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REPORT No. 94/24
PETITION 170-17
REPORT ON ADMISSIBILITY

ALAN RAÍ REHBEIM DE OLIVEIRA ET AL.
BRAZIL

Approved by the Commission electronically on June 19, 2024.

Cite as: IACHR, Report No. 94/24, Petition 170-17. Admissibility.
Alan Raí Rehbeim de Oliveira et al. Brazil. June 19, 2024.

I. INFORMATION ABOUT THE PETITION

Petitioners:	Association of Families of Victims and Survivors of the Santa Maria Tragedy (AVTSM), Instituto Juntos, Regional Council of Engineering and Agronomy (CREA), Regional Council of Psychology (CRP), Regional Council of Social Service (CRESS), Brazilian Institute of Architects (IAB), and Engineers Union of Rio Grande do Sul (SENGE)
Alleged victim:	Alan Raí Rehbeim de Oliveira and others ¹
Respondent State:	Brazil
Rights invoked:	Articles 4 (right to life), 5 (right to personal integrity), 7 (right to personal liberty), 8 (right to judicial guarantees), 13 (right to freedom of thought and expression), 16 (right to freedom of association), 17 (right to protection of the family), and 25 (right to judicial protection) of the American Convention on Human Rights, in relation to Articles 1.1 (obligation to respect and guarantee rights) and 2 (duty to adopt provisions of domestic law)

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	February 3, 2017
Additional information received at the stage of initial review:	February 21, 2017, March 29, 2017, May 25, 2017, July 3, 2019, August 27, 2020, April 20, 2021, and December 27, 2021
Notification of the petition to the State:	February 11, 2022
Request for extension:	May 10, 2022
State's first response:	June 10, 2022

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention on Human Rights ³ (instrument adopted 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	Articles 4 (right to life), 5 (right to personal integrity), 8 (right to judicial guarantees), and 25 (right to judicial protection) of the American Convention, in relation to Article 1.1 (obligation to respect rights)

¹ The victims named by the petitioner so far are listed in Annex I.

² The observations submitted by each party were duly transmitted to the opposing party.

³ Hereinafter "American Convention" or "the Convention." On June 13, 2022, the Attorney General of the State of Rio Grande do Sul submitted a communication as Amicus Curiae, which was forwarded to the parties on September 23, 2022. On September 30, 2022, the petitioner requested the IACHR to disregard the communication in question. On January 20, 2023, the Brazilian State made the same request to the IACHR. The Inter-American Commission decided, in accordance with the request of both parties, to disregard the communication from the Attorney General of the State of Rio Grande do Sul, which is why it does not form part of the record of the present petition.

Exhaustion of domestic remedies or applicability of an exception to the rule:	Partially exhausted domestic judicial remedies; and partial application of the exception provided in Article 46.2.c) of the American Convention
Timeliness of the petition:	Yes, according to Section VI

V. THE PARTIES' POSITIONS

Petitioner's position

1. The petitioner alleges that the State is responsible for the deaths and injuries resulting from the fire at the Kiss Nightclub, due to the failure to adopt necessary measures to prevent the incident, as well as delays in internal processes, impunity, and lack of civil compensation for the damages caused.

The Fire and the Treatment Given to Fatal Victims and Survivors

2. On January 27, 2013, at around 2:30 AM, a fire at the Kiss Nightclub killed 242 people by asphyxiation and injured at least 636 survivors. The nightclub was hosting a university party called "Agromerados" (a pun with the word "aglomerado", meaning "crowded" or "packed") and was overcrowded: there were between one thousand and one thousand five hundred people in the venue, according to police testimonies, whereas its maximum capacity was 691 people.

3. The fire started after the use of pyrotechnic devices, which were prohibited in enclosed spaces, by members of the band Gurizada Fandangueira during their performance on stage. The device was lit by the band's promoter. The lead singer then directed it towards the ceiling. When the fireworks reached the polyurethane foam lining the ceiling, it caught fire.

4. At the time of the fire, people tried to leave the venue in a panic. However, the security guards at the entrance tried to keep the doors closed as they had orders from the owners not to allow anyone to leave without paying their bill. The staff had no training on how to act in emergencies. Neither the staff, the band members, nor the club owners provided instructions on how to proceed. At least one fire extinguisher did not work when handled by a security guard and the band's lead singer. There were no emergency lights or illuminated exit routes. Darkness soon enveloped the venue.

5. The nightclub had only one access point, a main door that served as both entry and exit, which did not allow for the rapid evacuation needed in an emergency. The nightclub also lacked clear evacuation routes and resembled a maze of narrow corridors lined with barriers and internal walls. People trying to escape encountered various physical obstacles, such as metal bars that created a containment near the entrance, as well as steps, poor emergency lighting, and lack of emergency exit signage. The exterior facade of the nightclub was covered in wood, which prevented people from escaping through the bathroom windows. As they encountered obstacles, victims who fell were unable to get up. Piles of dead bodies formed in the bathrooms, in the narrow corridors of the nightclub, and around the metal bars blocking the exit. The petitioner claims that the victims died under cruel, inhuman, and degrading conditions, suffocated, trampled, falling on top of each other.

6. The firefighters did not have sufficient protective equipment to enter the nightclub and effectively rescue the victims. The bodies of the fatal victims were taken to the Municipal Sports Center. Lined up, they awaited identification by family and friends. Once identified and released to the families, the bodies were moved to another area of the gymnasium where, in improvised vestibules with ropes and black tarps, families undressed, dressed, and prepared their deceased loved ones in coffins. A collective wake was held overnight at the Municipal Sports Center. The bodies were identified by the General Institute of Forensics and the Civil Police on the same day as the fire, recognized and released to the families. The General Institute of Forensics collected material and conducted subsequent analyses, including DNA testing, on the bodies of the fatal victims. Regarding the fatal victims from other localities, many of whom were from other states and even

other countries, the petitioner denounces that the Brazilian state provided no assistance with the funeral and transportation of the bodies to their locations of origin.

7. The injured victims were treated in hospitals in Santa Maria, and those in serious condition were transferred to hospitals in the cities of Porto Alegre and Canoas. Two days after the fire, 126 people were still hospitalized, of which seventy-four were in serious condition. Among the hospitalized, six more people died.

Irregularities in the Operation of Kiss Nightclub

8. The petitioner presents extensive detailed information about various irregularities at Kiss Nightclub known to the State. The table below organizes the information in question:

IRREGULARITY	DESCRIPTION
Irregular Works and Unfulfilled Embargo	The building of the Kiss Nightclub underwent unauthorized construction in 2009. The irregularity was reported and formally embargoed by the city council, but the embargo was never enforced, and the nightclub was inaugurated on July 31, 2009.
Non-compliance with Order to Modify the Building for Safety	Between August 2009 and February 2010, the company deliberated with the city council about the building. The city council indicated twenty-nine necessary modifications to the building, including two emergency exits. The adjustments were not made, and even so, the city council did not embargo the activities.
Late and Irregular Issuance of the Location Permit; Operation without Permit	Between July 2009 and March 2010, the Kiss Nightclub operated without a location permit, even after the city council inspected the site, issued three infraction notices, one (unfulfilled) order to embargo activities, and three notifications with low-value fines. On March 14, 2010, the nightclub obtained the location permit irregularly, as it had not obtained the necessary sanitary permit.
Late and Irregular Issuance of the Sanitary Permit; Operation without Permit	The sanitary permit was requested only in December 2009 and issued retroactively in January 2010 without inspection. It was renewed in 2011, expired in 2012, and the renewal was denied. On the day of the fire, the nightclub did not have a valid sanitary permit.
Irregular Renewal of the Location Permit	The location permit issued in March 2010 was irregularly renewed in 2011 and 2012, without the sanitary and fire prevention permits, and without the required Technical Responsibility Annotation.
Operation without Environmental Operation License	Kiss Nightclub only obtained the environmental operation license on March 3, 2010, eight months after its inauguration when it should have obtained it before starting its activities.
Irregular Renewals of the Environmental Operation License	During the renewals of the environmental operation license, the inspection bulletins of February 11, 2011, and April 19, 2012, did not contain the legally required Technical Responsibility Annotation. The last license, issued on April 27, 2012, was valid when the fire occurred and was also renewed without the proper Technical Responsibility Annotation.
Late and Irregular Issuance of the Fire Prevention, Protection, and Combat Permit; Operation without Valid Permit	<p>The fire prevention permit was issued 28 days after the nightclub's inauguration, using an automated analysis system that dispensed with the need for a technical responsible party. This system, however, was not authorized for bars, nightclubs, and similar establishments.</p> <p>On April 11, 2011, the firefighters inspected the nightclub and noted irregularities in the fire extinguishers, emergency lighting, emergency exits, and gas hoses, indicating the need for two emergency exits. Despite this, on August 11, 2011, a new firefighter inspection resulted in the renewal of the permit without the corrections being made.</p> <p>On October 17, 2012, the firefighters notified the expiration of the second permit. On November 7, 2012, the nightclub owners requested the inspection for renewal. The fire occurred on January 27, 2013, without the inspection having been carried out. The nightclub was operating without a valid fire prevention permit.</p>

