
BRAZIL IN SÃO JOSÉ DA COSTA RICA: 20 YEARS OF RECOGNITION OF THE CONTENTIOUS JURISDICTION OF THE INTER- AMERICAN COURT OF HUMAN RIGHTS

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ABSTRACT

This article was written to mark the 20th anniversary of recognition by the Brazilian State of the contentious jurisdiction of the Inter-American Court of Human Rights. It is intended to make an individualized analysis of the sentences in nine cases in which Brazil was defendant between 1998 and 2018. It identifies then the systemic aspects of the sentences, pointing out the main difficulties for its compliance. It is concluded that Brazil's responsibilities are concentrated in four main areas: medical violence, land issues, police violence and slave labor. Concerning the obstacles to compliance with the judgments, the insistence on the internal application of prescription and amnesty in relation to crimes against humanity stands out.

Keywords: Inter-American Court of Human Rights; Brazil; contentious jurisdiction.

*O BRASIL EM SÃO JOSÉ DA COSTA RICA: 20 ANOS DE
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INTERAMERICANA DE DIREITOS HUMANOS*

RESUMO

Este artigo foi elaborado para marcar o 20º aniversário de reconhecimento pelo Estado brasileiro da jurisdição contenciosa da Corte Interamericana de Direitos Humanos. Pretende-se fazer uma análise individualizada das sentenças em nove casos em que o Brasil foi réu entre 1998 e 2018 para, em seguida, identificar os aspectos sistêmicos, apontando as principais dificuldades para seu cumprimento. Conclui-se que as responsabilizações do Brasil concentram-se em quatro grandes eixos: violência médica, questão fundiária, violência policial e trabalho escravo. No que concerne aos obstáculos ao cumprimento das sentenças, destaca-se a insistência na aplicação interna de prescrição e anistia em relação a crimes contra humanidade.

Palavras-chave: *Corte Interamericana de Direitos Humanos; Brasil; jurisdição contenciosa.*

INTRODUCTION

Although the American Convention on Human Rights (CADH) was adopted in 1969 and entered into force in 1978, Brazil only deposited the letter of accession on September 25, 1992, a week before the Carandiru Massacre¹. Since then, Brazil has been obliged to respect and ensure the full exercise of the rights provided in the Convention. The duty of respect is to prevent public officials from violating rights, while the duty of guarantee is fulfilled in adopting all measures to ensure the enjoyment of those rights. If, however, a violation occurs, the State must investigate, prosecute and punish those responsible, as well as repair the victims or their relatives. (RAMOS, 2007)

Six years after joining the CADH, on December 10, 1998, Brazil deposited a note of sovereign recognition of the contentious jurisdiction² of the Inter-American Court of Human Rights (CtIDH). Since then, the CtIDH can judge the merits of cases on the interpretation and application of the CADH involving Brazil. (ROSATO; CORREIA, 2011) When twenty years of contentious jurisdiction of CtIDH are completed in relation to demands of Brazil's accountability for human rights violations protected in the CADH, the present research intends, in a first moment, to make a balance of the cases, identifying the main characteristics of the controversial facts and analyzing the directions of the discussions about law. At the end, a comparison of these distinctive elements is made, pointing out the great challenges facing the country in terms of respect for human dignity.

1 Contentious Jurisdiction of the CtIDH

The CtIDH is responsible for examining the merits of cases in which the States-parties to the CADH, which have expressly recognized their jurisdiction, such as Brazil, have been tried since 1998. Excluded, for methodological reasons, the advisory³, a request for State accountability

1 The Carandiru Massacre was the result of an operation of the Military Police of São Paulo, held on October 2, 1992, to hold a prisoner rebellion at the Casa de Detenção de São Paulo (Carandiru), that killed 111 inmates.

2 The CtIDH may also adopt advisory opinions on interpretation of the CADH or other American human rights treaty, when requested by a member of the Organization of American States (OEA). In addition, any State party to the CADH may request the CtIDH to provide advisory opinion on the conventionality of domestic law.

3 Any member of the OEA may request an opinion from the CtIDH on the interpretation of the CADH or other human rights treaty recognized by the American States. The CtIDH may also exercise control of the convention of domestic law provisions of the States Parties to the CADH.

for violation of the CADH can only be submitted to the CtIDH by another State Party or by the Inter-American Commission on Human Rights (CIDH), although the first hypothesis has never happened. Therefore, there is no normative prediction of the active legitimacy of individuals, as has already occurred since 1998 in the European System of Human Rights⁴. However, in order for the CIDH to act, it is necessary for the individual, a group of individuals or non-governmental organizations, recognized in one or more OAS member states, to file a petition alleging violation in the CADH. (MICHEL; DEITOS, 2017) Once the petition is received, the CIDH examines the conditions of admissibility, which are, in summary, the exhaustion of domestic remedies, the absence of international *lis pendens* or previous manifestations of an international organization, the petitioner's active legitimacy and reasonableness of demand. (BARROZO; SILVA; PALUMA, 2014) The exhaustion of domestic remedies can be ruled out in this case in the event of unwarranted delay, inefficiency of the remedy or lack of internal norms for the defense of human rights. (CANÇADO TRINDADE, 2002)

Having verified the admissibility of the petition, the CIDH proposes to the victims and the State a friendly solution⁵, which depends directly on the consent of those involved. (BERNARDES; VENTURA, 2012) If conciliation is not possible, the CIDH begins to analyze the merits. If indications of human rights violations are identified, the CIDH recommends to the State, by confidential report, the adoption of certain measures of reparation⁶. (PIOVESAN, 2007) If the State does not follow the recommendations, as a rule, the CIDH must automatically file against it with the CtIDH a demand for international accountability, provided there is prior recognition of its contentious jurisdiction by the State in question, which, in relation to Brazil, occurred only in 1998. (RAMOS, 2007)

Once the action against the State party for violation of the provisions of the CADH is proposed, the CIDH becomes a procedural part of the action, the individual, whose right is defended, the true material part. (CANÇADO TRINDADE, 2002) The individual may, according to

4 Since the adoption of Protocol 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 1950), all allegations of violation of individuals' rights are directly referred to the European Court of Human Rights.

5 José Pereira vs. Brazil Case (Report 95/2003) and Case of Emasculated Boys from Maranhão (Report 95/2003).

6 For example, Maria da Penha Maia Fernandes Vs. Brazil Case (2000, Report 54/2001) and the Indigenous Communities of the Xingu River Basin vs. Brazil Case (Belo Monte, Precautionary Measures 382/2010).

the CtIDH Regulations, appoint representatives and participate directly in all procedural stages.

Induced by the CIDH, the CtIDH may review the conditions of admissibility of the action. (MICHEL; DEITOS, 2017) Once this has been confirmed, the defendant is given the opportunity to defend himself, when preliminary objections and merit arguments are presented. Then, if it deems interesting, the Court may propose a conciliation solution to the parties. If there is no agreement, the probative phase occurs, and then the decision phase. Pronounced the sentence by the CtIDH, condemned the defendant, he must comply with it, repairing the damage caused. The decision has binding force, and the State has to comply immediately, which is subject to supervision by the CtIDH itself. ((BARROZO; SILVA; PALUMA, 2014) If the sentence is unfulfilled, it is possible that the matter may be referred by the CtIDH to the General Assembly of the OAS, in order to put pressure on the State condemned to act (ZAVERRUCHA; LEITE, 2016). In this context, the General Assembly may issue a resolution recommending that OAS members adopt economic sanctions until compliance with the judgment. (CEIA, 2013)

Since 1998, against Brazil, there has been a judgment on the merits of the CtIDH of nine cases presented by the CIDH. In these twenty years, Brazil was in São José da Costa Rica to defend itself against the accusations of responsibility for violation of the CADH. Despite this, in eight opportunities, the Country was condemned. For a good understanding of the international human rights challenges in Brazil, in the face of the contentious jurisdiction of the CtIDH, we proceed to the analysis of the individual cases and, only then, it is possible to identify a general standard.

