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**REPORT No. 235/24**  
**PETITION 422-19**  
REPORT ON ADMISSIBILITY

TREVIAN FERNEY ARAGON VALENCIA  
BRAZIL

Approved electronically by the Commission on December 5, 2024.

**Cite as:** IACHR, Report No. 235/24, Petition 422-19. Admissibility.  
Trevian Ferney Aragon Valencia. Brazil. December 5, 2024.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioners:</b>	Public Defender's Office of the State of Rio de Janeiro
<b>Alleged victims:</b>	Trevian Ferney Aragon Valencia
<b>Respondent State:</b>	Brazil
<b>Rights invoked:</b>	Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 13 (freedom of thought and expression), 21 (right to property) and articles 1.1 (obligation to respect rights) and 2 (duty to adopt provisions of domestic law) of the American Convention on Human Rights <sup>1</sup>

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

<b>Filing of the petition:</b>	February 20, 2019
<b>Additional information received at the stage of initial review:</b>	August 11, 2022
<b>Notification of the petition to the State:</b>	August 29, 2022
<b>State's first response:</b>	November 29, 2022

**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, American Convention (deposit of the instrument of ratification on September 25, 1992).

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

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No.
<b>Rights declared admissible</b>	Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 9 (right to privacy), 13 (freedom of thought and expression), 21 (right to property), 24 (right to equal protection) and 25(right to judicial protection) in relation to articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the American Convention on Human Rights.
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, in terms of Section VI.
<b>Timeliness of the petition:</b>	Yes, in terms of Section VI.

<sup>1</sup> Hereinafter "American Convention" or "Convention".

<sup>2</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. ALLEGED FACTS

### *Petitioner*

1. The petitioner alleges that Mr. Trevian Ferney Aragon Valencia (hereinafter "Mr. Ferney Aragon" or "the alleged victim") was the victim of violence by municipal guards of the city of Rio de Janeiro during a police patrol. The agents allegedly confiscated his work tools, verbally and physically assaulted the alleged victim, and detained him. In addition, the petitioner asserts that Mr. Ferney Aragon, who verbally opposed the police action, has been charged with the crime of contempt and that the Brazilian authorities have ruled on the constitutionality of this criminal offense.

2. As reported by the petitioner, on August 1, 2013, Mr. Ferney Aragon, a migrant and Afro-descendant, was assaulted by five municipal guards while he was working as a hairdresser on the public highway, as he had done daily since 2010. The petitioner points out that the alleged victim was approached by the municipal guards with offensive shouts, while they destroyed the poster advertising his work and damaged his professional tools. It also alleges that the municipal guards used excessive force to detain the alleged victim, who was trying to resist the placement of handcuffs. In these circumstances, the victim would have said offensive expressions to the police officers ("go fuck yourself! Son of a bitch!"). Despite the protests of passers-by, who asked for an ambulance to be called for Mr. Ferney Aragon, given his state of almost unconsciousness, the police aggressions persisted and caused physical sequelae felt to this date.

3. The petitioner states that the alleged victim's liberty was restricted between August 1, 2013 and August 2, 2013. According to the petitioner, after the alleged victim was detained and handcuffed on August 1, 2013, he was placed inside a police vehicle, where, between the seats of the car, he allegedly suffered further physical aggression by the municipal guards, while they uttered discriminatory insults, referring to the national origin and race of the alleged victim. The alleged victim was taken to a health unit, where he was treated aggressively by health professionals and remained handcuffed throughout the night, as a result of an alleged directive from the municipal guards themselves.

4. The petitioner alleges that the following day, Mr. Ferney Aragon was taken to the police station and charged with the crimes of contempt and resistance. On that occasion, they allege that the agents demanded that Mr. Ferney Aragon sign a document that he did not have the opportunity to read, stating that he had expressed his constitutional right to remain silent. He also points out that he was not given back his work tools. In addition, it maintains that Mr. Ferney Aragon was transferred from the police station to the International Airport of Rio de Janeiro, where he was allegedly threatened with deportation. Upon arriving at the scene, in the custody of the Federal Police, he would have had access to water for the first time since the beginning of the events. The petitioner states that the alleged victim was released after these steps at the Rio de Janeiro International Airport on August 2, 2013.