Police investigations

9. The Civil Police of Rio Grande do Sul launched Police Inquiry No. 94/2013/150501 to investigate the causes of the fire. During fifty-five days of investigation, the police gathered extensive

documentary and testimonial evidence, including eight hundred and ten depositions, resulting in an Inquiry with thirteen thousand pages that supported the conclusions of the Final Report adopted on March 22, 2013. At the end of the investigations, the Civil Police:

- i) criminally indicted nine people linked to Kiss Nightclub and the band 241 times for qualified manslaughter (by asphyxiation) and 623 times for bodily injury of a culpable nature: Marcelo de Jesus dos Santos (vocalist of the band, directed the firework towards the ceiling, where the fire started), Luciano Augusto Bonilha Leão (band producer, bought the firework not indicated for indoor use, activated it, and handed it to the vocalist); Elissandro Callegaro Spohr (businessman and responsible for the operation of Kiss Nightclub), Mauro Londero Hoffman (businessman in the nightlife sector and one of the owners of Kiss Nightclub); Ricardo de Castro Pasche (night manager of Kiss responsible for hiring the company Hidramix to install the containment bars at the nightclub entrance); Ângela Aurelia Callegaro (Elissandro's sister and one of the nightclub's partners, participated in management); Marlene Teresinha Callegaro (Elissandro's mother and one of the nightclub's partners, also participated in management); Gilson Martins Dias (firefighter, participated in the last inspection at Kiss in 2011 and approved the issuance of the Fire Prevention, Promotion, and Combat Permit despite finding irregularities); Vagner Guimarães Coelho (firefighter, also participated in the 2011 inspection and approved the issuance of the permit);*
- ii) criminally indicted four public agents of the Santa Maria City Council 241 times for qualified manslaughter (by asphyxiation): Miguel Caetano Passini (Secretary of Control and Urban Mobility since 2012); Luiz Alberto Carvalho Júnior (Secretary of the Environment), Beloyannes Orengo de Pietro Júnior (Superintendent of Inspection since 2011) and Marcus Vinicius Bittencourt Biermann (Head of the Furniture and Property Registration Team);*
- iii) indicted criminally for procedural fraud the firefighters Gerson da Rosa Pereira, Renan Severo Berleza, and Elton Cristiano Uroda.*

10. Additionally, considering that it does not have the authority to investigate military crimes, the Civil Police informed the competent authorities of the existence of evidence of authorship and materiality of at least five cases of culpable homicide to which the firefighters Moisés da Silva Fuchs, Alex da Rocha Camillo, Robson Viegas Müller, and Sérgio Rogerio Chaves Gulart contributed with their conduct. Considering the mayor's privileged forum, it forwarded copies of the records to the 4th Criminal Chamber of the Court of Justice of the State of Rio Grande do Sul (TJRS), informing that "there are indications that the mayor's conduct contributed to the death of 241 people," as well as to the Parliamentary Inquiry Commission established in the Santa Maria City Council to investigate the mayor's possible responsibility. Furthermore, finding indications of administrative improbity by municipal and state public agents, it forwarded copies of the records to the Public Prosecutor's Office, the Court of Justice of Rio Grande do Sul, and the Military Justice for being the competent bodies to investigate the responsibility of these agents.

11. The petitioner also refers to a second police investigation, Inquiry No. 001/2013/3rd DPR, concerning the establishment, changes, and licenses of Kiss Nightclub. The origin of the investigation lies in an anonymous complaint on April 3, 2013, reporting possible irregularities in the Neighborhood Impact Study (EIV) conducted for the operation of Kiss Nightclub. The Popular Consultation to instruct the EIV would have been conducted irregularly with residents living more than a hundred meters from the nightclub. The investigation covered all documentation related to the emergence of Kiss Nightclub and its associated company, Santo Entretenimento Ltda., from the social contract to the documents necessary for its operation and authorization before public agencies. The final inquiry, concluded in July 2014, totaled nearly four thousand pages and eighteen volumes and resulted in the indictment of eighteen people (Tiago Flores Mutti, Santiago Mugica Mutti, Cintia Flores Mutti, Alexandre Silva da Costa, Eliseu Jorge Spohr, Elton Cristiano Uroda, Elissandro Callegaro Spohr, Marlene Terezinha Callegaro, Ângela Aurélio Callegaro, Mauro Londero Hoffman, Cristina Gorski Trevisan, Volmir Astor Panzer, Jackson Heitor Panzer, Luciane Flores Prestes, Elza Maria Prola, Marcos Vinicius Ramos Moraes, Carlos Alberto Souza Buzatti, and Luiz Alberto Carvalho Junior) for crimes allegedly committed between April 20, 2009, and January 27, 2013, related to the licensing and irregular operation of Kiss Nightclub.

Civil Inquiries Before and After the Fire

12. Years Before the Fire, on August 10, 2009, the Public Prosecutor's Office launched Civil Inquiry No. 00864.00145-2009 to "investigate noise pollution at Kiss Nightclub" following a neighbor's complaint. During the inquiry, measurements made by the Environmental Patrol of the Military Brigade pointed to non-compliance with noise legislation; the Public Prosecutor's Office was informed by the city council about irregularities regarding the environmental operation license; and the firefighters said that the irregularities related to fire issues had been resolved. Until October 31, 2010, the inquiry was coordinated by prosecutor João Marcos Adede e Castro, who was replaced by prosecutor Ricardo Lozza. On November 17, 2011, Kiss Nightclub was represented by lawyer Ricardo Luís Schultz e Castro, son of prosecutor João Marcos Adede e Castro. The lawyer negotiated with the Public Prosecutor's Office a Term of Conduct Adjustment (TAC) on November 22, 2011, through which Kiss Nightclub committed to adopting measures to avoid noise above permitted levels, with the possibility of interrupting the nightclub's activities during the necessary works. Subsequent events included the execution of services by engineer Samir Frazon until February 2012, requests for extension of the TAC due to the lack of an environmental operation license, and the determination of new measures by prosecutor Ricardo Lozza, including photographic surveys and noise measurements. The process remained pending conclusion until March 2013, when it was filed due to the irrelevance of the original investigation after the fire. The prosecutor issued a filing promotion, which was approved by the Superior Council of the Public Prosecutor's Office on April 30, 2013.

13. In November 2010, the Public Prosecutor's Office initiated Civil Inquiry No. 00864.00180/2010 to investigate the lack of inspection in bars and snack bars, focusing on Mayor Cesar Schirmer. The inquiry was motivated by reports from the Military Brigade about irregularities in municipal inspection. An inspection of Kiss Nightclub was requested on November 29, 2010, but conducted only eight months later, on July 25, 2011. The result was that the irregularities had been resolved. After the nightclub fire in February 2013, the civil inquiry was integrated into Administrative Procedure No. 00864.00027/2013, which addressed the safety and inspection policy for places such as bars and nightclubs in Santa Maria. However, on August 27, 2013, the Public Prosecutor's Office promoted the filing of all records, which was approved by the Superior Council of the Public Prosecutor's Office on September 3, 2013. — The petition does not provide information on the reasons for the filing. —

14. After the Kiss Nightclub fire, on January 30, 2013, the Public Prosecutor's Office launched Civil Inquiry No. 00864.00006/2013 to investigate possible acts of administrative improbity by municipal public agents regarding the Kiss Nightclub fire. The inquiry pointed out irregularities and administrative failures related to the works and operation of the nightclub without the required licenses and permits, such as the location permit. However, the inquiry concluded that there were no such acts after considering that the irregularities and administrative failures found could not be attributed to willful conduct by public agents. Therefore, the Public Prosecutor's Office promoted the filing of the inquiry.