2. Ximenes Lopes vs. Brazil Case (2006)

Damião Ximenes Lopes suffered from mental illness. On October 1, 1999, his mother hospitalized him into the Psychiatric Hospital “Casa de Repouso Guararapes” (Guararapes Rest Home), located in Sobral/CE, establishment accredited to the Unified Health System (SUS). (LIMA; PONTES, 2015) Three days later, a hospital official tried to stop Damião from being visited by his mother, so that she would not see the state in which he was. Damiao had his hands tied behind his back and was badly injured. Unrecognizable by his injuries, he stank of excrement and urine. While her mother was arguing with the only doctor on call, Francisco

Ivo de Vasconcelos, Damião was taken to the bathroom by nurses. The treatment received, however, was not enough to prevent his death, within the hospital, two hours later. The necropsy revealed that Damião had suffered several hits, presenting localized excoriations in the nasal region, right shoulder, anterior part of the knees and left foot, weevils located in the region of the left eye, homolateral shoulder and wrist. (RAMOS, 2007)

Damião's family then went on to fight for those responsible for his death to be criminally punished and also for compensation for material and moral damages. However, no action was taken by the police. The Public Prosecution Service of Ceará had the criminal and civil actions for damages filed, without a reasonable decision. (RAMOS, 2006)

Faced with Brazil's omission in 1999, the family and a non-governmental organization submitted a petition on the case to the CIDH (LIMA; PONTES, 2015), which immediately began examining the matter, concluding in 2002 that the petition satisfied the admissibility requirements. After analyzing the merits of the medical standards to be adopted for the mentally ill, the CIDH concluded in 2003 that Brazil had violated international human rights obligations in that case. (ROSATO; CORREIA, 2011) In response, the CIDH recommended that Brazil carry out a full, impartial and effective investigation into the events related to Damião's death and adequate reparation to his next of kin, including the payment of compensation. However, Brazil did not fully comply with these recommendations. As a result, the CIDH decided to submit the case to CtIDH, indicating that Brazil had violated the general duty to respect and guarantee human rights⁷. provided for in the CADH and, specifically, the rights to life, personal integrity, judicial protection and judicial guarantees⁸, due to the inhuman and degrading conditions of Damião's hospitalization and the lack of investigation and supply to the family of effective appeal to the defense of rights. (CtIDH, 2006a)

As a preliminary, Brazil has alleged the lack of exhaustion of domestic remedies⁹, in view of the fact that the internal accountability action was still ongoing. However, the CtIDH dismissed this preliminary because Brazil had tacitly renounced it when it was not raised in front of the CIDH¹⁰. In 2006, during the hearing, the Brazilian State acknowledged its international responsibility for violating the right to life and physical

7 Article 1. 1 of the CADH.

8 Articles 4, 5, 8 and 25 of the CADH.

9 Article 61. 2 of the CADH.

10 Article 46. 1(a) of the CADH.

integrity, but rejected it in the face of denunciations concerning the lack of judicial protection and judicial guarantees. Likewise, Brazil refused to acknowledge the violation of the right to the mental integrity of Damião's family members, which prevented payment of any compensation. (CtIDH, 2006a)

In its ruling, the CIDH examined, for the first time, the rights of persons with mental illness. It was also the first time that Brazil was convicted in a judgment of merit. In the sentence, the responsibility of Brazil for an individual act was recognized under the supervision and inspection of the Public Power. In addition, it was clear to CtIDH that people with disabilities, because of their vulnerability, require the State to take greater care and to promote individualized rights. As a result, the Inter-American Convention on the Rights of Persons with Disabilities (CIDPPD¹¹) was applied as the interpretation vector of the CADH itself. The CtIDH emphasized that mental illness does not prevent self-determination, and the ability of those who suffer from it to express their will, including with regard to refusal of treatment, should be presumed, which should always be respected by doctors and (other) authorities. If the consent of such persons can not be obtained, their legal representatives must decide what is best. Forced treatment is only justified in the event of imminent harm or urgency, which did not occur with Damião. (CtIDH, 2006a)

The CtIDH also recognized that the suffering of the relatives of Damião constitutes in itself violation to the right to the psychic integrity. Therefore, relatives of victims of human rights violations may also be victims of human rights violations. Regarding the delay in adopting internal measures of accountability and reparation, the CtIDH concluded that the characteristics of the fact did not make its calculation complex, and the negligence of the Brazilian judicial authorities was the only reason for the lack, which violated the principle of reasonable length of the process. (SCHENK, 2013)

Victims of human rights violations and their families have the right to truth and justice through the investigation and punishment of human rights violators. (NUNES, 2017) Brazil, which had previously confessed to violating the rights to life and physical integrity, was also blamed for violating the rights to judicial protection and judicial guarantees. The CtIDH thus condemned Brazil to pay damages to Damião's family; investigate and identify, within a reasonable time, those guilty of his death;

11 CIDPPD entered into force for Brazil on September 14, 2001.

promote training programs and training of health professionals, especially physicians, psychologists and nurses, who deal with people with mental illness. (RAMOS, 2007)

3. Nogueira de Carvalho et al. vs Brazil Case (2006)

Lawyer Gilson Nogueira de Carvalho was murdered on October 20, 1996, in Macaíba/RN, after disclosing the crimes committed by a group of extermination known as “Meninos de Ouro” (Golden Boys), which would include civilian police. Due to Brazil’s lack of due diligence in investigating, prosecuting and punishing the murderers, in 1997, non-governmental organizations sent a petition to the CIDH, accusing the State of violating family law to judicial guarantees¹². (CtIDH, 2006b)

In 2000 alone, Brazil alleged that it had conducted investigations into Gilson’s death, and the Rio Grande do Norte Public Prosecutor’s Office filed the respective criminal action¹³. After that, Brazil no longer manifested itself, which was interpreted by the CIDH in accordance with the petitioners’ allegations as disinterest in a conciliatory solution. (RAMOS, 2007)

In 2005, the CIDH filed a suit of international responsibility of Brazil with CtIDH. Their arguments consisted in the State’s failure to maintain the obligation regarding the respect of human rights¹⁴ and rights to judicial guarantees¹⁵ and judicial protection of Jaurídice Nogueira de Carvalho and Geraldo Cruz de Carvalho, Gilson’s parents, for lack of due diligence in the responsibility of the perpetrators of the homicide. (LIMA, 2010)

In this case, Brazil tested the scope of the temporal clause¹⁶. Since Gilson’s murder occurred in 1996, two years before the recognition of contentious jurisdiction, Brazil alleged that the CtIDH was incompetent *ratione temporis* to try the case. The CtIDH acknowledged that it could not know about Gilson’s death, but that it was competent to analyze the permanent violations resulting from that previous fact, such as the denial of justice to Gilson’s parents. Brazil also alleged the lack of exhaustion of

¹² Article 25 of the CADH.

¹³ In 2004, the defendant in this criminal case was acquitted by the jury for lack of evidence. (BARROZO; SILVA; PALUMA, 2014)

¹⁴ Article 1. 1 of the CADH.

¹⁵ Article 8 of the CADH.