5. The petitioner states that, in February 2014, the Public Prosecutor's Office filed a complaint against the alleged victim for the crime of contempt – basing the alleged crime on the offenses that the victim allegedly uttered to the police officers on August 1, 2013 – as well as the crime of resistance – which would have been committed by the alleged victim when he would have opposed, with violence, to the execution of a legal act by the police officer. The petitioner states that the 37th Criminal Court of Rio de Janeiro, on April 28, 2016, i) summarily acquitted Mr. Ferney Aragon in relation to the charge of resistance, recognizing the criminal atypicality of the conduct and the absence of just cause for the criminal action, and ii) also decided to reject the complaint with respect to the crime of contempt, basing the decision on the non-conformity of the crime with the constitutional and conventional right to freedom of expression.

6. The petitioner maintains that the Public Prosecutor's Office filed an Appeal in the Strict Sense before the Court of Justice of Rio de Janeiro (TJRJ), in view of the decision that rejected the complaint in relation to the crime of contempt. On March 14, 2017, the Fourth Criminal Chamber of the TJRJ granted the Appeal in the Strict Sense, determining the continuation of the criminal action in relation to the crime of contempt, on the grounds that "the derogation from the incriminating rule provided for in article 331 of the CP by the American Convention on Human Rights (ACHR) is the competence of the national authorities, so that any suppression of

the criminal type due to incompatibility with the ACHR must be recognized by the competent court". The same body also granted the appeal filed by the Public Prosecutor's Office, which requested the continuation of the criminal action in relation to the crime of resistance.

7. In view of the decision that determined the continuation of the criminal action regarding the crime of contempt, the alleged victim filed a Special Appeal to the Superior Court of Justice (STJ). The Special Appeal, however, was inadmissible by the Court of Justice of Rio de Janeiro (the competent body for the exercise of the admissibility judgment in the face of the filing of a Special Appeal), in a judgment dated May 29, 2017. In view of the inadmissibility of the Special Appeal, an Interlocutory Appeal was filed by the petitioner, which was denied by the STJ on February 7, 2018, through a monocratic decision that confirms the continuation of the criminal action for the crime of contempt. Against the new denial, an Interlocutory Appeal was filed in the Interlocutory Appeal in Special Appeal, denied by the Fifth Panel of the STJ, in a judgment rendered on March 1, 2018, once again ratifying the continuation of the criminal action for the crime of contempt.

8. The petitioner then filed a Habeas Corpus action before the Federal Supreme Court with the aim of reinstating the acquittal decision of the trial court in relation to the crime of contempt. However, it states that the Federal Supreme Court denied the granting of Habeas Corpus on August 8, 2018, notified on August 20, 2018.

9. The petitioner states that the case became final in October 2019, 5 years after the complaint was filed by the Public Prosecutor's Office of the State of Rio de Janeiro, and 6 years after the alleged illegal transfer to the police station. It states that the final and unappealable decision elapsed between the long interval amid the receipt of the complaint and a possible conviction, causing the statute of limitations of the punitive claim, both in relation to the crime of contempt and the crime of resistance. The petitioner alleges that the long time of the proceedings resulted in a new victimization of Mr. Ferney Aragon.

#### *State*

10. The State argues that the situation of the alleged victim came to the attention and judgment of the highest judicial levels in the country through Habeas Corpus No. 154,143, judged by the Federal Supreme Court, invoking the prohibition of the inter-American system acting as a fourth instance (fourth instance formula), replacing domestic state jurisdiction.

11. The State also asserts that the criminal type of contempt has been definitively scrutinized by the Brazilian State through the Allegation of Non-Compliance with a Fundamental Precept No. 496, within the scope of the abstract control of constitutionality. The State maintains that, on that occasion, the Federal Supreme Court thoroughly analyzed Article 13 of the ACHR and the jurisprudence of the Inter-American Court of Human Rights, concluding that the crime of contempt was constitutional, as well as that it was in conformity with the American Convention, establishing the following binding thesis: "the 1988 Constitution accepted the norm of Article 331 of the Penal Code, which typifies the crime of contempt".

12. Regarding the petitioner's argument that the violation of freedom of expression due to detention and prosecution for the crime of contempt would also entail a violation of personal liberty, the State argues that, since the crime of contempt does not violate freedom of expression, neither does it entail a violation of personal liberty.

13. The State also claims the alleged victim's obligation to seek monetary reparation under domestic law, by means of an action for damages in the civil sphere, before resorting to international jurisdiction in search of this type of reparation. It states that the absence of a civil action to repair the alleged violations of the right to humane treatment and property, a remedy that was fully available, would imply the impossibility of admissibility of the case, due to the lack of exhaustion of domestic remedies.

