this for fear of reprisals. On January 23, 2015, a former inmate, Geusimar Vicente Saline, testified before the Prosecutor's Office that Wesley was tortured in his cell by the police, mentioning agents Francisco Gonçalves and Tancredo.

#### *Domestic Proceedings*

5. The petitioner presents the following information on the domestic proceedings:

PROCESS	INFORMATION
<b>Administrative Proceeding 69021139</b>	Initiated on January 16, 2015, by the Internal Affairs Office of the Espírito Santo Justice Secretariat to investigate the administrative responsibility of public officials. Concluded on April 12, 2017, with the suspension of CDP officials Alexandre Magno Amaral Ferreira, Mário Giurizzato, Guilherme Comércio, and Douglas Scotá. The Justice Internal Affairs Office had recommended dismissal, but only suspensions of ten or fifteen days were applied. The petitioner considers them lenient and insufficient.

<b>Police Investigation 0002233-07.2015.8.08.0014</b>	Initiated by the Espírito Santo Civil Police, concluded on May 28, 2015, with the indictment of prison agents Alexandre Magno Amaral Ferreira, Mário Giurizatto, Olair José dos Santos Júnior, Wallace Neves de Oliveira, Derlivaldo Figueiredo Ferreira, Frantiesco da Silva Passos, Rodrigo Aguiar Lima, Frankieli de Avelar, Jovaci Ferreira Pinheiro, Samuel de Moura Godoi, Sandro Barros Gomes, Rodrigo Pavani Soares, Iuri Franco Valandro, Elton Lopes Bonfim, and Douglas Scotá.
<b>Military Police Investigation 0006297-93.2016.8.08.0024</b>	Initiated to investigate the complaint of torture perpetrated by the military police officers who transferred Wesley to the CDP. It was dismissed by the Military Court of Justice, upon request of the Military Prosecutor's Office, for lack of evidence.
<b>Criminal Action 0004963-54.2016.8.08.0014</b>	Initiated by the Espírito Santo Public Prosecutor's Office to hold Olair José dos Santos Júnior, Wallace Neves de Oliveira, Derlivaldo Figueiredo Ferreira, and Frankieli de Avelar (four of the sixteen prison agents involved during the police investigation) responsible for bodily injury resulting in death. It is still ongoing.
<b>Administrative Proceeding for the Investigation of Human Rights Violations 72187697</b>	Initiated by the Espírito Santo Public Defender's Office (no date information) due to the delay of the Public Prosecutor's Office in the Criminal Action; it culminated in the initiation of a Private Criminal Action (ongoing).
<b>Private Criminal Action 0004963-54.2016.8.08.0014</b>	Initiated by Necilda Simoura, it aimed at the criminal responsibility of the prison agents for the torture and death of Wesley Guidoni. On February 4, 2019, the Superior Court of Justice ruled, in the last instance, on the case, denying the plaintiff's requests.
<b>Administrative Improbity Action 0001857-16.2018.8.08.0014</b>	Initiated on February 20, 2020, by the Colatina Civil Prosecutor's Office against the prison agents involved, leading to the intervention of the State Committee for the Prevention and Eradication of Torture in Espírito Santo. On October 4, 2020, there was a decision to admit the case. The action is still ongoing.
<b>Proceeding 2015.02.00.0022108-07</b>	Initiated by Necilda Simoura before the National Council of Justice (CNJ) to challenge the irregularities of the CDP prison facility in Colatina. On November 9, 2015, the CNJ ordered that the Prison Inspector Judge be notified to request clarifications on the death of Wesley Guidoni. This was the only relevant determination. The petitioner claims that the process was archived without the implementation of public policies to eradicate or reduce acts of torture in the CDP and in the province of Espírito Santo.
<b>Civil Action 0000837-92.2015.8.08.0014</b>	Initiated on January 20, 2015, by Eduarda Altoé Guidoni, Wesley's daughter, to obtain compensation. Ruled in favor of the plaintiff, it became final on May 24, 2018. The final decision ordered the payment of compensation of fifty thousand reais (approximately US 13,722.69 <sup>4</sup> ) and a maintenance allowance of two-thirds of the minimum wage (approximately USD 174.55 <sup>5</sup> ) until Eduarda turns twenty-five. The petitioner highlights the delay in the judgment of the process between the beginning in January 2015 and its conclusion in May 2018. She also claims the insufficiency of the compensation and allowance determined, as well as the non-compliance with the judgment.
<b>Civil Action 0023157-05.2016.8.08.0014</b>	Initiated by Necilda Simoura to claim compensation for the death of her son. After a decision partially favorable to the plaintiff in the first instance, dated December 12, 2020, the plaintiff filed an appeal. According to the latest information from the petitioner, the analysis of this appeal was still pending.
<b>Separated Proceeding 0001731-68.2015.8.08.0014</b>	Initiated by Necilda Simoura to review arbitrariness in the Colatina CDP. It was dismissed at the request of the Espírito Santo State Prosecutor, justifying that the police investigation was sufficient (there is no information on the date of dismissal).