¹⁶ Article 62. 2 of the CADH.

domestic remedies. As in the case of *Damião*, CtIDH observed that Brazil could not raise this exception, since it had not done so with the CIDH. On merit, Brazil stated that it carried out a serious and impartial investigation, but that the complexity of the case prevented him from holding Gilson's murderer accountable. The absence of a criminal conviction would not mean a violation of due process of law, when the State undertakes to elucidate the fact. The duty to punish is an obligation means and not a result. (LIMA, 2010)

The CtIDH argued that it was not for it to replace internal jurisdiction, establishing specific procedures for investigation and prosecution, but to establish whether domestic obligations had been violated and judicial guarantees had not been violated. In view of the evidence presented, the CtIDH concluded that there was no evidence that Brazil had violated these rights, which motivated it, by unanimity, to reject the lawsuit, absolve the State and close the case. (CtIDH, 2006b)

4. Escher et al. vs. Brazil Case (2009)

On May 3, 1999, the Major of the Military Police of Paraná (PMPR), Waldir Copetti Neves, asked the Judge of the District of Loanda/PR, Elisabeth Kather, to authorize the telecommunications company of Paraná to carry out the interception and monitoring of the telephone line of the Cooperativa Agrícola de Conciliação Avante Ltda. (COANA), based in Querência do Norte/PR, in order to investigate crimes allegedly linked to its directors, Arley José Escher, Dalton Luciano de Vargas, Delino José Becker, Pedro Alves Cabral, Celso Aghinoni and Eduardo Aghinoni. The request was granted without informing the Public Ministry of Paraná (MPPR). In addition to the COANA telephone line, without judicial authorization, the telephone number of the Community Association of Rural Workers (ADECON) was also intercepted and monitored. COANA and ADECON were directly linked to the Movimento dos Trabalhadores Rurais Sem Terra (MST) - Landless Workers' Movement. On June 8, 1999, excerpts of the interceptions were reproduced in Globo's National Newspaper and several local press agencies.

In 2000, the MPPR concluded that telephone interceptions had been carried out in violation of the right to intimacy, privacy and free association. At the same time, a writ of security was filed against the decision of the Loanda court, which had authorized telephone interception.

The request was denied for lack of object, once the telephone clamp had been closed. Against this decision, embargoes of declaration were presented so that the recordings were destroyed, which was also rejected. In the same way, the MPPR complaint against the judge, the PMPR commanders and a PMPR third sergeant were rejected. (CtIDH, 2009a)

In the face of these failures, a petition was sent by nongovernmental organizations to the CIDH in 2000, denouncing the violation of the right to privacy¹⁷ of the victims, freedom of association¹⁸, judicial guarantees, judicial protection and non-compliance with the obligation to repair the damage caused by the illegal interception of widely publicized telephone conversations and the lack of destruction of the material. The CIDH advised Brazil to hold the agents accountable and to repair the victims, which was not done, making it possible to lodge the complaint with the CtIDH (OLIVEIRA, 2013).

In the CtIDH, Brazil raised the exception of lack of exhaustion of domestic remedies and argued that there were no reprehensible conduct to be imputed to the State. In addition, it requested that its due diligence be recognized regarding the investigation of the denunciations, stating that the alleged victims had at their disposal all adequate mechanisms of reparation. Specifically on interceptions, Brazil claimed to have complied with the principle of legality, which would remove the possibility of offense to honor. Finally, Brazil questioned the possibility of reviewing, on an international level, the conduct of agents already examined internally.

In 2009, CtIDH pushed back the preliminaries. In the merit, CtIDH stated that telephone conversations should be made with care, in strict compliance with legal limits, which did not happen in the case. In fact, the breach of telephone confidentiality of the victims had occurred in disobedience to the provisions of Law 9. 296/1996¹⁹, that is, without the due diligence required of the State. Because of this, the interceptions corresponded to the violation of the right to private life, honor and reputation of the victims. (CtIDH, 2009a)

In addition, the CtIDH established that the clandestine disclosure of the conversations affected the images of rural workers' organizations, which constituted a violation of the right to freedom of association. Due to the lack of confidentiality of the recordings, the crime of Article

17 Article 11 of the CADH.

18 Article 16 of the CADH.

19 Law regulates Article 5, XII of the Brazilian Constitution.

10 of Law 9. 296/1996 was practiced, which was not verified by Brazil, meaning, therefore, violation of the right to judicial guarantees and judicial protection. The CtIDH unanimously condemned Brazil to pay damages for moral damages; publish the sentence in several organs of the national and local press; investigate, prosecute and punish those responsible for the violations. (PIOVESAN; QUETES; FERRAZ, 2018)

5. Garibaldi vs. Brazil Case (2009)

This is a case directly related to the previous case, as it relates to violence in the countryside, in Querência do Norte/PR, in the county of Loanda, where COANA was based. (LEMES; CEOLIN, 2017) On November 27, 1998, a group of twenty gunslingers organized the clandestine eviction of about fifty MST families, who occupied a farm. Carrying large-caliber weapons, they arrived at the camp, identifying themselves as policemen. They then forced the villagers to leave their tents and lie face down on the ground. When Sétimo Garibaldi left his house, he was shot by one of the gunmen, dying on the spot. With the death of Sétimo, the group left the encampment, not concluding the clandestine eviction.

As is always the case, the police were called in, and the respective inquiry was filed, which was, however, closed by order of the Loanda court in 2004. Against that decision, the widow of Sétimo filed a writ of mandamus, requesting the reopening of the investigation, which was rejected by the Court of Paraná. (PIOVESAN; QUETES; FERRAZ, 2018) In 2003, the petition was submitted to the CIDH. The petitioners alleged that Brazil, because of delays and lack of due diligence, was internationally responsible for the violation of the obligation to investigate, prosecute and punish the murderer of Sétimo.

In 2007, the CIDH filed a lawsuit with the CtIDH against Brazil, which defended itself by preliminarily alleging the lack of exhaustion of domestic remedies and incompetence *ratione temporis*, in view of the death occurring 13 days before the filing of the recognition act of contentious jurisdiction of the CtIDH. Once again, the CtIDH acknowledged its incompetence to hear of Sétimo's murder, but said it was permanent the violation of the judicial guarantees and the judicial protection of its next of kin. The CtIDH then acknowledged that there had been exhaustion of

domestic remedies, as the police investigation was filed by court order at the request of the MPPR. (CtIDH, 2009b)

In the merits, the CtIDH concluded that the State did not act with due diligence when conducting the investigation, because there was a lack of indispensable testimony, lack of interest in clarifying the contradictions, loss of evidence, failure to comply with due diligence, error in filing the investigation and delay at the conclusion of the investigation. (GARCIA, 2016) As a result, in the judgment, CtIDH concluded that Brazil had violated the right of the relatives of Sétimo to know the truth of the facts. The State was therefore ordered to indemnify, publish the sentence in national and local press organs, and investigate the responsibilities of the public agents involved in the crime. (CEIA, 2013)

6. Guerrilha do Araguaia Case (2010)

After the coup d'état against the government of President João Goulart, in 1964, the Dictatorship was established in Brazil, against which the Partido Comunista Brasileiro (PCdoB) - Communist Party of Brazil - stood. In 1969, the PCdoB decided to initiate a movement of armed resistance to the dictatorial government, organizing in the Bico do Papagaio, location where the States of Pará, Tocantins and Maranhão meets, the Guerrilha do Araguaia - Araguaia Guerrilla. The purpose of the movement was to overthrow the Dictatorship by force. (MORAIS; SILVA, 2005)

As a reaction to the revolutionary initiative²⁰ of PCdoB, the Brazilian dictatorial government put its Armed Forces to carry out, between 1972 and 1975, several military operations in the region of Araguaia, with the intention of exterminating the guerrillas. During the execution of the operations, the military practiced arbitrary detention, torture and forced disappearance of dozens of people. These facts have never been the object of investigation and accountability on the part of Brazil. (JUSTAMAND; MECHI, 2014)

In 1982, relatives of the guerrillas interposed, in the internal scope, a common action of recognition by the State of the operations of extermination in Araguaia. Nevertheless, there was never any official response from Brazil about the fate of the people associated with the

²⁰ Any initiative to overthrow an antidemocratic government, as was the Brazilian government between 1964 and 1989, was considered revolutionary, while any initiative to overthrow a democratic government is a coup.