15. In addition to the mentioned procedures, on February 1, 2013, the Public Prosecutor's Office launched investigative procedure PA.00864.00027/2013 to investigate the public safety and inspection policy for bars, nightclubs, theaters, and similar establishments in the Municipality of Santa Maria. On the cited date, the responsible prosecutor ordered the mayor to increase the inspection activity in establishments and events, public and private, of any nature where there is or may be an agglomeration of people. — The petition does not provide more information on this investigative procedure. —

16. After the conclusion of the main police inquiry on March 22, 2013, the Public Prosecutor's Office was prompted by the Association of Victims of the Santa Maria Tragedy to reassess the issue of possible acts of administrative improbity that had been the subject of the mentioned Civil Inquiry No. 00864.00006/2013. This led to the launch of a new inquiry, Civil Inquiry No. 00864.00031/2013, on July 15, 2013. In this record, the Public Prosecutor's Office considered that the lack of effective inspection by the municipality and the Fire Department was systematic. The petitioner claims this is a structural problem throughout the country, with recurrent fires in forests, residences, and various establishments (warehouses, hospitals, hotels, schools, public buildings, etc.). However, the Public Prosecutor's Office concluded that there were no acts of administrative improbity by municipal public agents regarding the Kiss Nightclub fire and

proceeded to file the records, mainly due to the lack of evidence of willful misconduct or deliberate intent by public agents to commit improbity. — The petitioner informs that the filing promotion was approved by the Superior Council of the Public Prosecutor's Office on April 30, 2013. However, the date is incongruent with the information, also provided by the petitioner, that the inquiry was opened on July 15, 2013. —

17. The petitioner indicates that, specifically in the case of the mayor, the Attorney General's Office, a second-instance body of the Public Prosecutor's Office that operates alongside the Court of Justice of the State of Rio Grande do Sul (TJRS), advocated for the filing, considering that there is no possibility of criminal liability for the conduct attributed to him, namely, demonstrating ignorance of the municipal bureaucracy responsible for inspecting and authorizing Kiss Nightclub. The TJRS promoted the filing without examining the merits, considering that it is not the judges' role to review or censor the Public Prosecutor's Office's decision due to a lack of probable cause for criminal prosecution.

Criminal Action for Homicide and Attempted Homicide

18. On April 2, 2013, the Public Prosecutor's Office initiated a criminal action: i) for the crimes of intentional homicide, the two co-owners of the nightclub, Elissandro Spohr and Mauro Hoffman, and the two members of the band Gurizada Fandangueira, Marcelo de Jesus dos Santos, and Luciano Augusto Bonilha Leão; ii) for procedural fraud, two firefighters, Major Gerson da Rosa Pereira and Sergeant Renan Severo Berleza, for falsifying documents related to Kiss Nightclub; iii) for perjury, Elton Cristiano Uroda (former partner of Kiss) and Volmir Astor Panzer (accountant of a company owned by the Spohr family). On the other hand, the Public Prosecutor's Office downgraded the indictment of firefighters Gilson Martins Dias and Vagner Guimarães Coelho (responsible for the nightclub's last inspection) from intentional homicide to culpable homicide, considering there was no intent to kill, and requested the filing of the case against the municipal public agents for lack of probable cause for criminal prosecution.

19. The petitioner denounces that the people formally listed as partners of the nightclub and who played an active role in managing the establishment alongside the defendants were not prosecuted, as would have been the case with Ângela Aurelia Callegaro and Marlene Teresinha Callegaro.

20. Elissandro Spohr, Mauro Hoffman, Luciano Bonilha de Leão, and Marcelo Jesus dos Santos were arrested in the days following the fire, but the court granted them provisional release in May 2013. On July 27, 2016, the four defendants were indicted by the judge of the case, allowing the case to proceed to trial by a jury.

Criminal Actions for Perjury, Procedural Fraud and Forgery of Signatures

21. The petitioner also presents a summary of criminal case No. 027/2130006199-2 on the irregularities in the establishment of the company Santo Entretenimento Ltda, the predecessor of Kiss Nightclub.

22. In 2009, Cíntia Mutti, Tiago Mutti, Alexandre Silva da Costa, Élton Uroda, Volmir Panzer, and Eliseo Jorge Spohr (Elissandro Spohr's father) formed this partnership to operate a nightclub, bar, and similar establishments in Santa Maria. However, Cíntia and Élton Cristiano acted as figurehead partners, meaning that although they were registered as owners, they were not the real owners. The true owners were other members of the group, including Tiago and Eliseo Jorge Spohr. Volmir, who knew the real situation, signed as a witness in the partnership's formation. In 2010, Tiago Mutti and Eliseo Jorge Spohr transferred the company's ownership to Elissandro Spohr using Cíntia and Élton Cristiano to mask the transfer. Subsequently, Elissandro included Ângela Aurélio Callegaro as another figurehead partner in the social contract. The Public Prosecutor's Office initiated the criminal case by filing a criminal complaint in 2013. This complaint was later revised to include perjury charges against Élton Uroda and Volmir Panzer, and involved nine other people, such as Elissandro Spohr and Mauro Hoffmann.

23. Additionally, two firefighters were criminally prosecuted for procedural fraud, giving rise to cases No. 07/2130006197-6 and No. 027/2.14.0000773-6. The defendants were accused of presenting documents to the police that were not part of the original Fire Prevention and Protection Plan for Kiss Nightclub. The major of the Fire Department, Gerson da Rosa Pereira, was sentenced to six months in detention for fraud in documents related to the police inquiry that investigated the causes of the fire at Kiss Nightclub, in a decision on October 27, 2015. The sentence was later converted to community service, and the defendant could appeal the sentence in freedom. As Pereira's defense appealed the sentence, the appeal was sent to the Court of Justice. The other defendant had his punishment extinguished by fulfilling all the conditions of the conditional suspension of the process.⁴

24. The Public Prosecutor's Office also initiated a process against thirty-four residents of the city of Santa Maria for forging signatures on a document that expressed support for the installation of the Kiss nightclub, related to the legally required Neighborhood Impact Study. The lawsuit was filed on January 30, 2015. The Public Prosecutor proposed conditional suspension of the process for twenty-four of the accused, of whom thirteen accepted. The judge then ordered the separation of the cases, causing the lawsuit to continue only against ten of the defendants.

Cases Concerning the Conduct of the Public Prosecutor's Office

25. On February 13, 2014, the legal representative of the AVTSM initiated a corrective representation against the actions of Prosecutors Maurício Trevisan and Joel Oliveira Dutra for filing the administrative improbity case against Mayor Cesar Schirmer before the National Corregedoria of the Public Prosecutor's Office. On July 17, 2014, the Corregedoria archived the case, justifying that there was no probable cause to hold the prosecutors accountable in the case.

26. Additionally, one of the owners of Kiss Nightclub, Elissandro Callegaro Spohr, charged with homicide, initiated an administrative procedure requesting actions before the Superior Council of the Public Prosecutor's Office and filed a crime report with the Court of Justice of Rio Grande do Sul, requesting an investigation into Prosecutor Ricardo Lozza's possible criminal responsibility regarding his conduct in the Civil Inquiry. The request for actions was archived by the Superior Council of the Public Prosecutor's Office on April 30, 2013. The crime report was archived by the Court of Justice, which accepted the opinion of the Attorney General of Justice.

27. The petitioner considers that the Public Prosecutor's Office should have initiated a criminal action against the municipal public agents directly and indirectly involved in the fire and emphasizes that none of them had their criminal responsibility judicially assessed.