<sup>4</sup> According to the official conversion of the Central Bank of Brazil (<https://www.bcb.gov.br/conversao>).

<sup>5</sup> According to the official conversion of the Central Bank of Brazil (<https://www.bcb.gov.br/conversao>) and the information on the value of the minimum wage in May 2018 (<https://www.dieese.org.br/analisecestabasica/salarioMinimo.html>).

<b>Request for Measures 0000470-36.2015.2.00.0000</b>	Initiated by the CNJ regarding the conduct of Judge Paula Moscon Lorde, who denied bail and ratified Wesley Guidoni's pre-trial detention. It was dismissed on May 5, 2015, by decision of the National Justice Inspector, arguing that there were proper procedural means to challenge the judicial act.
<b>Representation for inertia or excessive delay 1.00021/2016-18</b>	Initiated by Necilda Simoura before the National Council of the Public Prosecutor's Office, with a negative decision on March 29, 2016.

### *The Petitioner's Conclusions*

6. The petitioner argues that civil action 0000837-92.2015.8.08.0014 does not fully address Wesley's death, since the process does not deal with criminal responsibility for his death. In addition, she denounces the lack of concrete results from the various internal processes attempted, including complaints before public bodies such as the CNJ and the investigation of the State Committee for the Prevention and Eradication of Torture in Espírito Santo.

7. With specific regards to Wesley's detention, she denounces the absence of an explanation from the State regarding the "extensive criminal record" that was incorrectly attributed to him to justify his pre-trial detention. Likewise, she highlights several unresolved problems in the investigations and the internal criminal process, including: i) the dismissal of the Military Police Investigation for alleged proof of non-participation of the military in the homicide; ii) the initial criminal charge against only seven of the seventeen officials initially indicted in the police investigation; iii) the formal accusation against only four of those seven in the public criminal action, excluding Mr. Guilherme Comércio Carvalho, one of the main individuals implicated in the death; and iv) the classification of the charges by the prosecutor as bodily injury resulting in death instead of aggravated torture.

8. The petitioner requests that the IACHR declare the petition admissible after having exhausted various internal remedies whose insufficient results are attributable to the State. In this regard, she points out that, except for the criminal action and the civil reparation action initiated by Ms. Necilda, in the other internal proceedings there is already *res judicata*.

9. Regarding the criminal action, she considers that prior exhaustion of remedies is not required due to the unjustified delay and the participation of public officials with the power to destroy evidence and intimidate witnesses in the case. Regarding the delay, she indicates that one year, eleven months, and five days elapsed from Wesley's death until the Public Prosecutor's Office filed the initial complaint, in addition to four years, two months, and eleven days for the judicial authority to hold the first criminal hearing in the case.

10. The petitioner also argues that by presenting the case before the IACHR in 2015, she did not fail to comply with the need to exhaust domestic remedies, since these must be exhausted at the time of the admission of the case, not at the time of initial receipt. Additionally, given that the Public Prosecutor's Office did not request the removal of the public positions of those accused of Wesley's death, and considering that Wesley's relatives had no possibility of acting internally to reverse this omission, the exception of impossibility of adequate exhaustion of internal remedies applies at this point.