Araguaia Guerrilla, which motivated relatives and nongovernmental organizations to submit a petition to the CIDH denouncing the facts, before recognition of the contentious jurisdiction of the CtIDH by the State. (GRABOIS, 2018)

In 2008, the CIDH found that, due largely to the Amnesty Law, Brazil had not carried out any investigation to try and punish those responsible for the crimes committed during the confrontation of the Araguaia Guerrilla. In addition, the judicial remedies available to the victims' families to ensure the right to truth were found to be ineffective. Eleven years after the recognition of contentious jurisdiction by Brazil, the CIDH decided to refer the case of the Guerrilha do Araguaia to the CtIDH. It was asked to hold Brazil accountable for arbitrary detention²¹, torture²² and forced disappearance²³ of 70 people, PCdoB members and peasants, and extrajudicial execution²⁴ of Maria Lúcia Petit da Silva, whose remains were found and identified in 1996. In addition, Brazil should be held liable for lack of a duty to investigate, prosecute and punish²⁵ those responsible for these violations.

Preliminarily, as had happened in previous cases, the State raised the lack of exhaustion of domestic remedies, since five legal actions were underway on the Araguaia Guerrilla, and the CtIDH exception of *ratione temporis* incompetence, since the facts would have occurred before 1998. In response, the CtIDH has declared itself competent to try the case, since such violations have permanent effects. On the other preliminary, it was understood that the delay in exercising jurisdiction corresponded, in practice, to the exhaustion of domestic remedies.

In the merit, Brazil maintained that, due to the provisions of Law 9. 140/1995 and the “Right to Memory and Truth” report, there was recognition of the responsibility of the State for the atrocities committed against persons associated with the Araguaia Guerrilla, which removed the object under the CtIDH action. Faced with this, the CtIDH concluded that the occurrence of the facts and the consequent responsibility of Brazil were not the subject of controversy. Therefore, the State must act with due diligence to investigate, prosecute and punish the perpetrators of these uncontroversial facts, despite the Amnesty Law, which lacks legal

21 Articles 7 and 13 of the CADH.

22 Article 5 of the CADH.

23 Article 3 and 4 of the CADH.

24 Article 4 of the CADH

25 Articles 8 and 25 of the CADH.

effects in view of the *jus cogens* nature of those obligations²⁶. As forced disappearance almost always entails torture, execution and concealment of the corpse, Brazil is obliged to guarantee to the family of the disappeared fast and efficient resources for the localization, identification and delivery of the remains. Also worthy of note is the Order of the CtIDH for the State to implement a permanent and obligatory program or course on human rights at all hierarchical levels of the Armed Forces. (CtIDH, 2010)

7. Workers of Fazenda Brasil Verde vs. Brazil Case (2016)

Fazenda Brasil Verde is a rural property, located in Sapucaia/PA, corresponding to a total area of 8. 544 hectares. In 1988, the Federal Police received allegations of slave labor on that property, as well as the disappearance of two young workers, Iron Canuto da Silva and Luís Ferreira da Cruz. (ROCHA, 2016)

Once the complaint was received, the PF approached Fazenda Brasil Verde six months later, in early 1989. There, a fraudulent system of grooming for temporary work was identified. The workers were subjected to debt bondage, characterized by the discount in salary of the expenses with food, housing, tools, medicines, etc. In effect, the workers did not receive salary. In this context, the only getaway was the risky escape through the forest. Despite the blatant illegality, the PF did not carry out the police investigation. In 1992, the Comissão Pastoral da Terra (CPT) denounced the existence of slavery in the Fazenda Brasil Verde. Back at the site, the PF identified several violations of labor law, but this did not correspond to any liability. Years later, twelve workers were able to flee the farm, which led to another inspection operation in 1997, when, finally, the Federal Public Ministry (MPF) filed a criminal complaint against the enquirer, the manager and the owner of the farm. Two years later, the criminal action against the owner was suspended . With regard to the two other accused, before the infinite indefiniteness of jurisdiction, punitive prescription occurred. In 2000, there was a fourth inspection operation at Fazenda Brasil Verde, when the same violations against workers' rights were identified. Between 1989 and 2002, more than 300 workers were rescued from the farm. (CtIDH, 2016)

Faced with the evident lack of will of the State to investigate,

26 Seeing that Brazil requires the adequacy of its domestic law, that is, the repeal of the Amnesty Law, pursuant to Article 2 of the CADH.

prosecute and punish the practice of slave labor and the disappearance of Iron and Luis, a petition was presented to the CIDH. In 2007, Brazil defended itself, claiming that the demand was inadmissible, due to the lack of exhaustion of domestic remedies. On the merits, Brazil claimed that it could not be responsible domestically for private acts. The State also said that it had not been silent, since measures of agrarian reform and the fight against violence in rural areas were being implemented, in addition to actions to combat slave labor. Specifically, in relation to the facts that occurred at the Fazenda Brasil Verde, Brazil reported that all the allegations were duly investigated, but that there was no obligation to punish, but to investigate. The investigations had been carried out seriously, but they proved unsuccessful. (DUARTE, 2017)

The CIDH considered that the inefficiency of domestic remedies corresponds to the presumption of its exhaustion. In the merit, it considered that the workers were treated like property goods, which configures the slavery. Since the State had witnessed human rights violations unopposed by private individuals, Brazil was responsible for lack of due diligence, which obliged it to investigate, prosecute and punish the perpetrators of such acts. In addition, Brazil was also obliged to locate the missing persons. Faced with the inertia of Brazil in following the determinate, the CIDH interposed with the CtIDH the action of international accountability.

In the CtIDH, Brazil raised the exception of *ratione personae* incompetence in relation to persons whose identification did not exist or whose link with the farm was insufficient. The State also questioned the *ratione temporis* competence, since the facts occurred before 1998. There was also questioning of the lack of exhaustion of domestic remedies and the prescription of reparation claims. In the merits, Brazil defended itself by arguing that the CtIDH can not judge a case about prohibition of trafficking in persons and labor rights, since they are not foreseen in the CADH. In addition, the facts had been practiced by private. However, Brazil acknowledged that the redeemed workers were in degrading working conditions, but that this would not constitute slave labor under the terms of the Slavery Convention²⁷. (DUARTE, 2017)

The CtIDH stated that the impossibility of identifying the victims stems from the State's negligence in investigating the facts, and it is not possible to plead its own awkwardness as a defense. Regarding temporal

27 The Slavery Convention, adopted at Geneva in 1926 and amended by the Protocol of 1953, entered into force for Brazil on January 6, 1966.

jurisdiction, CtIDH admitted that it could examine the facts of the 1997 and 2000 inspections at Fazenda Brasil Verde, except for the disappearance of Iron and Luis, which is a continuing violation. Regarding the lack of exhaustion of domestic remedies, CtIDH did not identify which internal measures were pending execution. (ROCHA, 2016)

In the sentence, we tried to integrate the concepts of slavery, bondage and forced labor, foreseen in article 6 of the CADH. Firstly, it was recalled that the exploitation of slave labor is a crime against humanity and, consequently, its existence is contrary to the norm of *jus cogens*. In result, it was decided that the easement is a mechanism similar to slavery, as there is worker control by physical or psychological coercion, and is thus a violation of the mandatory law of general international law²⁸ which makes the limitation of the State's punitive claim inadmissible. In this sense, the CtIDH identified serious omissions by state bodies to provide an adequate solution to the tragedy of those persons, which is reflected in the excessive duration of the pertinent actions, corresponding to the non-fulfillment of the duty of judicial guarantees and judicial protection. (PIOVESAN; QUETES; FERRAZ, 2018)

Violations of *jus cogens* were aggravated by the socioeconomic vulnerability of the victims, isolated in the Amazon. For this reason, Brazil was blamed by the CtIDH for violating the right of workers, identified in the post-1998 inspections, not to be subjected to slave trade and slavery. (BASTOS JR; CUNHA, 2017) At the end, in addition to paying compensation to the victims, CtIDH condemned Brazil to adapt its domestic law²⁹ concerning the imprescriptibility of slavery in all its forms, in view of its character as a crime against humanity. (VILLELA, 2016)

8. Favela Nova Brasília Case (2017)

At the end of the dawn of October 18, 1994, civilian police made an incursion into the Favela Nova Brasília, part of the Alemão Complex, in the city of Rio de Janeiro. A group of 110 civilian police officers, of whom “Turco”³⁰ participated, went to the community to allegedly serve 104 warrants against drug traffickers. However, the media reported that it was actually a reprisal for the attack suffered in the 21 Police Station, three

²⁸ Article 53 of the Vienna Convention on the Law of Treaties, in force, for Brazil, since September 25, 2009.