Prosecutors' Cases Against Family Members and Representatives of Victims

28. The petitioner further informs that three fathers and one mother of young people who died in the fire, all of them AVTSM leaders, were criminally prosecuted for slander and defamation after publicly questioning the conduct of the prosecutors involved in the inquiries into the Kiss Nightclub fire (criminal cases No. 27/2.15.0012854-3, No. 027/2.15.0012855-1, and No. 027/1.15.0009961-9). Sérgio da Silva and Flávio José da Silva, respectively president and vice-president of the AVTSM, are accused by Prosecutor Ricardo Lozza due to posters suggesting prior knowledge of the Public Prosecutor's Office about irregularities at the nightclub. Paulo Tadeu Nunes de Carvalho, legal director of the association, faces legal actions for an article criticizing the filing of an administrative improbity case. Marta Beuren, treasurer of the association, is prosecuted for pointing out family ties between the case prosecutor and the nightclub's lawyer in a local newspaper. All were prosecuted for statements aimed at highlighting failures and possible collusions before and after the tragedy.

⁴ In Brazilian law, conditional suspension of the process allows the process to be suspended for two to four years if the defendant is a first-time offender and the crime carries a minimum sentence of up to one year. During this period, the defendant must comply with conditions set by the judge, such as not committing new crimes and fulfilling specific obligations. If all conditions are met by the end of the period, the process is extinguished, avoiding the defendant's criminal conviction; otherwise, the process can be resumed.

Petitioner's Conclusions

29. The petitioner argues that internal processes did not ascertain the responsibility of all state agents directly and indirectly involved in the fire, such as firefighters, city council employees, and the mayor of Santa Maria. The filing of the complaints against public agents by the Public Prosecutor's Office deprived the victims of the truth about the facts and compromised their right to access justice, blocking the possibility of exhausting any judicial remedies. The involved public agents were exonerated from responsibility at the preliminary investigation stage, without the initiation of judicial processes that would allow the production of evidence and a more in-depth analysis of the facts. The petitioner considers that in this context, the exception to the rule of prior exhaustion provided for in Article 46.2.b) of the American Convention should be applied.

30. Regarding the same issue, concerning the submission deadline, the petitioner claims, in summary: i) that, regarding the responsibility of these agents for crimes of homicide and attempted homicide, the filing of the criminal case against state agents was promoted by the Public Prosecutor's Office in March 2013, after the conclusion of the police inquiry; ii) that, regarding the responsibility of these agents for administrative improbity, also in 2013, the Public Prosecutor's Office concluded the filing of the civil inquiry without filing the respective civil public action; iii) and that the petitioner waited a reasonable period of time to allow state authorities to reassess their position. However, as the situation remained the same, it decided to denounce it to the IACHR on February 3, 2017.

31. Besides the considerations about public agents, considering the totality of the narrated facts, the petitioner claims violations of the rights: i) to life, in prejudice of the fatal victims of the fire; ii) to personal integrity, in prejudice of the fatal victims and survivors, as well as their families; iii) to personal liberty and security, in prejudice of the fatal victims and survivors; iv) to freedom of expression and thought and freedom of association, in prejudice of the human rights defenders and AVTSM leaders Sérgio da Silva, Flávio da Silva, Paulo Carvalho, and Marta Beuren; v) to family protection, in prejudice of the fatal victims and their families; vi) to judicial guarantees and protection, in prejudice of the fatal victims and survivors and their families. Consequently, it requests the Commission to recommend to the State the adoption of reparative measures it deems appropriate.

Brazilian State's Position

32. The Brazilian State presents a summary of what it considers to be the scope of the petition. In this sense, it indicates that the petition encompasses the alleged responsibility of the State regarding the Kiss Nightclub fire as a consequence of alleged acts of omission, negligence, and lack of application and enforcement of the law by the Municipality of Santa Maria, the Fire Department of Rio Grande do Sul, and the Public Prosecutor's Office of the State of Rio Grande do Sul. The allegations include that the municipality would have granted licenses irregularly and failed to exercise its police, inspection, and disciplinary power; the Fire Department would have been complicit in a situation contrary to municipal, state, and federal fire prevention norms; and the Public Prosecutor's Office would have failed to embargo the nightclub's operation and to file appropriate procedures against the nightclub's owners, the involved public agents, and the prosecutors themselves who allegedly failed in the pursuit against the culprits.

33. Furthermore, the State argues the IACHR's lack of *ratione personae* and *ratione materiae* competence regarding the following aspects of the petition.

34. Regarding *ratione personae* competence, the State argues that Article 44 of the Convention provides that any person or non-governmental entity may file a petition with the IACHR against a State Party. In this case, however, public law entities are among the petitioners, such as the Regional Council of Engineering and Agronomy, the Regional Council of Psychology, and the Regional Council of Social Work. The State requests the exclusion of these entities as petitioners and requests that the subsequent stages of processing, in the event the Commission considers the petition admissible, be limited to the private entities that make up the list of petitioners.

35. Regarding *ratione materiae* competence, the State argues that the petition results from the petitioners' dissatisfaction with the conclusions reached during the disciplinary proceedings concerning the performance of members of the Public Prosecutor's Office of the State of Rio Grande do Sul (MPRS). In this sense, it mentions that, according to Annex 57 of the initial petition, on February 13, 2014, Paulo Tadeu Nunes de Carvalho filed a complaint against prosecutors Maurício Trevisan and Joel Oliveira Dutra for the absence of administrative improbity charges against Mayor Cesar Schirmer before the National Corregedoria of the Public Prosecutor's Office (CNMP). The complaint was registered by the CNMP as Disciplinary Complaint No. 0.00.000.000274/2014-11, which later led to the initiation of Administrative Proceedings No. PR.00035.00192/2014-3 by the General Corregedoria of the MPRS. On July 17, 2014, after conducting a series of procedural instruction steps, the General Corregedoria decided that the mentioned prosecutors did not incur any disciplinary fault in conducting the investigations against the mayor. This is because, as determined by the correctional body, there was no omission in the investigation of the facts, and the motivations that justified the filing were fully reasonable. In light of the above, the State considers that, contrary to what the petitioners allege, the competent institutions performed their duties well. Furthermore, the State considers the petition inadmissible because it aims to have the IACHR function as a superior court to the decision of the General Corregedoria of the MPRS.

36. Additionally, the State presents information on internal processes and mentions that the same information is available on official pages about the case, voluntarily created and maintained by the Public Prosecutor's Office of the State of Rio Grande do Sul and the Court of Justice of the State of Rio Grande do Sul: <https://www.mprs.mp.br/hotsite/boatekiss/#!/timeline> and <https://www.tjrs.jus.br/novo/caso-kiss/>.

37. The internal process information presented by the State refers essentially to the police investigation; the main criminal case and other criminal cases; and individual and collective civil compensation processes. Additionally, the State presents its arguments on the possible inadmissibility of the petition.

The Investigation and Main Criminal Case

38. According to the State, the Civil Police of Rio Grande do Sul immediately launched Police Inquiry No. 94/2013/150501 to investigate the causes of the fire that occurred on January 27, 2013, at Kiss Nightclub, where the use of pyrotechnics by the band Gurizada Fandangueira caused the burning of acoustic foam on the ceiling, releasing toxic smoke and resulting in the death of 242 people and more than 600 injuries. After 55 days of investigation, generating approximately 13,000 pages of documents, the inquiry was concluded with the determination of criminal liability of 16 public and private agents. The inquiry was then forwarded to the competent authorities, including the Military Justice, the Court of Justice of Rio Grande do Sul, and the Public Prosecutor's Office for the investigation of possible crimes committed by agents subject to their respective competencies.

39. The day after the fire, on January 28, 2013, the 1st Criminal Court of Santa Maria ordered the temporary detention of the nightclub's owners, Elissandro Callegaro Spohr and Mauro Londero Hoffmann, as well as musicians Marcelo de Jesus dos Santos and Luciano Augusto Bonilha Leão, with the Public Prosecutor's Office's favorable opinion. On March 1, 2013, the temporary detention was converted into preventive detention.⁵ However, on May 29, 2013, the 1st Criminal Chamber of the Court of Justice of Rio Grande do Sul revoked the preventive detention in a habeas corpus appeal filed by Marcelo de Jesus dos Santos's defense. The Public Prosecutor's Office appealed the decision to the STJ and the Supreme Federal Court, in addition to requesting a precautionary measure from the Court of Justice of Rio Grande do Sul to suspend the release while the appeals were pending, and a suspension of the decision that released the defendants from the Supreme Federal Court. All appeals and precautionary measures were rejected by the higher courts, which found no grounds for preventive detention at that time.