### **The Brazilian State**

11. The State provides information on disciplinary administrative and criminal proceedings, as well as civil reparation actions. It also presents its arguments and conclusions regarding the admissibility of the petition.

*Disciplinary Administrative Measures*

12. The State reports that Disciplinary Administrative Proceeding (PAD) No. 69021139 was initiated by the Internal Affairs Office of the Espírito Santo Justice Secretariat (SEJUS/ES) on January 16, 2015, to investigate the administrative responsibility of public officials allegedly involved in the death of Wesley Belz Guidoni. A copy of the police investigation report conducted by the Espírito Santo Civil Police, whose conclusion was the indictment of several prison agents and employees for the crime of aggravated torture resulting in death, is included in the PAD. The police investigation occurred in parallel with the PAD.

13. The final report of the disciplinary administrative investigation prepared by SEJUS/ES found evidence of authorship and materiality of an administrative infraction, initially attributing responsibility to the following agents: Alexandre Magno Amaral Ferreira, Mário Giurizatto, Guilherme Comércio Carvalho, Douglas Scotá, Angelo Coffler, Mateus Fazolo, Vagner Machado Roberto, Wallace Neves de Oliveira, Olair José dos Santos Júnior, Rodrigo Aguilar Lima, Derlivaldo Figueiredo Ferreira, Frankieli de Avelar, Frantiesco da Silva Passos, Elton Lopes Bonfim, Jovaci Ferreira Pinheiro, Bruna Prando Boone Dadalto.

14. The SEJUS/ES Internal Affairs Office, through a dispatch, recommended opening the PAD proceedings against these authorities and prison agents, except for Olair José dos Santos Júnior and Bruna Prando Boone Dadalto, former employees. This decision was accepted by the SEJUS Secretary. The PAD was assigned to the First Processing Commission of the SEJUS/ES Internal Affairs Office, which took the statement of the petitioner, Necilda Simoura Belz. On November 11, 2016, the commission closed the procedural investigation and promoted the indictment of agents Alexandre Magno Amaral Ferreira, Mário Giurizatto, Guilherme Comércio Carvalho, and Douglas Scotá. The commission requested the dismissal of the proceedings in relation to the other employees and former employees due to a lack of minimum evidentiary elements that could indicate the occurrence of an administrative offense or participation in the events that culminated in Wesley's injuries and death.

15. In the final report, the commission recommended: i) applying the penalty of dismissal to employee Guilherme Comércio Carvalho for falsifying a document and for not diligently and dedicatedly performing the duties of his position; ii) dismissal from the commissioned position combined with a fifteen-day suspension for employees Alexandre Magno Amaral Ferreira and Mário Giurizatto for not diligently and dedicatedly performing the duties of their positions; iii) a twenty-day suspension for employee Douglas Scotá for the same reason. The SEJUS/ES Internal Affairs Office accepted the commission's conclusion and forwarded the case to the Secretary of Justice for a final decision. The Secretary decided to apply the penalty of a ten-day suspension to Alexandre Magno Amaral Ferreira and Mário Giurizatto, and a fifteen-day suspension to Guilherme Comércio Carvalho and Douglas Scotá. The sanction was formalized through Ordinance No. 466-S of April 12, 2017.

16. The Secretary of Justice pointed out that the procedural investigation did not show that the event that culminated in the death of Wesley Belz Guidoni was actually a homicide as a result of mistreatment or beatings perpetrated by SEJUS employees. Nor is there irrefutable and conclusive proof that the injuries described in the autopsy report were caused by mistreatment or beatings. For this reason, he did not apply the penalty of dismissal.

17. The State alleges that the public administration of the state of Espírito Santo did not remain silent in the face of an extremely serious event. All actions within the reach of public power were carried out within an administrative procedure guided by the guarantees of adversarial proceedings and full defense, with the aim of clarifying the context in which the inmate's death occurred. Due to evidentiary limitations, and not due to administrative negligence, it was not possible to establish the participation of public servants in acts of torture or beatings allegedly perpetrated against the inmate.