²⁹ Article 2 of the CADH.

³⁰ “Turco” was quoted for his special truculence with the victims.

days earlier, when three policemen were injured.

In the favela, the police invaded at least five houses. In the first, a 16-year-old girl was tortured and sexually assaulted while questioning her about the whereabouts of one of the local drug trafficking leaders. In the second and third houses, a minimum of six people were executed. In the fourth, the police arbitrarily detained three individuals, whose bodies appeared among the thirteen corpses removed from the scene of the crime and abandoned in one of the streets of the favela. In the fifth house, where the policemen came firing, there were two girls, aged 15 and 19. One of them was sexually abused by the police. In the end, three women were victims of sexual violence, nine male adults were murdered and four male children were murdered.

Months later, in the early morning of May 8, 1995, a new police raid was organized in the Favela Nova Brasília. A group of 14 civil police officers from the Delegacia de Repressão a Roubos e Furtos contra Estabelecimentos Financeiros (DRRFCEF) - Police Station for Burglary and Theft Repression against Financial Establishments, supported by helicopters, aimed at seizing a shipment of firearms destined to drug traffickers. When the police arrived in the favela, there was intense firefight with traffickers, which caused panic in the community. After the shooting, eight alleged drug traffickers were killed, who had been executed by the police, after surrendering, in the building number 26 of Santa Catarina Street. By the end of the second police operation, thirteen men had been killed, two of whom were minors. (CtIDH, 2017)

As a result of both police incursions, an investigation was begun within the scope of the Rio de Janeiro Civil Police (PCRJ) and a Special Investigation Commission was created within the scope of the State Government. During the investigations, the deaths were recorded under “arrest warrants”. In the face of the official death declaration followed by resistance to imprisonment, both investigations were filed and the case closed. Due to the Brazilian authorities’ failure to investigate, prosecute and punish those responsible, two³¹ petitions were presented to the CIDH, one for each slaughter, in 1995 and 1996, alleging that Brazil was responsible for extrajudicial executions and abuses. (MENEZES, 2017)

The CIDH concluded that Brazil was responsible for violating provisions of the CADH, the Inter-American Convention to Prevent and

31 The CIDH only decided to bring them together in 2007, since it was found that both dealt with similar and related facts.

Punish Torture (CIPPT³²) and the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará³³). In cases related to deaths caused by the police, a pattern of investigation is observed that legitimizes all police action, which makes their control unfeasible, especially in the face of vulnerable human groups. In fact, investigative procedures are so fragile that the use of the police force is always adequate, lawful, and just. It is the police's standard, for example, not to preserve the crime scene, which impedes a serious investigation. Regarding the favelas of Nova Brasília, the CIDH recommended that Brazil investigate, prosecute, punish those responsible and repair the victims, including their families. In addition, the State should adopt a more appropriate program of training of public security agents, as well as extinguishing the figure of "resistance files". (MENEZES, 2017)

Faced with the State's inertia regarding the recommendations, the CIDH filed in 2015 the action of international accountability with the CtIDH. In its defense, Brazil raised preliminary objections regarding the identification of the alleged victims and the temporal clause. The CtIDH partially accepted the exception on incompetence *ratione personae*, considering as alleged victims only the persons identified in the CIDH report. Regarding incompetence *ratione temporis*, CtIDH acknowledged that Brazil has been bound by compulsory jurisdiction since 1998, but that did not prevent it from trying the case because it is a continuing violation of the obligation to investigate, prosecute, punish and repair the damages caused to the people of Favela Nova Brasília. (SILVA; MONT'ALVERNE, 2017)

On merit, Brazil claimed that the two police incursions were not "extermination operations" but rather public security operations, which strictly followed the principle of legality. The State maintained that there was no indication of extrajudicial execution. On the contrary, all testimony confirmed that there was a shootout between police and traffickers. Thus, the deaths were a consequence of the exercise of the right of defense by the police. According to Brazil, the only flaw in the operation had been not to keep the crime scene intact, but this was only because the police had provided help to the victims, transporting them to the hospital. (CELA; SILVA, 2017)

32 Brazil ratified the CIPPT on July 20, 1989.

33 Brazil deposited the letter of ratification of the Convention of Belém do Pará on November 27, 1995.

In the judgment, CtIDH considered that the investigation into death resulting from police action can not be carried out by a body linked to those involved, as happened in the case at hand, which compromises the guarantee of independence and impartiality. In addition, the investigations did not follow the minimum standards of due diligence in cases of extrajudicial executions and serious violations of human rights, especially as regards the reasonable duration. Victims of sexual violence participated only as witnesses of other facts and not as victims of violations of the provisions of the CADH, CIPPT and the Convention of Belém do Pará. All these absences correspond, therefore, to the violation of the duty of judicial guarantees and judicial protection. Therefore, it was incumbent on the State to resume investigations, in view of the inadmissibility of the statute of limitations for crimes of torture and extrajudicial executions (BASTOS JR; CUNHA, 2017). The lack of due diligence in Brazil was also the cause of suffering and distress of some relatives of the murdered people who were treated by the CtIDH as victims of violation of the right to moral and psychological integrity³⁴.

Brazil was then sentenced to investigate, prosecute and, if possible, punish those responsible for crimes committed in the Favela Nova Brasília. In addition, following the system adopted in the ruling of the Guerrilha do Araguaia case, Brazil should rapidly implement a mandatory and permanent program for the training of civilian and military police officers in Rio de Janeiro, as well as public health agents, in order to provide adequate care to rape victims. Finally, the concept of death resulting from police intervention was standardized, and arbitrary executions in the form of “resistance files” should be abolished. (CtIDH, 2017)

9. Xucuru Indigenous People and its members vs. Brazil Case (2018)

6. 200 people, distributed in several communities, located mainly in Pesqueira/PE, form the Xucuru Indigenous People. Historically, these people have fought for territorial rights, which means, in Brazil, the demarcation of their traditional lands. (VALENTE, 2018) Since 1996, interested third parties have been able to challenge demarcations of indigenous lands in defense of their private property rights. In 2001, the demarcation of the indigenous Xucuru land was approved. However, this act was the subject of hundreds of questions, which were accepted by the

³⁴ Article 5 of the CADH.

Judiciary. In 2014, a judicial decision in favor of non-indigenous occupants was upheld, which was subject to a rescission action by the National Indian Foundation (FUNAI).

In 2002, nongovernmental organizations sent a petition to the CIDH, reporting Brazil's delay in completing the process of recognition, titling, delimitation, demarcation and de-intrusion³⁵ of the indigenous Xucuru land, which meant the violation of property rights³⁶. (PEREIRA *et al.*, [s. d]) On the right of collective property, the CtIDH has recognized the substantial link between indigenous peoples and traditionally occupied lands. It is the international protection of the identity dimension of individuals as members of a collectivity, which is only recognized by being rooted in a certain geographic space. This recognizes the importance of the possession of the lands traditionally occupied as a condition for the protection of a given culture. (BENEDETTO, 2017) In the case of the Xucuru Indigenous People, the discussion of collective ownership took place in two axes, namely lack of titration and lack of de-intrusion. The first axis refers to the right of ownership, while the second concerns the right to judicial guarantees³⁷ and judicial protection³⁸.