⁵ In Brazilian law, temporary detention occurs during the police inquiry to facilitate investigations in serious crimes, with a duration of up to five days, extendable for an equal period. Preventive detention, on the other hand, can be decreed at any stage of the criminal process to ensure public order, criminal instruction, or the application of criminal law, and it remains in effect as long as the reasons for its decree persist.

40. Based on the conclusions reached by the police investigation, on April 2, 2013, the Public Prosecutor's Office filed Criminal Action No. 027/2130000696-7 against eight accused. The owners of Kiss Nightclub, Elissandro Callegaro Spohr and Mauro Londero Hoffmann, and the members of the band Gurizada Fandangueira, Marcelo de Jesus dos Santos, and Luciano Augusto Bonilha Leão, were charged with intentional homicides and attempted homicides committed with eventual intent, qualified by the use of fire, asphyxiation, and vileness. The two nightclub owners were considered responsible for the structural reforms in the nightclub, including the installation of the foam that intensified the fire, for overcrowding, and for hiring a pyrotechnic show without safety conditions. The band members were considered responsible for setting off fireworks in the nightclub's closed environment, near curtains, wood, and the mentioned foam. Firefighters Gerson da Rosa Pereira and Renan Severo Berleze, former nightclub partner Elton Cristiano Uroda, and Mr. Volmir Astor Panzer (employee of Elissandro Spohr's father, Eliseo Jorge Spohr) were charged with procedural fraud and perjury. On the other hand, the Public Prosecutor's Office concluded that there was no evidence that other public agents committed crimes of homicide or other crimes related to the fire. The Public Prosecutor's Office also requested the filing of the investigation in relation to other people indicted by the Civil Police for reasons such as lack of evidence, conduct unrelated to the fire, and characterization errors.

41. The Mayor of Santa Maria at the time, Mr. Cezar Schirmer, had been mentioned in the final report of the police inquiry as possibly responsible for omission by demonstrating ignorance of the municipal bureaucracy that inspects and authorizes establishments like Kiss Nightclub. However, the Public Prosecutor's Office considered that this was not enough for criminal liability, also taking into account, among other things, that the expiration of the fire prevention and protection permit for Kiss Nightclub, handled by the Fire Department, was not communicated to any municipal administrative body. Thus, the Public Prosecutor's Office recommended the filing of the investigation regarding the mayor. Before deciding on the filing, the 4th Criminal Chamber of the Court of Justice of Rio Grande do Sul (TJRS) forwarded the process to the Attorney General, who ratified the Public Prosecutor's Office's opinion. As a result, the 4th Criminal Chamber unanimously determined the filing due to lack of probable cause for criminal prosecution.

42. During the criminal process, 64 hearings were held, and 215 people were heard, including surviving victims, witnesses, and experts, in addition to the defendants' interrogations. The State argues that this fact reveals the complexity of the process. Additionally, it informs that the process involved the participation of the Public Prosecutor's Office, the defendants' defense, as well as the participation of the Association of Victims and Survivors of the Santa Maria Tragedy (AVTSM) and some surviving victims and family members of those who died, with the Public Prosecutor's Office's agreement, in the legal capacity of prosecution assistants.

43. On July 27, 2016, the judge of the 1st Criminal Court of Santa Maria decided to pronounce⁶ the four defendants accused of homicides and attempted homicides, following the Public Prosecutor's Office's complaint. The four defendants' defenses appealed the decision to the TJRS, through appeals known as strict sense appeals. On November 30, 2016, the Criminal Prosecution Office issued an opinion for the maintenance of the pronouncement.

44. On March 22, 2017, by a two-to-one vote, the 1st Criminal Chamber of the TJRS upheld the indictment of the two de facto owners of Kiss Nightclub, Elissandro Callegaro Spohr and Mauro Londero Hoffmann, and the two members of the band Gurizada Fandangueira, Marcelo de Jesus dos Santos and Luciano Augusto Bonilha Leão, for the homicide of 242 people and the attempted homicide of 636 others. The Court

⁶ In Brazilian law, the pronouncement sentence does not analyze whether the accused is guilty or innocent, but only whether there is sufficient evidence that the case involves an intentional crime against life to be decided on the merits by the Jury Court.

also upheld the understanding that the crimes were committed with eventual intent⁷. In a majority decision, however, the court decided to exclude the qualifiers⁸ argued by the Public Prosecutor's Office.

45. On December 1, 2017, however, in response to the defendants' appeals, the 1st Criminal Group of the TJRS decided to overturn the previous decisions and found that there were not enough elements to subject the defendants to trial by the Jury Court, whose jurisdiction covers only intentional crimes against life.

46. On January 8, 2018, the Prosecution's Appeals Office filed an appeal against the 1st Criminal Group of the TJRS's decision, arguing mainly that the decision failed to consider that, once the materiality is proven and there are sufficient indications of authorship, it is imperative to indict the defendants for trial by the Jury Court. After the appeal's processing in the form of a special appeal to the STJ, the case files were sent to this third-instance court.

47. On June 18, 2019, the 6th Chamber of the STJ upheld the special appeal and unanimously decided that the four defendants would be tried by the Jury Court. After setting the trial date, the Court of Justice began preparations for the trial in Porto Alegre, which involved months of work by hundreds of public servants from various sectors.

48. On December 10, 2021, the trial was broadcast in full on YouTube, with about 6 million views. The four defendants were convicted. The sentences imposed were as follows: Elissandro Callegaro Spohr (nightclub partner), 22 years and 6 months in initial closed regime; Mauro Londero Hoffmann (nightclub partner), 19 years and 6 months in initial closed regime; Luciano Bonilha Leão (band producer), 18 years in initial closed regime; and Marcelo de Jesus dos Santos (band vocalist), 18 years in initial closed regime. In its June 2022 submission, the State informed that the four convicted individuals were in prison and that the case was in the appeal phase before the TJRS.

Other Criminal Cases

49. The State also indicates that the police pointed out the practice of procedural fraud during the acts of investigating the causes of the Kiss Nightclub fire. The fraud would have occurred when the commander of the 4th Regional Fire Department Command of Santa Maria and a firefighter had sent documents to the police that were not related to the nightclub's original Fire Prevention and Protection Plan. Given the existence of evidence of authorship of the crime and after splits resulting from the original criminal case, the Public Prosecutor's Office of Rio Grande do Sul filed two criminal actions, cases No. 027/2130006197-6 and No. 027/2.14.0000773-6.

50. In the criminal case 027/2130006197-6, Major Gerson da Rosa Pereira of the Fire Department was sentenced to six months in detention for fraud in documents related to the police inquiry that investigated the causes of the fire at the Kiss Nightclub. The decision was made on October 27, 2015. The sentence was later converted to community service. The defendant appealed the sentence, but his appeal was denied on October 27, 2016. The defendant then appealed to the Superior Court of Justice (STJ), which ordered the replacement of the detention sentence with a fine, as established by the First Instance Court on May 28, 2018. Finally, on May 8, 2019, the court recognized the extinction of the punishability due to prescription. In the case 027/2.14.0000773-6, firefighter Renan Severo Berleze had his punishability extinguished after complying with all the conditions of the conditional suspension of the process. Thus, on February 22, 2016, the case was definitively archived.

⁷ In Brazilian law, eventual intent is one of the forms of intent, which is the conscious will to perform a criminal act. In eventual intent, the agent does not have the direct intention to produce the typical result but assumes the risk of producing it. The main characteristic of eventual intent is that the agent foresees the result as possible and, even so, decides to proceed with their conduct, accepting the risk of the result occurring. This understanding differentiates eventual intent from conscious negligence. In conscious negligence, the agent also foresees the result as possible but acts with the expectation that it will not occur, relying on their ability to avoid the result.

⁸ In Brazilian law, qualifiers are circumstances that, when present in certain crimes, increase the severity of the offense and, consequently, the base penalty to be applied to the defendant.