*The Police Investigation*

18. The State reports that on January 14, 2015, the Civil Police of the State of Espírito Santo initiated a police investigation to investigate the circumstances of Wesley Belz Guidoni's death at the Santa Fé CDP.

19. On May 28, 2015, the Civil Police concluded the investigation. According to the respective police report, i) the medical examiner indicated that Wesley Belz Guidoni entered the Provisional Detention Center on January 10, 2015, without bodily injuries of a violent nature, except for minor wounds caused by the use of handcuffs; ii) upon entering the CDP, Guidoni was received by Inspector and Shift Supervisor Guilherme Comércio Carvalho and agents Frantiesco da Silva Passos and Jovaci Pinheiro, who initially placed him in a collective cell in the Triage Gallery; iii) when his state of agitation worsened, he was transferred to cell TR 204, where he remained alone until he was found lifeless on January 14.

20. The investigation notes that after Wesley's death, the directors of the CDP, Alexandra Magno Amaral Ferreira and Mario Giurizatto, attempted to obstruct the investigation. They sent to the Civil Police, through Official Letter 12/15, a document with handwritten alterations by Guilherme Comércio Carvalho, in which it was stated that Guidoni had arrived at the unit with injuries to his feet, wrists, and body. However, agents Frantiesco da Silva and Jovaci Pinheiro declared that Wesley entered the CDP without any bodily injury. Likewise, the medical record from the Silvio Avido Hospital, obtained after his treatment on January 12, 2015, confirmed the absence of injuries.

21. The investigation also indicates, based on the daily reports from the shifts of January 13 and 14, 2015, and the statements of the CDP directors, that internal reports were falsified to hinder the investigation of the death. The argument that Wesley self-harmed is considered inconsistent, given that, if it had occurred, the agents and the CDP management would have had the duty to refer him to the Legal Medical Section for an evaluation.

22. Additionally, the investigation points out that during his stay at the CDP, Wesley was repeatedly subjected to "Immobilization Procedures or Techniques with Martial Arts moves," including the "Mata Leão" (Rear Naked Choke) or "Choke Hold," which could have caused fractures in his neck. The investigation suggests that Wesley was beaten and tortured to death in his cell, with the participation of agents Olair José dos Santos Júnior, Wallace Neves de Oliveira, Guilherme Comércio Carvalho, Frantiesco da Silva Passos, Rodrigo Aguilar Lima, Jovaci Ferreira Pinheiro, Derlivaldo Figueiredo Ferreira, and Frankieli de Avelar, who were seeking to "contain the agitations" of an inmate who clearly needed specialized medical attention. It highlights that Wesley was found dead in his cell at 6:00 AM on January 14, 2015.

23. On the shift of the gallery where Wesley Belz Guidoni's cell was located, the agents assigned on January 13 were Olair José dos Santos Júnior and Derlivaldo Figueiredo Ferreira. From 9:00 PM on January 13 to 6:00 AM on January 14, 2015, surveillance was covered by Samuel Godoi, Mauro Sergio Souza Silva, Sandro Barros Gomes, and again Samuel Godoi. Guilherme Comércio Carvalho supervised the shift and coordinated activities. Furthermore, the CDP recordings showed the presence of agents Iuri Franco Valandro and Wallace Neves de Oliveira.

24. In response to the excuses of the CDP directors about the malfunction of the security cameras in the gallery of the events, the CDP systems analyst, Jonathan Pimenta Ferreira, stated that the cameras were operational and that he delivered eight DVD discs to the directors, although only four were sent to the Civil Police.

25. Agents and inmates of the CDP confirmed that Wesley entered in a state of agitation, disturbing the tranquility of the CDP and uttering offenses. Upon being transferred to cell TR 204, where he remained alone, he shouted for help, saying, "Don't hit me, you can't hit me." During January



13, witnesses heard noises, screams, and complaints while Guidoni was subjected to several immobilization procedures.