In view of this, the CtIDH recognized that in Brazil, in the event of a conflict between the right to collective property and the right to private property, domestic law gives priority to the first to the detriment of the second. The collective right always prevails, even in the face of bona fide third parties. Thus, it is the responsibility of the CtIDH, in this case, to internationally declare the existence of a right already internally recognized by Brazil. (CARRA, 2017)

The CtIDH then analyzed the effectiveness of Brazil's measures to guarantee the right to collective ownership of lands traditionally occupied by the Xucuru Indigenous People, in the context of due diligence. In this sense, it was verified that, in spite of the hundreds of challenges, the State should have already completed the demarcation and de-intrusion of the Xucuru indigenous land, and therefore, the violation of the right to judicial guarantees and judicial protection was identified. Although, despite Brazil's acknowledgment of the collective property rights of the

35 Once the demarcation has been completed, there is a de-intrusion, a measure for the effective possession of indigenous land by a people, which provides for the removal of any non-indigenous occupants.

36 Article 21 of the CADH.

37 Article 8 of the CADH.

38 Article 25 of the CADH.

Xucuru Indigenous People over traditionally occupied lands, the State did not guarantee the full exercise of this right, CtIDH found that there had been a violation of Article 21 of the CADH. In view of this, Brazil was condemned to do so, concluding with diligence the de-intrusion of the indigenous Xucuru land, indemnifying third parties in good faith for possible improvements in the property. (CtIDH, 2018a)

10 Vladimir Herzog et al. vs. Brasil Case (2018)

On October 24, 1975, journalist Vladimir Herzog was summoned to appear at the headquarters of the Department of Information Operations and Internal Defense Operations Center (DOI/CODI) of São Paulo, a body linked to the Second Army³⁹, located at Rua Tutoia, Paraíso. (LIMA, 2018) The next day, Vladimir voluntarily went to the DOI/CODI, arriving there early in the morning. In the afternoon of the same day, under state custody, Vladimir died, hanged with the belt⁴⁰ of his prison jumpsuit, in incomplete suspension, that is to say, with feet resting on the ground. According to the Brazilian state, based on expertise, Vladimir had committed suicide, which was promptly questioned, based on photos and the testimony of George Duque Estrada and Leandro Konder, prisoners in DOI/CODI. Torture marks have been identified by the Jewish funeral committee, which is responsible for preparing the body for burial. For this reason, Vladimir was not buried in the part of the cemetery intended for suicides. (BRASIL, 2007)

In 1976, the Vladimir family filed a declaratory action against the Union, demanding recognition of the arbitrary arrest, torture and death of the journalist and payment of compensation. Boldly, in 1978, the court recognized the arbitrary arrest, torture and murder of Vladimir by state agents. Reluctant, the Federal Court appealed against this decision, which was judged in 1983, and the Federal Court of Appeal declared that there was an obligation of the State to indemnify Vladimir's family, but that the request should have been made in specific action. Against the appeals decision, the Union presented infringements, which were denied, and the in 1995 the decision became final.

In 1992, the magazine "Isto É, Senhor!" published a news

³⁹ Since 1985, this is the Military Command of the Southeast, based in São Paulo/SP.

⁴⁰ Although other people, who were arrested there in the same period, claim that there is no such thing in their overalls. (BRASIL, 2007)

in which an official of DOI/CODI, Pedro Antonio Mira Grancieri, the “Captain Ramiro”, confirmed his involvement in the death of Vladimir. In the face of the news, the São Paulo Public Prosecutor’s Office requested the Civil Police to open an investigation, which was quickly shelved on the basis of the Amnesty Law, after Captain Ramiro filed a *habeas corpus* with the São Paulo Court of Justice. (SANTOS, 2017) In 1993, while the Union resorted to the declaratory decision on torture and murder of Vladimir, the then Minister of Justice, Mauricio Corrêa, signed an official report that Vladimir had committed suicide by hanging inside the cell he occupied in DOI/CODI. (BRASIL, 2007) With the enactment of Law 9. 140/1995, Brazil acknowledged its responsibility for the assassination of political opponents between 1961 and 1979.

Years after the end of the Dictatorship⁴¹ in recognition of the jurisdiction of the CtIDH and the International Criminal Court (TPI⁴²) by Brazil, consolidating the international understanding on the impossibility of prescribing and amnesty of crimes against humanity, the MPF began to investigate facts related to the repression of opponents of the Dictatorship. In 2008, the MPF intended to initiate accountability for Vladimir’s assassins. However, internal disagreements prompted the MPF to request, in the following year, the filing of the deed, which was granted by the federal court, which identified the existence of *res judicata*, non-existence of the criminal type on crime against humanity and prescription of applicable criminal types. Also in 2009, a petition on human rights violations related to Vladimir’s death reached the CIDH. (SANTOS, 2017)

In 2011, the National Truth Commission (CNV) was set up internally, which paid special attention to Vladimir’s death. An important development of CNV work was the request to Justice-rectification Vladimir death records, which was granted, and transcribed in the *cause of death* injuries and ill-treatment on the premises of DOI/CODI, instead of mere mechanical asphyxia by hanging. (BORGES; BRITTO, 2012) In 2014, CNV experts drew up a report on Vladimir’s death, demonstrating that the victim had been strangled in DOI/CODI. The novelty refers to the CNV’s finding that, due to the systematic nature of the serious human

41 For some, the Military Dictatorship came to an end in 1985, when a civilian, Tancredo Neves, was indirectly elected President. Others maintain that the Civil-Military Dictatorship ended only with the promulgation of the 1988 Constitution.

42 The Brazil deposited the instrument of ratification of the TPI of Rome Statute on 20 June 2002 and is effective for the country on 1 September 2002. By Constitutional Amendment 45/2004, the Constitution has to rely on Article 5, § 4 as follows: “Brazil submits to the jurisdiction of the International Criminal Court to whose creation has manifested accession.”

rights violations committed against the civilian population, crimes against humanity have been committed, which are not subject to limitation or amnesty and are part of the competence of the TPI.

In 2015, Vladimir's family received the certificate of rectified death record. (BORGES, 2013) This year, the CIDH recommended that Brazil determine the criminal responsibility for the arbitrary arrest, torture and murder of Vladimir, which are crimes against humanity and therefore unmanageable and imprescriptible. In addition, Brazil should compensate Vladimir's next of kin for material and moral damages. However, Brazil did not follow the recommendations, which implied the filing of the action with the CtIDH. (SANTOS, 2017)

In the face of the case, CtIDH analyzed the responsibility of the State based on the obligations derived from the CADH and the CIPPT regarding the lack of investigation, trial and possible punishment of the torturers and assassins of Vladimir. As Brazil had already recognized, through Law 9. 140/1995, its responsibility for these facts, the discussion was restricted to the legal nature of the crimes and the possibility of authors being held accountable, in view of the Amnesty Law. In addition, the possible violation of the right to the truth was also analyzed, due to the false version of the death, the absence of presentation of documents and the consequent lack of identification of those responsible for the crimes. Finally, it was examined the allegation of violation of the right to personal integrity of Vladimir's next of kin.

CtIDH decided that, at the time of the facts, the prohibition of torture, arbitrary execution and forced disappearance had already been accepted and recognized as *jus cogens*, which imposed on Brazil the obligation to investigate, prosecute and punish those responsible for the torture and murder of Vladimir, nullifying the normative provisions of amnesty or pardon of the perpetrators of the crimes. The condemnation highlights the order to restart the investigation for the trial and accountability of the torturers and murderers of Vladimir, and Brazil must recognize the imprescriptibility of crimes against humanity.