14. Consequently, the State considers that the alleged victim did not use the available remedies to seek monetary reparation for violations of the right to humane treatment and the right to property. In addition, it argues that the alleged victim could have effectively accessed the remedies available under domestic law to

protect and denounce the alleged violations of the right to freedom of expression and personal liberty, and that it is not feasible for the IACHR to exercise the function of a review instance of domestic jurisdiction.

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

15. The present petition claims human rights violations allegedly committed by police officers during a police patrol, in which the agents supposedly approached the alleged victim, while he was carrying out commercial activities on a public road, uttered insults, destroyed materials and assaulted him. The alleged victim, in turn, would have offended the police, who also report resistance to the execution of legal orders during patrolling. A process for contempt, considering the offenses committed by the alleged victim against public officials, was carried out. Although the case was filed due to the statute of limitations of the punitive claim, the alleged victim's legal representation tried for years, including with an appeal decided by the highest court in the country, that the process be promptly filed for the unconventionality of the crime of contempt.

16. Article 46. 1. a) of the American Convention establishes as a requirement for the admissibility of a case that "the remedies under domestic law have been pursued and exhausted, in accordance with generally recognized principles of international law."

17. In its analysis of the exhaustion of domestic remedies in the present case, the IACHR recalls that, in accordance with its consolidated and repeated practice, in order to identify the adequate remedies that should have been exhausted by a petitioner before resorting to the inter-American system, the first methodological step of the analysis consists of separating the different claims raised in the corresponding petition in order to proceed with its individualized examination.

18. In the present case, the State presents two distinct positions regarding the alleged violations of the right to freedom of expression and personal liberty, with the alleged violations of the other rights invoked by the petitioner.

### *Exhaustion of remedies over alleged violations of freedom of expression and personal liberty*

19. Although the State denies violations of freedom of expression and personal liberty, it asserts that domestic remedies have been exhausted with respect to these allegations. According to the petitioner, domestic remedies were exhausted in the face of the decision rendered by the Federal Supreme Court denying the Habeas Corpus order, to Mr. Ferney Aragon, on August 8, 2018, maintaining the criminal proceedings for the crimes of contempt. Therefore, the IACHR concludes that, regarding the alleged violations of the right to freedom of expression and personal liberty, domestic remedies have been exhausted with the denial of the Habeas Corpus, in compliance with the requirement of Article 46(1)(a) of the Convention.

20. In addition, in the instant case, the petitioners were notified of the denial of the writ of habeas corpus, a decision of last resort, on August 20, 2018, six months before the petition of complaint was lodged with the Inter-American Commission on Human Rights on February 20, 2019. Therefore, the Commission concludes that the petition was lodged in compliance with to Article 46(1)(b) of the Convention.

### *Exhaustion of remedies in respect of other alleged violations*

21. Regarding violations resulting from alleged acts of violence by police officers, the State maintains that available domestic remedies have not been exhausted, since no action for reparation has been filed to financially compensate the alleged victim. The Commission will now examine this claim.

22. The IACHR recalls that, in the event of alleging failure to exhaust domestic remedies, the State has the duty to indicate the remedies that have not been exhausted and to demonstrate their adequacy. In addition, domestic remedies that require prior exhaustion must be sufficiently secure from a formal point of view and satisfactory to reparation, from a material point of view. The effectiveness of a remedy must be

understood in relation to its possibility of determining the existence of violations of fundamental rights, of repairing the damage caused and allowing the punishment of those responsible<sup>3</sup>.

23. In cases such as the present one, the fact that the alleged victim has or has not resorted to the civil jurisdiction in search of monetary compensation is not decisive for the analysis of the exhaustion of domestic remedies<sup>4</sup>. The Commission states that, although a civil liability action could provide financial compensation to the alleged victim, it would not be adequate enough to fully correct the alleged violations<sup>5</sup>.

24. Thus, it is concluded that the State has failed to demonstrate that the remedies that have not been exhausted are "adequate" to repair the alleged violation, that is, that the function of these remedies within the domestic legal system is adequate to protect the violated legal situation. Therefore, it did not discharge the burden that fell to it by alleging the non-exhaustion of domestic remedies.

25. Notwithstanding, in compliance with Article 31.3 of the Rules of Procedure, the Commission will verify the information in the file regarding the failure to exhaust remedies regarding the actions taken by police officers during the patrol of August 1, 2013, and during the period in which the alleged victim was detained.

26. In situations that include crimes against integrity, the domestic remedies that must be considered for the purposes of admissibility of petitions are those related to the criminal investigation and punishment of those responsible<sup>6</sup>. The IACHR notes that, in the present case, the alleged victim claims that acts of violence by agents of the State took place between August 1 and 2, 2023, which would have affected his personal integrity. These violent acts would have included damage to his property, which could have been qualified as crimes.