26. According to obtained images, Wesley was transferred to the infirmary at 4:08 PM on January 13, taken in a wheelchair and tied with strips of bedsheet by agents Guilherme Comércio Carvalho, Frantiesco da Silva Passos, and Rodrigo Aguilar. He remained there until 7:32 PM, under the care of nurse Bruna Prando Boone, who medicated him and then left him on a stretcher. Upon returning to his cell, the images show that Wesley no longer showed signs of life. The investigation highlights the negligent conduct of Bruna Prando Boone, who did not request help or arrange for his transfer to the Emergency Room. It also notes the desperation of the agents who took him back to the cell, showing unusual restlessness.

27. Upon discovering Wesley's body on January 14, the Integrated Operational Center for Social Defense was not informed, obstructing the initial investigations. According to testimonies, the cell was breached before the arrival of the forensic experts, finding Wesley in the same position in which he had been left after his return from the infirmary. Statements from CDP inmates attest that Wesley was tortured and beaten to death. They identified Wallace Neves de Oliveira, Olair José dos Santos Júnior, Derlivaldo Figueiredo Ferreira, and Frankieli de Avelar as members of the aggressor group. The inmates also reported intimidation and threats for collaborating with the investigation, especially from Wallace Neves de Oliveira. The police investigation report also includes excerpts from statements that demonstrate Wesley's progressive physical deterioration during his stay at the CDP and notes that Guilherme Comércio practiced jiu-jitsu.

28. Based on all these elements, the Civil Police investigation concluded the possible responsibility of the prison agents for the crimes of torture resulting in death and ideological falsehood.

#### *The Main and Secondary Criminal Proceedings*

29. After receiving the police investigation report in case 0002233-07.2015.8.08.0014, the Public Prosecutor's Office of the state of Espírito Santo (MPES), in its role as the holder of public criminal action, requested further proceedings, considering the evidence insufficient to file the criminal action. Likewise, it requested the rejection of the request for preventive detention of the accused presented by the police authority. On June 23, 2015, the First Criminal Court ("Primeira Vara Criminal") of Colatina denied the request for preventive detention and accepted the MPES's request to carry out further investigative proceedings.

30. Simultaneously, on March 14, 2016, Wesley's mother, assisted by the Public Defender's Office of the state of Espírito Santo (DPES), filed a criminal complaint or private criminal action subsidiary to the public one (case 0004963-54.2016.8.08.0014), accompanied by a full copy of the police investigation file. The complaint was directed against prison agents Alexandre Magno Amaral Ferreira, Mário Giurizzato, Olair José dos Santos Júnior, Wallace Neves de Oliveira, Derlivaldo Figueiredo Ferreira, Frankieli de Avelar, and Guilherme Comércio Carvalho, charging them with crimes such as torture resulting in death and ideological falsehood. The 3rd Criminal Court ("3ª Vara Criminal") of Colatina dismissed the complaint on May 3, 2016, arguing that there was no inertia or negligence on the part of the MPES, since the requested proceedings were within its functional autonomy. Necilda and the DPES filed a strict sense appeal on May 20, 2016, which was denied at first instance on July 19, 2016. The Court of Justice of the State of Espírito Santo (TJES) heard the appeal but denied it unanimously. Subsequently, the DPES filed a motion for clarification, which was also rejected. They then filed a special appeal that was not admitted by the Vice-President of the TJES, and upon filing an appeal to the Superior Court of Justice, it was also denied. The decision became final on February 4, 2019.



31. In the main criminal case before the 1st Criminal Court of Colatina (case 0004963-54.2016.8.08.0014), the MPES requested an extension to form its "opinio delicti," which was denied on November 21, 2016. Notified of the decision, the MPES filed an indictment on December 16, 2016, against seven individuals: Alexandre Magno Amaral Ferreira, Mário Giurizatto, Guilherme Carvalho Comério, Olair José dos Santos Júnior, Wallace Neves de Oliveira, Derlivaldo Figueiredo Ferreira; and Frankieli de Avelar. They were charged with the crime of bodily injury resulting in death, with the first three being accused under the modality of improper omission. The other facts and the other investigated individuals were dismissed due to a lack of sufficient elements to support the accusation.