51. Besides the firefighters, the Public Prosecutor's Office also charged Elton Cristiano Uroda and Volmir Astor Panzer (criminal case 027/2130006199-2). Elton Uroda and Volmir Panzer allegedly committed perjury by stating in their testimonies to the Civil Police that Eliseo Spohr was not a partner of the nightclub, when there were indications that he was, even though he did not appear in the company's articles of incorporation.

52. On December 5, 2014, based on a police inquiry conducted by the Civil Police (inquiry 027/2.14.0011071-5, subsequent to the one that based the original criminal action), the criminal complaint was amended, changing the accusation from perjury to the crime of ideological falsehood, committed multiple times in the nightclub's articles of incorporation and its amendments. For these crimes, alongside Elton Uroda and Volmir Panzer, eight other people were included. Elissandro Spohr and Mauro Hoffmann, actual partners of the nightclub, also accused of consummated and attempted intentional homicides, were included, as well as Eliseo Jorge Spohr, Marlene Terezinha Calegaro, and Ângela Aurélia Calegaro (Elissandro's father, mother, and sister), Cíntia Flores Mutti (formal partner of the nightclub), Tiago Flores Mutti, and Alexandre da Silva Costa (the two actual partners of the nightclub). Additionally, Jákson Heitor Panzer was charged with perjury for giving false statements to the Civil Police about the protocol and administrative procedures of the Kiss Nightclub's documents with the Santa Maria City Hall and about the composition of the nightclub's partnership.

53. After receiving the amendment, written defenses were presented, and procedural acts provided by law were performed. In its June 2022 report, the State mentioned that the process was awaiting a hearing to take witness testimonies and interrogate the defendants.

State's Conclusions

54. Referring to internal criminal resources, the State emphasizes the complexity of the facts involved and highlights that there are still ongoing criminal processes (in addition to the main criminal process). Furthermore, the State mentions that the civil reparation actions were also not exhausted before the petition to the IACHR, indicating that several of them were filed after the complaint to the Commission. Therefore, the State considers that various internal resources were not exhausted before the petition to the Commission, rendering the petition inadmissible.

55. In conclusion, the State requests that, in the event that the admissibility stage of the complaint petition is surpassed, it be given the opportunity to present its arguments on the merits of the case.

VI. COMPETENCE RATIONE PERSONAE

56. The State argues that, according to Article 44 of the Convention, only individuals or non-governmental entities can present petitions to the IACHR. Therefore, the State requests that public entities appearing among the petitioners (CREA, CRP, and CRESS) be excluded from the process.

57. On this subject, the Inter-American Commission notes that professional councils, although they are regulatory bodies of professions and have functions delegated by the State, operate with a certain degree of autonomy and represent the specific interests of professional groups. Therefore, they can be seen as hybrid entities that also act in the defense of the rights and collective interests of their members.⁹ Article 44 of the American Convention provides for the possibility of any "person," "group of persons," or "non-governmental entity" to present petitions to the inter-American system. Although they are not purely "non-governmental" entities, professional councils sufficiently fit into the category of non-governmental entities, as they are understood by the highest legal body of the Brazilian State, the Supreme Federal Court (STF), as a "sui generis type of non-state public legal entity."¹⁰ Furthermore, they can be understood as legitimate representatives of groups of people, which is why they should not be excluded from the active role in the

⁹ "Professional Councils, as corporate entities created by law with the authority to exercise a typical State activity, have a greater degree of administrative and financial autonomy, constituting a sui generis type of non-state public legal entity." Supreme Federal Court, ADC 36, rel. min. Cármen Lúcia, j. 8-9-2020, P, DJE de 16-11-2020.

¹⁰ Supreme Federal Court, ADC 36, rel. min. Cármen Lúcia, j. 8-9-2020, P, DJE de 16-11-2020.

present case. An opposite interpretation would weaken the inter-American system itself by denying access to inter-American justice to professional councils and the people they represent.¹¹

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

58. The Inter-American Commission notes that the present controversy primarily concerns the alleged responsibility of the State i) for the deaths, injuries, and damages resulting from the fire at the Kiss Nightclub, for the lack of investigation and punishment of all responsible parties, for the lack of adequate civil reparation for the victims and their families, and for the consequent suffering caused to the families; and ii) for the possible violation of the freedoms of expression, thought, and association of human rights defenders and leaders of AVTSM Sérgio da Silva, Flávio da Silva, Paulo Carvalho, and Marta Beuren.

59. Regarding issue i), as it has been expressed on several occasions, the Inter-American Commission notes that in situations involving crimes against life and integrity, the domestic remedies to be considered for the purposes of admissibility of petitions are those related to the criminal investigation and punishment of the responsible parties, and it is up to the State to promote them *ex officio*, promptly and diligently, in accordance with the American Convention.¹²

60. According to the information provided by the parties, the fire occurred on January 27, 2013. The Civil Police immediately initiated the police inquiry. On March 22, 2013, the inquiry was concluded. On April 2, 2013, the Public Prosecutor's Office initiated the criminal action. However, only on December 10, 2021, were the defendants tried and sentenced by the Jury Court to custodial sentences. According to the State's June 2022 report, the convicted individuals were in prison, and the process was in the appeal stage before the Rio Grande do Sul Court of Justice (second instance).

61. The Commission recalls that Article 46.2 of the Convention, by its nature and purpose, is a norm with autonomous content in relation to the substantive norms of the American Convention. Therefore, the determination of whether the exceptions to the rule of exhaustion of domestic remedies are applicable to the case in question must be made prior to and separate from the merits analysis, as it depends on a different standard of assessment than that used to clarify the possible violation of Articles 8 and 25 of the Convention. There are no conventional or regulatory provisions that specifically regulate the period that constitutes an unjustified delay, which is why the Commission evaluates on a case-by-case basis to determine if such a delay occurs.¹³ In this sense, it has established, as a guiding principle, that "*in no way should the rule of prior exhaustion lead to the suspension or delay to the point of rendering the international action futile in helping the defenseless victim.*"¹⁴ The complementarity of the international protection provided in the American Convention also implies that the intervention of the Inter-American System bodies should be timely to have some useful effect in protecting the rights of the alleged victims.

62. Moreover, to determine whether the investigation and punishment of the responsible parties were carried out "promptly," the Commission considers several factors, such as the time elapsed since the crime was committed, whether the investigation progressed beyond the preliminary stage, the measures taken by the authorities, and the complexity of the case.¹⁵

¹¹ See also, e.g., IACHR. Report No. 26/08. Petition 270-02. Admissibility. César Alberto Mendoza and others. Argentina. March 14, 2008, para. 1, 66 (admitting the possibility of a public servant, the National Defender General, acting as a petitioner in a complaint to the IACHR against the State).

¹² IACHR, Report No. 79/23. Petition 1388-14. Admissibility. Márcio José Sabino Pereira and relatives. Brazil. June 7, 2023, para. 11; IACHR, Report No. 155/21. Petition 151-15. Admissibility. Marcos Rebello Filho and Others. Brazil. July 28, 2021, para. 25; IACHR, Report No. 226/20. Petition 32-07. Admissibility. Márcio Antônio Maia de Souza and relatives. Brazil. September 6, 2020, para. 8.

¹³ IACHR, Report No. 14/08, Petition 652-04. Admissibility. Hugo Humberto Ruíz Fuentes. Guatemala. March 5, 2008, para. 68.

¹⁴ IACHR, Report No. 14/08, Petition 652-04. Admissibility. Hugo Humberto Ruíz Fuentes. Guatemala. March 5, 2008, para. 68.

¹⁵ See, e.g., IACHR, Report No. 50/08, Petition 298-07. Admissibility. Néstor José Uzcátegui and others. Venezuela. July 24, 2008, para. 42.

63. The Inter-American Commission acknowledges the complexity of the issue. According to the reported facts, the fire resulted in the death of 242 people and left at least 636 survivors injured. The chain of possible responsible parties includes, to some extent, the nightclub owners and the band members who used pyrotechnics, as well as public officials who failed to enforce safety regulations. Additionally, failures in the fire prevention and control system, such as the inadequacy of the foam used for sound insulation, which was highly flammable, required technical analyses regarding compliance with safety standards, the effectiveness of safety devices such as extinguishers and emergency exits, the role of authorities in supervising these aspects, among other points. The fire is associated with a long sequence of actions and omissions, from the alleged irregular granting of licenses and negligence in inspecting the nightclub's safety conditions to the conduct of public and private agents before, during, and after the fire.