27. In this regard, since August 1, 2013, the State was aware that public agents had to use force against Mr. Trevian Ferney. The arrest was carried out by state agents themselves, and the alleged victim was taken to a police station. In the detailed term, signed at the 12th Police Station, although the alleged victim remained silent during his testimony, two police officers declared that they had to "join forces" against the alleged victim and "expend forces to stop him". Both agents also stated that "the perpetrator of the fact felt ill and had to be taken to the UPA" (a public health care establishment in Brazil). Both police officers also stated that they did not know the whereabouts of the alleged victim's belongings, which had been "stolen". In addition, in the complaint that the Prosecutor's Office filed against Mr. Trevian Ferney for the crimes of contempt and resistance, it is clear – because it's mentioned in the document – that the Prosecutor's Office also learned that police officers had to use force against Mr. Trevian Ferney and that the alleged victim became ill and required medical attention. Therefore, the State had full knowledge of the facts on which the attributions of human rights violations in the present case are based.

28. Despite this, more than eleven years after the date of the aforementioned events, the State has not presented information that would prove that it has taken investigative actions to clarify what happened. For this reason, the IACHR concludes, as it has done in other cases<sup>7</sup>, that it applies the exception to the exhaustion of domestic remedies, as established in Article 46(2)(c) of the Convention. In addition, the IACHR considers that the facts alleged in this part of the petition remain relevant due to the lack of investigation and

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<sup>3</sup> IACHR. Access to justice as a guarantee of economic, social and cultural rights. Study of the standards established by the Inter-American System of Human Rights. OEA/Ser.L/V/II.129. Doc. 4. September 7, 2007. Paragraph 24.

<sup>4</sup> IACHR, Report No. 105/17, Petition 798-07. Admissibility. David Valderrama Opazo and others. Chile. September 7, 2017, para. 11.

<sup>5</sup> Inter-American Court of Human Rights. Case of the Julien Grisonas Family v. Argentina. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 23, 2021. Series C No. 437, para. 40; Case of Vásquez Durand et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 15, 2017. Series C No. 332, para. 40.

<sup>6</sup> IACHR, Report No. 72/18, Petition 1131-08. Admissibility. Moisés de Jesús Hernández Pinto and family. Guatemala. June 20, 2018, para. 10.

<sup>7</sup> In this regard, see, in particular: IACHR, Report No. 19/16, Petition 3546-02. Admissibility. Galo Roberto Matute Robles and family. Ecuador. April 15, 2016, para. 34. In addition, IACHR, Report No. 159/17, Petition 712-08. Admissibility. Sebastián Larroza Velázquez and family. Paraguay. November 30, 2017, para. 15; and Report No. 262/20, Petition 863-11. Admissibility. Carla Marcelina Camargo Bermúdez and another (Massacre of the Tupes). Colombia. September 25, 2020, para. 18.

that they were presented within a reasonable period of time, pursuant to Article 32(2) of the IACHR's Rules of Procedure.

## VII. ANALYSIS OF COLORABLE CLAIM

29. Regarding the analysis of admissibility, the Commission considers that it is not appropriate, at this stage of the proceedings, to decide whether or not violations of integrity, freedom of expression, and judicial guarantees have occurred. For the purposes of admissibility, the IACHR must decide, at this stage, only whether facts presented, if proven, would establish violations of the American Convention, as stipulated in Article 47. b) as well as whether the petition is "manifestly unfounded" or "obviously out of purpose", according to paragraph c) of the same article.

30. Notwithstanding the statute of limitations for punishability in the criminal action against Mr. Ferney Aragon as a defendant, it is observed that the alleged facts could characterize violations of the rights to freedom of thought and expression, personal liberty, privacy, the right to property, and the right to equal protection. The claims of the alleged victim in the present case were not dependent on the criminal conviction for contempt. On the contrary, the petition was filed before the conclusion of the criminal proceedings because the petitioner considered that the elements present up to that point could, in themselves, be characterized as human rights violations. The petition treats the opening of the criminal proceedings itself, based on the crime of contempt, as an alleged violation; and elements that go beyond the process, such as allegations of mistreatment by police officers, discriminatory treatment, destruction of work instruments, application of the crime of contempt. It also notes that, *prima facie*, they tend to characterize violations of judicial guarantees and judicial protection, due to allegations about the ineffectiveness of the judicial remedies accessed and the non-observance of the conventionality control by the Brazilian authorities, in light of the criminalization of freedom of expression through the crime of contempt.