32. On January 16, 2017, the court analyzed the indictment and decided to admit it with respect to Olair José dos Santos Júnior, Wallace Neves de Oliveira, Derlivaldo Figueiredo Ferreira, and Frankieli de Avelar. However, it rejected it in relation to Alexandre Magno Amaral Ferreira, Mário Giurizatto, and Guilherme Carvalho Comério, citing the lack of sufficient evidence and an adequate description of their conduct.

33. Necilda Simoura Belz requested to be admitted as an assistant to the prosecution, and on January 26, 2017, she filed a strict sense appeal against the partial rejection of the indictment, seeking its acceptance also against Alexandre and Mário. The judge upheld his decision at first instance on June 8, 2017; however, the TJES ruled the appeal admissible on October 25, 2017, by a majority vote, and ordered the admission of the indictment against Alexandre and Mário. The defense of the accused filed a writ of habeas corpus before the STJ (HC 430317/ES). The STJ granted the order to annul the TJES decision and reinstate the first instance ruling that had rejected the indictment against Alexandre and Mário. As a result, the procedural acts carried out in relation to the latter were declared null and their exclusion from the process was ordered on September 21, 2018.

34. The State indicates that the process continued with respect to the other defendants. Hearings were held, but delays arose due to difficulties in locating witnesses, and later due to restrictions imposed by the COVID-19 pandemic. According to the latest information provided by the State in March 2021, the process is still ongoing, with pending hearings for the testimony of witnesses and the questioning of the defendants. The judicial authorities have stated that there have been no unjustified delays and that all procedural guarantees and international human rights treaties to which Brazil is a party are being observed.

#### *Civil Reparation Actions*

35. The State also indicates that Eduarda Altoé Guidoni, Wesley's daughter, filed a lawsuit against the state of Espírito Santo (No. 0000837-92.2015.8.08.0014) and obtained compensation for moral and material damages (monthly pension). It also points out that this process is in the execution phase.

36. The State reports that Necilda Simoura Belz also filed a lawsuit for damages (No. 0023157-05.2016.8.08.0014) against the State, which was partially successful. The State appealed, and the process is proceeding regularly.

#### *State's Conclusions*

37. The State affirms that it did not fail in its duty to investigate and prosecute the alleged perpetrators of the events that resulted in the death of Wesley Belz Guidoni. It argues that the criminal process is proceeding regularly and that the state instances are complying with constitutional and legal dictates, respecting the rights of the accused, the victim, and their relatives, and following all international human rights treaties, especially the American Convention on Human Rights.

38. The State maintains that, at the time the complaint was filed with the IACHR on April 1, 2015, the disciplinary administrative process and the police investigation had already been initiated (01/19/2015), and that both were proceeding regularly. The administrative process resulted in the

aforementioned sanctions, and the police investigation led to a criminal action that is still ongoing in the state courts, under due process of law.

39. The State alleges that it is up to the petitioning party to demonstrate that it has exhausted domestic remedies before resorting to the international system. It further claims that the petitioner has not exhausted domestic remedies and that the exceptions to the exhaustion requirement do not apply to the case. It argues that there is no unjustified delay in the decision on the remedies, and that the petitioner has had access to domestic jurisdiction. Therefore, it concludes that the IACHR should declare the petition inadmissible for failure to exhaust domestic remedies.

40. The State also argues that the Inter-American system is subsidiary and complementary to the domestic system. The IACHR cannot act as a "fourth instance" reviewing national decisions, unless rights protected by the ACHR have been violated. It maintains that the national authorities have provided adequate and effective remedies for the protection of human rights and that, therefore, the IACHR is incompetent *ratione materiae* to hear the case. Therefore, it considers that the IACHR should recognize its incompetence and declare the petition inadmissible.