64. However, the Inter-American Commission also notes that although the investigations were initiated quickly, the progression to subsequent stages was notably slow and problematic, with more than ten years passed without the criminal process reaching its conclusion with final judgment and archiving. The Commission did not find sufficient justification in the State's allegations for the delay in question. On the contrary, the reported facts indicate that the observed slowness reflects possible failures in the judicial system, such as delays in holding critical hearings and delays in judicial decisions, exacerbated by the apparent lack of resources and prioritization of the system to handle cases of great magnitude and public impact. In this regard, for example, although the pronouncement decision in the main criminal case occurred in 2016, signaling the possibility of subsequent trial of the defendants by the Jury Court, procedural matters unrelated to the complexity of the fire and preparations for the trial resulted in the first-instance trial of the defendants only in December 2021. Given the above, considering the characteristics of the present petition, the Commission concludes that the exception established in Article 46.2(c) of the American Convention is applicable.

65. Regarding the reasonable time requirement, according to Article 46.2 of the American Convention, the specific requirement of Article 46.1(b) of that treaty does not apply when some of the exceptions to the rule of exhaustion of domestic remedies provided in that article are relevant. In this regard, Article 32.2 of the IACHR Rules of Procedure establishes that in such cases: "the petition shall be presented within a reasonable period, at the discretion of the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case." In the present case, the Commission notes that the facts reported related to the Kiss Nightclub fire occurred on January 27, 2013, and their consequences, in terms of alleged impunity, extend to the present, more than ten years later. The petition to the IACHR, in turn, was submitted on February 3, 2017. Given the above, the Commission considers that the present petition was filed within a reasonable time under Article 32.2 of the American Convention.

66. Regarding issue ii), the petitioner reports that three fathers and one mother of young people killed in the fire, all of them leaders of AVTSM, were criminally prosecuted for slander and defamation after publicly questioning the conduct of the prosecutors involved in the investigations into the Kiss Nightclub fire. However, there is no further information about these criminal processes. The Brazilian State also did not provide additional information about these processes. Therefore, the Inter-American Commission considers that it lacks sufficient elements to make a judgment on the exhaustion of domestic remedies or the possible application of an exception to the prior exhaustion rule.

VIII. ANALYSIS OF CHARACTERIZATION OF ALLEGED FACTS

67. The petition essentially concerns the possible responsibility of the State for the deaths, injuries, and damages resulting from a fire in a nightclub, the alleged lack of timely and thorough investigation and punishment of those responsible, and the lack of reparation for the associated damages.

68. The Inter-American Commission clarifies that, in the context of the admissibility examination, it is responsible for conducting a *prima facie* analysis with the sole objective of determining whether the facts presented may constitute a possible violation of human rights, as well as whether the facts are not manifestly unfounded.

69. In a comparable case involving deaths and injuries caused by an explosion and fire in a private establishment (a fireworks factory operating irregularly), the Inter-American Commission clarified that the fulfillment of obligations under Article 1.1 of the Convention not only implies that no person should be arbitrarily deprived of life but also requires that States take all appropriate measures to protect and preserve the right to life, and these obligations equally apply to the right to personal integrity.¹⁶ Furthermore, it clarified that a violation of human rights protected by the Convention can result in the international responsibility of a State Party if the unlawful act involved the participation, support, or tolerance of state agents or resulted from the State's failure to reasonably prevent human rights violations, to investigate seriously with the aim of identifying and punishing those responsible, and to adequately compensate the victim or their family for the damages caused.¹⁷ Finally, it concluded that while not every harm to life and integrity is attributable to the State, the State can be internationally responsible for such harm when it occurs in the absence of adequate regulatory, supervisory, and oversight mechanisms. These obligations are reinforced in the presence of private actors engaged in high-risk activities.¹⁸

70. The Inter-American Court of Human Rights has highlighted that the obligation to guarantee human rights under Article 1.1 of the American Convention "*implies the duty of States Parties to organize the entire governmental apparatus and, in general, all the structures through which public power is exercised, in such a way as to ensure the free and full exercise of human rights.*" As a result, States must prevent, investigate, and punish all violations of the rights recognized by the Convention and guarantee reparation for the damages caused.¹⁹ The Court also stated that States have a duty to regulate, supervise, and oversee dangerous activities:

The observance of Article 4, related to Article 1.1 of the American Convention, not only implies that no person should be arbitrarily deprived of their life (negative obligation), but also requires States to take all appropriate measures to protect and preserve the right to life (positive obligation), in accordance with the duty to guarantee the free and full exercise of the rights of all persons under their jurisdiction. [...] In fulfilling their duty to guarantee the rights to life and personal integrity, [...] States have the duty to regulate, supervise, and oversee the practice of dangerous activities by private companies that pose significant risks to the life and integrity of people under their jurisdiction.²⁰

71. Considering all the above and the IACHR's admissibility decisions in very similar cases²¹, considering that the allegations include inspection failures and establishment irregularities that may have contributed to the deaths, injuries, and damages resulting from the Kiss Nightclub fire, in addition to the possible lack of investigation, punishment, and total and timely reparation; the Inter-American Commission concludes that, if proven, these allegations may constitute violations of the rights protected by Articles 4 (right

¹⁶ IACHR. Report No. 25/18, Case 12.428. Admissibility and Merits. Employees of the Santo Antônio de Jesus Fireworks Factory and their relatives. March 2, 2018, para. 6, 8, 33, 91.

¹⁷ IACHR. Report No. 25/18, Case 12.428. Admissibility and Merits. Employees of the Santo Antônio de Jesus Fireworks Factory and their relatives. March 2, 2018, para. 95.

¹⁸ IACHR. Report No. 25/18, Case 12.428. Admissibility and Merits. Employees of the Santo Antônio de Jesus Fireworks Factory and their relatives. March 2, 2018, para. 101. Similarly, European Court of Human Rights. Case of Öneriyildiz vs. Turkey. Petition No. 48939/99. Strasbourg, Judgment of November 30, 2004, para. 89-91 ("*the positive obligation to take all appropriate measures to safeguard life [...] implies primarily the State's fundamental duty to establish a legislative and administrative framework designed to provide effective deterrence against threats to the right to life. This obligation undoubtedly applies to the specific context of risky activities, where, in addition, special emphasis must be placed on standards adapted to the specific characteristics of the activity in question, particularly concerning the level of potential risk to human lives. States must regulate the granting of licenses, the establishment, operation, safety, and supervision of the activity, and must require all concerned to take practical measures to ensure the effective protection of citizens whose lives may be threatened by the inherent risks. The obligations arising from [the right to life] do not end there. When lives have been lost in circumstances that potentially compromise the responsibility of the State, this provision implies the State's duty to ensure, by all means at its disposal, an adequate response (judicial or otherwise) to ensure that the legislative and administrative framework established to protect the right to life is adequately implemented, and any violation of this right is repressed and punished.*").

¹⁹ Inter-American Court of Human Rights. Case of the Miskito Divers (Lemoth Morris and others) vs. Honduras. Judgment of August 31, 2021, para. 43.

²⁰ Inter-American Court of Human Rights. Case of the Miskito Divers (Lemoth Morris and others) vs. Honduras. Judgment of August 31, 2021, para. 54-55.

²¹ IACHR, Report No. 277/23. Petition 6-15. Admissibility. Júlio César dos Santos and others. Brazil. October 31, 2023 (case also related to a fire in a nightclub started by pyrotechnic devices); IACHR, Report No. 42/19. Admissibility. Petition 467-10. Maritza Elizabeth Gutierrez Cortez and others (Mesa Redonda Tragedy). Peru. April 24, 2019 (case about a fire in a commercial area of a humble neighborhood started by pyrotechnic devices that resulted in hundreds of deaths and injuries).

to life), 5 (personal integrity), 8 (judicial guarantees), and 25 (judicial protection) of the American Convention on Human Rights, in relation to the obligations set forth in Article 1.1 (obligation to respect rights) of the American Convention, to the detriment of the victims identified in this report.