31. The Commission also emphasizes that the Convention does not require the petitioning party to identify the specific rights that are allegedly violated by the State in a matter submitted to the Commission, although the petitioners may do so. It is up to the Commission, based on the jurisprudence of the system, to determine in its admissibility reports which provision of the relevant inter-American instruments is applicable, and its violation could be established if the facts alleged are proven by sufficient evidence<sup>8</sup>.

32. Regarding the alleged violation of the right to privacy, the right to equality before the law, and the alleged failure to comply with the prohibition of discrimination, the Commission considers that the Petitioner's arguments regarding alleged discriminatory acts against Mr. Ferney Aragon, based on his race and national origin, could constitute a breach of the prohibition of discrimination contained in Article 1(1) with respect to the rights contained in Articles 5, 7, 8, 11, and 25 of the American Convention or, in any event, a violation of Articles 24 and 11 in relation to Article 1(1) of that instrument. Whereas allegations regarding alleged discriminatory treatment by the police on the basis of the alleged victim's race and national origin; and considering that race and national origin are categories that require particularly close scrutiny, the Commission considers such allegations admissible for the purposes of study at the merits stage.

33. Finally, in regard to the argument of the "fourth instance formula," the Commission highlights the complementary nature of the inter-American system and emphasizes that, as indicated by the Inter-American Court, for a "fourth instance" exception to be valid, it would be necessary to seek a review of the "decision of a domestic court due to its incorrect assessment of the evidence, of the facts or of domestic law, without, at the same time, alleging that such a decision incurred a violation of international treaties [...]"<sup>9</sup> element. That is not the situation in the present case, in which the petitioner has discussed alleged violations

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<sup>8</sup> See, for example: IACHR, Report No. 143/22. Petition 1350-13. Admissibility. Luis Guillermo Catalán Arriagada. Chile. June 27, 2022, paragraph 18; IACHR, Report No. 27/16, Petition 30-04. Inadmissibility. Luis Alexander Santillán Hermoza. Peru. April 15, 2016, para. 29; and IACHR, Report No. 7/12. Petition 609-98. Admissibility. Guillermo Armando Capó. Argentina. March 19, 2012, para. 26. In the same vein, see *mutatis mutandis*: Inter-American Cut. Hilaire vs. Trinidad and Tobago Case. Preliminary Exceptions. Judgment of September 1, 2001. Series C No. 80, pgs. 40 to 42.

<sup>9</sup> HDI cut. Cabrera García and Montiel Flores vs. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Serie C No. 220, par 18.

attributable to State authorities. The analysis carried out by the Commission focuses on determining whether, in the context of police activity and in the course of criminal proceedings, the guarantees established in the American Convention or in other applicable instruments have been respected. In other words, this analysis is objective and carried out in light of the relevant standards and norms of international human rights law. Therefore, the analysis of whether or not the State has committed violations of the Convention corresponds to the merits of the case.

34. It should also be noted that on several occasions the IACHR has determined that the crime of contempt is not compatible with the American Convention, since it would authorize the abuse of authority as a means of silencing ideas and opinions, thus repressing debates of vital importance for the effective functioning of democratic institutions<sup>10</sup>.

35. In light of these considerations, and after examining the matters of fact and law submitted by the parties, the Commission considers that the petitioner's allegations are not manifestly unfounded and require a study of the merits. Consequently, the Commission will analyze the possible violation of the rights enshrined in Articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 11 (right to privacy), 13 (freedom of thought and expression), 21 (right to property), 24 (right to equal protection), and 25 (right to judicial protection) of the American Convention, in accordance with Articles 1(1) and 2 of that treaty to the detriment of Mr. Trevian Ferney Aragon Valencia.

### **VIII. DECISION**

1. To declare the present petition admissible regarding Articles 5, 7, 8, 11, 13, 21, 24, and 25 of the American Convention, with regard to Articles 1(1) and 2.

2. Notify the parties of this decision; continue with the analysis of the merits of the matter; 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 5<sup>th</sup> day of the month of December, 2024. (Signed:) Roberta Clarke, President; Carlos Bernal Pulido, Vice President; Arif Bulkan, and Gloria Monique de Mees, Commissioners.

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<sup>10</sup> See the statement of the IACHR, through its RFO, in IACHR. Annual Report 1994. Chapter V: Report on the Compatibility of Desacato Laws with the American Convention on Human Rights. Title III. OEA/Ser. L/V/11.88. Doc. 9 rev. February 17, 1995.