## **VI. ANALYSIS OF THE EXHAUSTION OF DOMESTIC REMEDIES AND TIMELY SUBMISSION**

41. The petitioning party argues, in summary, that: i) given that the Public Prosecutor's Office did not request the removal of the accused from public office for Wesley's death, and considering that Wesley's relatives had no possibility of acting internally to reverse this omission, the exception of impossibility of adequate exhaustion of domestic remedies applies at this point; ii) except for the criminal action and the civil reparation action initiated by Ms. Necilda, in the other internal proceedings there is already *res judicata*; iii) regarding the criminal action, prior exhaustion of remedies is not required due to the unjustified delay and the participation of public officials with the power to destroy evidence and intimidate witnesses in the case; iv) in conclusion, the IACHR would be competent to hear the case, given the impossibility of access to justice by the petitioning party in the domestic jurisdiction.

42. For its part, the State maintains that: i) the petition should be inadmissible for lack of adequate proof of prior exhaustion of domestic remedies; ii) the exceptions to the rule of prior exhaustion do not apply, given that there is no unjustified delay in the processing of the relevant domestic remedies; iii) the remedies must have been exhausted at the time of filing the complaint with the IACHR, which did not occur in this case.

43. The Commission recalls that, in accordance with its consistent practice, "the analysis of the requirements set forth in Articles 46 and 47 of the Convention must be made in light of the situation in effect at the time it rules on the admissibility or inadmissibility of the complaint."<sup>6</sup> The Commission also notes that, in situations involving crimes against life and integrity, the domestic remedies to be exhausted are those related to the criminal investigation and the punishment of those responsible<sup>7</sup>. Likewise, it recalls that, in situations involving allegations of illegal detention and torture, actions or remedies of the civil jurisdiction are not decisive for the analysis of the exhaustion of domestic remedies<sup>8</sup>.

<sup>6</sup> IACHR. Report No. 15/15. Admissibility. Petition 374-05. Workers of the Union of Workers of the National Federation of Coffee Growers of Colombia. Colombia. March 24, 2015, para. 39. See also I/A Court H.R. Case of Wong Ho Wing v. Peru. Judgment of June 30, 2015 (Preliminary Objection, Merits, Reparations and Costs). Series C No. 297, para. 25.

<sup>7</sup> IACHR, Report No. 70/20. Petition 2326-12. Admissibility. Jonatan Souza Azevedo. Brazil. March 12, 2020, para. 11; IACHR, Report No. 72/18, Petition 1131-08. Admissibility. Moisés de Jesús Hernández Pinto and family. Guatemala. June 20, 2018, para. 10.

<sup>8</sup> IACHR, Report No. 70/20. Petition 2326-12. Admissibility. Jonatan Souza Azevedo. Brazil. March 12, 2020, para. 11; IACHR, Report No. 105/17, Petition 798-07. Admissibility. David Valderrama Opazo and others. Chile. September 7, 2017, para. 11.

44. According to the information provided by the petitioning party and the State, after Wesley's detention on January 9, 2015, and his death on January 14, 2015: i) on the same day, January 14, 2015, the Civil Police initiated the criminal investigation; ii) on May 28, 2015, the Police concluded the investigation, pointing out, *prima facie*, the criminal responsibility of several police officers in the assault and death of Wesley; iii) the Public Prosecutor's Office filed the formal criminal complaint against the alleged perpetrators on December 16, 2016; and iv) as of the date of this report, the criminal proceedings are still ongoing without a final judgment having been issued.

45. The IACHR notes that more than nine years have elapsed since the death of Wesley Belz Guidoni without a final resolution having been reached in the criminal proceedings. It also notes that the criminal action was initiated late and has faced delays throughout its processing. Some of these delays appear to have a legitimate justification, such as the difficulties caused by the Covid-19 pandemic; however, this is not sufficient to explain the entire period of more than nine years without the criminal proceedings even reaching a first instance decision. In this context, the IACHR considers that the delays in the criminal proceedings and the lack of a final resolution constitute an unwarranted delay. Therefore, the exception to the exhaustion of domestic remedies established in Article 46.2.c) of the American Convention is applicable.