Since Brazil has been inert since 1975, despite numerous demands to the contrary, CtIDH has found that the State has continuously violated its duty of due diligence in regard to investigation, prosecution and punishment, as well as the right to the truth. Since the State has repeatedly issued the false version of suicide, this has done damage to the personal integrity of Vladimir's family members, who were also considered victims

of violation of the right to judicial guarantees and judicial protection. (CtIDH, 2018b)

11. Brazil as a convicted defendant

Once condemned, Brazil is bound to⁴³ comply with the decisions of the CtIDH. In the last twenty years, since the recognition of the contentious jurisdiction of CtIDH, Brazil was convicted in eight cases⁴⁴. When the conviction determines the payment of indemnity, the State has fulfilled the obligation without major problems, such as the cases of Damião and Sétimo⁴⁵. (LOUREIRO, 2008) Since 2004, Brazil has also earmarked part of its budget for the payment of compensation for non-compliance with the international law of human rights. (CICCO FILHO; VELLOSO; ROCHA, 2014)

The challenges regarding compliance with the CtIDH judgment by Brazil refer to the admission of the prescription, amnesty and *res judicata*, which has been the basis for noncompliance with decisions. For example, in the Indigenous People of Xucuru case, an action to reintegrate possession of an area of 300 hectares, located in the Xucuru indigenous land, filed by a non-indigenous occupant, was judged internally valid, being final and unappealable before reading the international decision. (CtIDH, 2018a) It is important to discuss the effects of domestic *res judicata* on behalf of a private owner in conflict with the international *res judicata* in favor of collective owners.

For the CtIDH, the principle of *res judicata* is not absolute, being possible to be removed when it is demonstrated that the trial was not independent and impartial, and the *res judicata* seems to be “apparent” (BÁEZ; PARRÓN, 2015) or “fraudulent” (VERA, 2012). When it is shown that the internal court has acted without interest to hold, the *res judicata* should have no effect. If not, we witness the forbidden *bis in idem*⁴⁶. In the case of the Xucuru Indigenous People, there is in principle a conflict of domestic and international *res judicata*, in which collective property rights are irreconcilable with private property. The impartiality of the domestic court to re-examine the issue is not disputed, as is normally the case with the international obligation to investigate, prosecute and punish, in which

⁴³ Article 68 of the CADH.

⁴⁴ The only absolution was in the Nogueira de Carvalho vs. Brazil Case.

⁴⁵ Although payments were made outside the one-year deadline stipulated by CtIDH.

⁴⁶ Article 8. 4 of the CADH.

res judicata may be raised. On the contrary, it is a matter of solving a conflict of rules.

Since Brazil has ratified the CADH and recognized the contentious jurisdiction of CtIDH, the principle of *pacta sunt servanda*⁴⁷ obliges the State to fully comply with the judgment rendered in the case it is a party⁴⁸. Thus, once the State is part of the inter-American human rights system, there is an obligation for national judges to apply domestic law without violating international human rights law, by exercising concentrated control of the convention of laws. When acting, the Brazilian judges should thus be in line with the CtIDH, the last interpreter of the CADH⁴⁹. In this sense, it is argued that it is not possible for Brazil to allege the existence of internal res judicata in order to disregard the CtIDH's decision in the case of the Xucuru Indigenous People.

Another major challenge in Brazil is precisely the obligation to investigate, prosecute and punish perpetrators of human rights violations, in view of the institutes of prescription and amnesty. (CANÇADO TRINDADE; ROBLES, 2004) In the case of Damião, for example, five defendants of the criminal action were convicted in 2009 of the alleged crime of ill-treatment. Three years later, the Ceará Court of Justice upheld the appeal, recognizing the limitation of the State's punitive claim. (LIMA; PONTES, 2015) In the Escher et al. vs Brazil case, the sentence was sent to the General Attorney of Paraná to comply with the obligation to investigate the facts regarding illegal interceptions. However, it was found to be legally impossible to investigate because of the prescription. (PEREIRA, 2013)

Despite the frequent opposition of the petitioners and the CIDH itself, CtIDH has recognized the statute of limitations regarding non-serious violations of human rights. In this sense, regarding compliance with the judgment of the Sétimo case, Brazil reported that, in the administrative sphere, the Office of the General Police Department had requested the closure of the case for lack of proof of authorship, which was accepted by CtIDH (CEIA, 2013). As far as criminal responsibility is concerned, the Superior Court of Justice maintained, in 2016, at the time of the Special Appeal 1351177, the decision to close the investigation to investigate

47 CtIDH. Caso Trabajadores Cesados del Congreso (Aguado Alfaro y otros) vs. Perú. Sentencia de 24 de noviembre de 2006 (excepciones preliminares, fondo, reparaciones y costas).

48 CtIDH. Consultative Opinion (OC) 14/94, of December 9, 1994, on international liability for the issuance and application of laws of violation of the American Convention (Articles 1 and 2).

49 CtIDH. Almonacid Arellano et al. vs. Chile Case. Judgment of September 26, 2006 (preliminary objections, merits, reparations and costs), § 124.

the crime (GARCIA, 2016). Shortly after the statute of limitations has been prescribed in the face of the murder of Sétimo (CtIDH, 2009b), non-governmental organizations have been mobilized so that the CtIDH does not recognize the fulfillment of the sentence by Brazil under this justification. (BORGES, 2018)

The same lack of definition exists in relation to compliance with the judgment in the case of Nova Brasília Favela. The CtIDH has identified that effective conduction of investigation, trial and punishment of those responsible for the killings is pending. As they occurred in 1994 and 1995, there would be the limitation, under the terms of Brazilian criminal procedural law. However, unlike the Sétimo homicide, which was not identified by the CtIDH as a serious violation of human rights, the massacres in the Favela Nova Brasília were treated as extrajudicial executions, which, because of their seriousness, distort the application of the prescription⁵⁰. (GROSSMAN, 2008) Although there is no discussion about the imprescriptibility of serious human rights violations, Brazil has reiterated, in demonstrations by the Public Prosecutor's Office and the Judiciary, that there is no legal possibility of accountability for the perpetrators of crimes committed in Favela Nova Brasília (CtIDH, 2017), which constitutes a new violation of international law. In this case, the CtIDH indicates the case to the OAS General Assembly in which the State has not complied with the judgment⁵¹.

The practice of slavery is another serious violation of human rights that prevents prescription. At least since 1945, with the Statute of the International Military Tribunal of Nuremberg, slavery is considered a crime against humanity. The *ad hoc* International Criminal Tribunal for the former Yugoslavia, in 1992, considered that contemporary forms of slavery were part of the definition of a crime against humanity. The obligation to restart criminal investigations or prosecutions of the facts found on Fazenda Brasil Verde is part of the CtIDH ruling, which determined that Brazil should take the necessary measures to ensure that the prescription is not applied to slavery and its analogous forms, which are crimes against the humanity. As a result, Brazil can not claim the existence of a limitation or the principle of *non bis in idem* as an excuse for non-compliance with the judgment. (CtIDH, 2018b, § 232)

Crimes committed by State agents against members of the

50 CtIDH. Barrios Altos vs. Peru Case. Judgment of March 14, 2001 (merits), § 41.

51 Article 65 of the CADH.

Araguaia Guerrilla, impassible for amnesty and prescription, were also considered by the CtIDH serious human rights violations. Based on this, State organs, notably the MPF, have demanded the accountability of perpetrators of human rights violations during the dictatorship. However, because of the amnesty and prescription, the Judiciary has been characterized as making it impossible to comply with the CtIDH ruling⁵². In fact, regarding criminal liability, even in actions for the forced disappearance of persons, as a continuing crime against humanity, Brazil continues to prevent the investigation and prosecution of the accused. (RABELO, 2015) Of the 36 actions⁵³ that the MPF has tried in recent years, throughout the country, against agents of repression involved in murders of political dissidents, only two are in progress. (MPF, 2018)

Regarding the forbidden amnesty of crimes against humanity, we highlight the judgment by the STF in 2010 of the Arrangement of Non-compliance with Fundamental Precept 153 (SANTOS, 2011). By majority⁵⁴, the court considered the Amnesty Law as an important political movement for national reconciliation, which meant *forgetting* of all crimes committed by agents of the Dictatorship. The legal system of human rights is based on the principle of justice, truth and memory, which is directly opposed to any proposal of forgetfulness (BARROZO; SILVA; PALUMA, 2014). In addition, in order to justify the STF's positioning, it was stated that the Amnesty Law could not be confused with self-amnesty⁵⁵ prohibited by international law (UNNEBERG; MELO, 2014). However, this conceptual differentiation is not made to allow the amnesty of crimes against humanity. Even if it were done, for reasons of logic, the state granting amnesty to its agents means self-amnesty.