72. Regarding Articles 13 (freedom of thought and expression) and 16 (freedom of association) invoked by the petitioner, the Commission recalls that, in the previous section, it could not determine the fulfillment of the rules of exhaustion of domestic remedies and the filing period concerning the facts associated with these articles.

73. Regarding Article 17 (protection of the family) invoked by the petitioner, the Inter-American Commission clarifies that the said article, when dealing with family protection, focuses on the rights and duties of family members, including marriage, equal rights of spouses, and child protection. The context described in the petition about the Kiss Nightclub involves possible negligence and administrative failures that resulted in a disaster with multiple fatalities and injuries. The discussion primarily focuses on violations of rights such as life, personal integrity, judicial guarantees, and protection. The possible failures in question (such as security failures, inadequate nightclub supervision, deficiencies in emergency responses, and subsequent investigations) are not directly related to the protection of the family structure per se or rights within the family context. For this reason, the present prima facie legal characterization analysis of the narrated facts does not include the invoked article.

74. Finally, regarding the State's argument that admitting the present petition would constitute a violation of the so-called "fourth instance formula," the Commission reiterates that, within the scope of its mandate, it has the competence to declare a petition admissible and decide on the merits when it involves internal processes that may violate the rights guaranteed by the American Convention.

IX. DECISION

1. To declare this petition admissible regarding Articles 4, 5, 8, and 25 of the American Convention, in accordance with its Article 1.1.
2. To declare this petition inadmissible regarding Article 17 of the American Convention.
3. To notify the parties of this decision; to continue the analysis of the merits of the case; and to publish it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 19th day of the month of June, 2024. (Signed:) Roberta Clarke, President; Carlos Bernal Pulido, Vice President; Arif Bulkan and Gloria Monique de Mees, Commissioners.

ANNEX I: List of Victims Indicated by the Petitioner

Fatal Victims:

1. Alan Raí Rehbein De Oliveira
2. Alex Giacomolli
3. Alexandre Ames Prado
4. Alisson Oliveira Da Silva
5. Allana Willers
6. Ana Caroline Rodrigues
7. Ana Paula Anibaletto Dos Santos
8. Ana Paula Rodrigues
9. André Cadore Posser
10. Andressa Ferreira Flores
11. Andressa Inaja De Moura Ferreira
12. Andressa Rooz Paz
13. Andressa Thalita Farias Brissow
14. Andrieli Righi Da Silva
15. Andrise Farias Nicoletti
16. Ângelo Nicoloso Aita
17. Ariel Nunes Andreatta
18. Augusto Cezar Neves
19. Augusto Malezan De Almeida Gomes
20. Augusto Sergio Krauspenhar Da Silva
21. Barbara Moraes Nunes
22. Benhur Retzlaff Rodrigues
23. Bernardo Carlo Robe
24. Bibiana Berleze
25. Brady Adrian Gonçalves Silveira
26. Bruna Brondani Papalia
27. Bruna Camila Graeff
28. Bruna Eduarda Neu
29. Bruna Karoline Occai
30. Bruno Kraulich
31. Bruno Portella Fricks
32. Camila Massulo Ramos
33. Carlitos Chaves Soares
34. Carlos Alexandre Dos Santos Machado
35. Carolina Simões Corte Real
36. Cássio Garcez Biscaino
37. Cecília Soares Vargas
38. Clarissa Lima Teixeira
39. Crisley Caroline Saraiva De Freitas Da Palma
40. Cristiane Quevedo Da Rosa
41. Daniel Cechin
42. Daniel Knabben Da Rosa
43. Daniela Betega Ahmad
44. Daniele Dias De Mattos
45. Danilo Brauner Jaques
46. Danrlei Darin
47. David Santiago E Souza
48. Débora Chiappa Forner
49. Deivis Marques Gonçalves

50. Diego Silvestri Comim
51. Dionatha Kamphorst Paulo
52. Douglas Da Silva Flores
53. Driele Pedroso Lucas
54. Dulce Ranieri Gomes Machado
55. Elisandro Oliveira Rolim
56. Emerson Cardoso Pain
57. Emili Contreira Ercolani
58. Éricson Avila Dos Santos
59. Érika Sarturi Becker
60. Évelin Costa Lopes
61. Fábio José Cervinski
62. Felipe Vieira
63. Fernanda De Lima Malheiros
64. Fernanda Tischer
65. Fernando Michel Devagarins Parcianello
66. Fernando Pellin
67. Flávia De Carli Magalhães
68. Flávia Maria Torres Lemos
69. Franciele Soares Vargas
70. Francieli Araujo Vieira
71. Francieli Vizioli
72. Gabriella Corcini Sanchotene
73. Gabriella Dos Santos Saenger
74. Geni Lourença Da Silva
75. Gilmara Quintanilha Oliveira
76. Giovani Krauchenberg Simões
77. Greicy Pazini Bairro
78. Guilherme Pontes Gonçalves
79. Guido Ramom Brites Burro
80. Gustavo Ferreira Soares
81. Gustavo Marques Gonçalves
82. Heitor Santos Oliveira Teixeira
83. Heitor Teixeira Gonçalves
84. Helena Poletto Dambrós
85. Hélio Trentin Júnior
86. Henrique Nemitz Martins
87. Herberth Magalhães Charão
88. Igor Stephan De Oliveira Pereira
89. Ilielton Martins Koglin
90. Isabella Fiorini
91. Ivan Munchen
92. Jacob Francisco Thiele
93. Jaderson Da Silva
94. Janaína Portela
95. Jennefer Mendes Ferreira
96. Jéssica Almeida Konzen
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98. João Carlos Barcellos Silva
99. João Paulo Pozzobon
100. João Renato Chagas De Souza
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141. Luiz Fernando Rodrigues Wagner
142. Luiza Alves Da Silva
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145. Maicon Francisco Evaldt
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149. Marfisa Soares Caminha
150. Maria Mariana Rodrigues Ferreira
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152. Mariana Machado Bona
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154. Mariana Pereira Freitas
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156. Marilene Iensen Castro
157. Marina De Jesus Nunes
158. Marina Kettermann Callegaro
159. Martim Francisco Mascarenhas De Souza Onofrio

160. Marton Matana
161. Matheus De Lima Librelotto
162. Matheus Engers Rebolho
163. Matheus Pacheco Brondani
164. Matheus Rafael Raschen
165. Mauricio Loreto Jaime
166. Melissa Berguemaier Correa
167. Melissa Do Amaral Dalforno
168. Merylin De Camargo Dos Santos
169. Michéli Dias De Campos
170. Micheli Froehlich Cardoso
171. Miguel Webber May
172. Mirela Rosa Da Cruz
173. Monica Andressa Glanzel
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231. Vandercork Marques Lara Junior
232. Vanessa Vanovicht Soares
233. Victor Datria Mcagnam
234. Vinícius Marconato Uggeri
235. Vinícius Montardo Rosado
236. Vinicius Pagnossim De Moraes
237. Vinícius Pinton Greff
238. Vinicius Silveira Marques De Mello
239. Vitória Dacorso Saccol
240. Viviane Tolio Soares
241. Walter De Mello Cabistani
242. Wicton Martins Schimitz

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Luisa Berlato Silva
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Matheus Roos de Oliveira
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Valesca Alves da Trindade
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Vanda Denise Puccini Dacorso
Vandelcork Marques Lara
Vanessa Brauner Jaques
Vanessa Gisele Vasconcellos
Vanessa Gonzaga Noronha
Vanessa Moraes Lopes
Vanessa Ribeiro Contreira
Vania Lisete Tauchen Antolini
Veleda Maria Ames
Vera Lucia dos Santos Azzolin
Vera Lucia Rigoli
Vera Regina Desbessel Robe
Veridiana Neu
Verônica Rosa Cechin
Vitor Hugo Balest Piovesan
Viviani Reghelim Berguemaier
Vlademir Antonio Vargas
Walter Roberto Thiele
William de Freitas Pietro
Yara Regina Knabben da Rosa
Zeni da Costa Weiss
Zoé Gonçalves Silveira