46. Regarding the reasonableness of the period in which this petition was filed, in accordance with Article 32.2 of its Rules of Procedure, the IACHR concludes that it meets this requirement, since the initial events occurred in January 2015; the petition was filed in April 2015; and the effects of the alleged violations in terms of the alleged impunity would remain to date.

## **VII. CHARACTERIZATION OF THE ALLEGED FACTS**

47. The IACHR notes that the main object of the case refers to the complaint that Wesley Belz Guidoni was unnecessarily detained and, during his detention, temporarily held incommunicado and subjected to torture that resulted in his death. According to the complaint, these facts have not been sufficiently sanctioned or redressed to date.

48. The facts alleged by the petitioning party are extremely serious, involving alleged torture and death of Wesley Belz Guidoni while he was in state custody, as well as the alleged impunity and lack of effective reparation by the State. The petitioning party describes the multiple injuries on Wesley Belz Guidoni's body, including bruises, fractures, and strangulation marks. The discrepancy between the observed injuries and the explanation offered by the CDP authorities, together with the allegations of obstruction of justice and the possible falsification of documents, raise serious doubts about the State's version. The petitioner also alleges the existence of an arbitrary detention based on a false criminal record, incommunicado detention from his family during his confinement, and the lack of adequate medical attention despite his pre-existing health condition. Likewise, the length of the criminal proceedings, the exclusion of some individuals possibly responsible for the events, and the reclassification of the charged offenses could imply breaches of the State's obligations to investigate with due diligence, prosecute, and punish all those responsible for human rights violations, especially in cases involving torture and arbitrary deprivation of life.

49. In view of these considerations and after examining the elements of fact and law presented by the parties, the Commission considers that the allegations of the petitioning party are not manifestly unfounded and require an examination on the merits, since the alleged facts, if proven to be true, could constitute violations, fundamentally, of Articles 4 (life), 5 (personal integrity), 7 (personal liberty), 8 (judicial guarantees), and 25 (judicial protection), in connection with Article 1.1 (obligation to respect rights), and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

50. With respect to the State's argument of the "fourth instance formula," the Commission emphasizes the complementary nature of the Inter-American system and points out that, as indicated by the Inter-American Court, for a "fourth instance" exception to proceed, it would be necessary that

"it is sought that [...] [the Court] review the judgment of a domestic court by virtue of its incorrect assessment of the evidence, the facts, or domestic law, without, at the same time, alleging that such judgment incurred in a violation of international treaties."<sup>9</sup> In the present case, the Commission considers that, as indicated by the Inter-American Court, "[it] is competent to verify whether in the steps actually taken at the domestic level, international obligations of the State derived from the Inter-American instruments that grant it competence were violated or not."<sup>10</sup> Likewise, it is up to the Commission to examine "whether the actions of judicial bodies constitute or not a violation of the international obligations of the State, [which] may lead to [...] having to examine the respective domestic proceedings to establish their compatibility with the American Convention."<sup>11</sup> In this sense, the analysis of whether the State incurred in violations of the American Convention is a matter that must be decided on the merits of the present matter.

## VIII. DECISION

1. To declare the present petition admissible in relation to Articles 4, 5, 7, 8, and 25 of the American Convention in connection with Article 1.1; and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture;

2. To notify the parties of this decision; to continue with the analysis of the merits of the case; 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 3rd day of the month of March, 2025. (Signed:) Arif Bulkan, Second Vice President; Roberta Clarke, Carlos Bernal Pulido and Gloria Monique de Mees, Commissioners.

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<sup>9</sup> I/A Court H.R. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, para. 18.

<sup>10</sup> I/A Court H.R. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, para. 19.

<sup>11</sup> I/A Court H.R. Case of Palma Mendoza et al. v. Ecuador. Preliminary Objection and Merits. Judgment of September 3, 2012. Series C No. 247, para. 18; I/A Court H.R. Case of Rosadio Villavicencio v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of October 14, 2019. Series C No. 388, para. 24; I/A Court H.R. Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, para. 19.