In the face of the CtIDH's ruling on the Araguaia Guerrilla, STF Minister Marco Aurélio came to publicly stand for not only

52 It seems that this is slowly starting to change. On August 22, 2018, it reported that the Federal Regional Court of the 3rd Region decided by three votes to two, be imprescriptible repair damage caused by torture during the dictatorship. (NUNES, 2018)

53 It is worth mentioning, for the sake of memory of the Araguaia Guerrilla, the vain attempts of criminal liability of Sebastião Rodrigues de Moura, the "Major Curio", for qualified abduction, mistreatment and corpse concealment; Lieutenant-Colonel Licio Augusto Maciel, for qualified abduction, ill-treatment and murder. (GRABOIS, 2018)

54 The majority of the ministers were Cármen Lúcia, Ellen Gracie, Eros Grau (rapporteur), Gilmar Mendes, Marco Aurélio, Celso de Mello e Cezar Peluso. Ministers Ayres Britto and Ricardo Lewandowski have argued that certain crimes are absolutely incompatible with the notion of political criminality.

55 In the case "Almonacid Arrellano et al. vs. Chile", "CtIDH has ruled that auto-amnesty laws can not be an obstacle to the investigation, prosecution and punishment of those responsible for the atrocities committed. (FERREIRA JÚNIOR, 2013)

nationalistic monism, that is, in case of normative conflict, domestic law overlaps international law, but rather treating the CtIDH decision as a political decision. (GOMES, 2011) Crass error! As consolidated in the case-law⁵⁶ The forced disappearance of persons is an infringement of *jus cogens*. (CtIDH, 2010, § 105) Thus, the conflicting normative provisions, whether conventional, customary or internal, are null and void. Accordingly, the CtIDH has determined that the provisions of the Amnesty Law, implying impunity for those responsible for serious violations of human rights “lack legal effects” (CtIDH, 2010, § 174). In another attempt, the MPF has opened a new investigation aiming the criminal responsibility of agents of the dictatorship for the death of Vladimir, seeking to comply with the judgment of the CtIDH, in view of the fact that his torture and death were considered crimes against humanity. (CtIDH, 2018b)

CONCLUSION

Twenty years ago, Brazil sovereignly recognized the contentious jurisdiction of the CtIDH. Once the act is practiced, limitations not provided for in Article 62 of the CADH, especially of an internal nature, are admitted. (GONZÁLEZ, 2006) In virtue to the recognition, since 1998, CtIDH has the competence to judge the merits of cases involving allegations of violation of provisions of the CADH by Brazil, which has been a State Party since 1992. Once a case has been judged by the CtIDH, if there is a conviction, Brazil must comply with the decision in full, pursuant to Article 68 of the CADH. The judgment of the CtIDH is therefore binding on the parties to the case.

The CtIDH, in the last twenty years, judged nine cases in which Brazil was defendant. The thematic of these cases gives a panoramic view of the great national dramas. One can divide this theme into four main axes: police violence, slave labor, land tenure, and medical violence.

The cases of police violence are those in which public security agents use force excessively, according to international parameters, even if they may be protected by domestic law. This means that police violence may be nationally lawful, but internationally unlawful, which calls into question its internal legitimacy. The cases decided by CtIDH, related to

⁵⁶ CtIDH. Goiburú et al. vs. Paraguay case. Judgment of September 22, 2006 (merits, reparations and costs), § 84; Chitay Nech et al. vs. Guatemala case. Judgment of May 25, 2010, § 86; Caso Ibsen Cárdenas y Ibsen Peña vs. Bolívia. Sentencia de 1 de septiembre de 2010 (fondo, reparaciones y costas), § 61.

police violence in Brazil, are those founded on the murder of Gilson by extermination group, in the massacres of Favela Nova Brasília, in the forced disappearances of people associated with the Araguaia Guerrilla and in the assassination of Vladimir.

The case related to slave labor refers to the employees of Fazenda Brasil Verde. Slavery is a deep scar in Brazilian society. Between the sixteenth and nineteenth centuries, millions of Africans were forced to work as slaves on large farms. In 1888, slavery was abolished by law⁵⁷ in Brazil, but this did not prevent the exploitation of slave labor as a sad feature of the national productive process during the twentieth century.

Related to the issue of slave labor, since slavery is traditionally the model of exploitation of the labor force of others in the context of rural production, there is the land issue. Since the colonial period, Brazil has adopted a model of land concentration, whose deconstruction implies an agrarian reform eternally postponed by state political agents. As a consequence, inequality in the distribution of land, accompanied by the lack of public policies of socioeconomic balance in rural areas, makes the land dispute accompanied by conflict and violence. Social movements, traditional communities, quilombolas and indigenous peoples have pressed the Brazilian state to guarantee the right of access to land. In this context, the cases of Sétimo and the directors of COANA refer specifically to the criminalization of social movements such as the MST, while the case of the Xucuru Indigenous People portrays the long struggle of the indigenous people for the possession of their traditional lands.

Regarding medical violence, Brazil was convicted in the case of Damião, who died in a mental hospital. Medical violence is usually a physical or psychic aggression, almost always intentional, practiced in hospital settings, which is perversely justified by the patient's own good. This is not a new theme, since the implications of biopower for the destinies of human beings have long been questioned. (FOUCAULT, 2014)

In the last twenty years, of the nine cases, Brazil was convicted by CtIDH in eight. Therefore, the State must fully comply with the sentence. With regard to the conviction in the case of the Xucuru Indigenous People, domestic *res judicata*, which guarantees private property rights to non-indigenous occupants, can not prevent compliance with the international sentence, since it is not a matter for a new internal judgment. which could

⁵⁷ Law 3. 353, of May 13, 1888, which declares slavery to be extinguished in Brazil.

give rise to this discussion. It is a matter of resolving a conflict, but the conflict of norms, the solution of which follows internationalist monism, due to the provisions of Article 68 of the CADH, which has been in force for Brazil since 1992. In addition, the CtIDH itself determined that third parties in good faith should be compensated for the improvements made in the Xucuru indigenous land. Therefore, recognized rights of non-indigenous occupants, it is not possible to remain in that space, but it is guaranteed reparation for the work done there during the process of demarcation and deconstruction. The compliance difficulties, in this case, are lower than those of others.

In fact, there have been, in general, great difficulties in complying with CtIDH judgments, due to the admission of limitation and amnesty, when it comes to the international obligation to investigate, prosecute and punish domestically those responsible for serious violations of human rights. Such difficulties occur even though the CtIDH has already consolidated the understanding that the prescription and amnesty can not be an obstacle to the identification and punishment of those responsible for serious human rights violations, such as the facts related to the Araguaia Guerrilla, Fazenda Brasil Verde, to the massacres of Favela Nova Brasília and to the death of Vladimir Herzog. Therefore, recognizing the statute of limitations in respect of extrajudicial executions and exploitation of labor analogous to slavery is a violation of international law. Recognize the amnesty in relation to enforced disappearances, qualified as State terrorism⁵⁸, is an offense against the most elementary parameters of international justice, which keeps Brazil in a continuous condition that violates human rights and protects criminals against humanity. May the TPI one day judge them!

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