

The Brazilian Penitential System, Case “Urso Branco” and the Inter-American Court of Human Rights

Guilherme Calmon Nogueira da Gama

Estácio de Sá University, State University of Rio de Janeiro (Brazil)

In 1996 the “José Mário Alves da Silva” Detention House (better known as the “Urso Branco” Penitentiary) was inaugurated, which in the early 2000s became the largest prison in the northern region of Brazil with approximately 1.300 prisoners. The number of places available to prisoners, however, was only 450. In January 2002, due to the problems detected in the prison, there was the second largest slaughter in Brazil (behind only the Carandiru slaughter in the State of São Paulo), with the death of 27 prisoners, some were even quartered.

Due to the Resolution of the Inter-American Court of Human Rights, dated June 18th, 2002, provisional measures were determined in relation to the Brazilian State, in particular the use of the measures necessary to protect the lives and personal integrity of all prisoners held at “Urso Branco” Penitentiary, carrying out an investigation of the events that led to the adoption of provisional measures, information on the measures adopted and the presentation of an updated list of all prisoners held at the Penitentiary. The Inter-American Court instructed the Inter-American Commission on Human Rights to present its observations on the periodic reports submitted by the Brazilian State.

On several subsequent occasions (August 2002, April and July 2004), the Inter-American Court issued resolutions on the case, always repeating the provisional measures previously employed, including some new ones.

The Brazilian Republic has been a State Party to the Inter-American Convention on Human Rights since September 1992 and, according to its art. 62, recognized the contentious jurisdiction of the Inter-American Court in December 1998. The art. 63.2, of the Convention, establishes that “in cases of extreme gravity and urgency, and when it is necessary to avoid irreparable harm to people”, the Court may order the provisional measures it deems relevant in

matters that have not yet been submitted to its consideration at the request of the Inter-American Commission on Human Rights.

In 2014, a new rebellion at the “Urso Branco” Prison caused the death of 14 prisoners. In July 2004, the Inter-American Court of Human Rights (ICHR) issued a Resolution¹ on the provisional measures related to the Federative Republic of Brazil involving the case of the “Urso Branco” Penitentiary, imposing measures on the Brazilian State regarding the realization of human rights to life, integrity and the protection of prisoners, as well as the identification and punishment of those responsible for the tragic massacre that occurred inside the prison.

In terms of international human rights law, provisional measures are not only precautionary - in order to preserve a certain legal situation - but especially protective, since they protect human rights as they seek to prevent irreparable damages to people directly involved in certain events. Provisional measures have become a true preventive jurisdictional guarantee in the international human rights system.

In this particular case of the “Urso Branco” Penitentiary, due to the responsibility of the Brazilian State to employ measures to protect the people subject to its jurisdiction, the Inter-American Court considered that this duty is stricter because it involves prisoners in a state prison center, hypothesis in which the State is the “guarantor” of the rights of the people under its custody. In 2004, unsatisfactory conditions of security, infrastructure, hygiene and health were found at the “Urso Branco” Penitentiary, as well as new episodes of homicides and acts of violence inside the prison.

In the period from 2002 to 2006, there were still some serious violations of the human rights of prisoners, with “massacres” practiced by rival groups within the Penitentiary, which motivated several decisions of the Inter-American Court in the sense that the provisional measures ordered by the Court were not really being implemented since the beginning (2002). In October 2008, the Attorney General of the Brazilian Republic requested federal intervention in the State of Rondônia from the Supreme Federal Court due to the chaos identified in the state prison system, notably in the “Urso Branco” Penitentiary.

¹ https://www.corteidh.or.cr/docs/medidas/urso_se_04_portugues.pdf. Visited 05.01.2021.

In the same year of 2008, the Governor of the State of Rondônia decreed a state of emergency in the State prison system, assigning part of the responsibility to the federal government for not providing the construction of new prisons in the State, which could lead to a significant reduction in overpopulation of prisoners in Rondônia.

It is clear that federal intervention has not been decreed in the State of Rondônia, but the action of the Public Prosecutor's Office has had practical effects, including the state jurisdiction regarding the prosecution of people accused of several murders committed against prisoners in the massacres identified in the “Urso Branco” Penitentiary.

With the monitoring of the measures employed by the Brazilian State which had been enforced by the Inter-American Commission on Human Rights, and due to the celebration of the “Pact on the improvement of the prison system and the lifting of provisional measures” celebrated by the federal and state authorities of Rondônia and Brazilian entities for the protection of human rights, the Inter-American Court lifted the provisional measures, with the edition of the Resolution of August 25th, 2011. However, the Inter American Court emphasized that, despite the lifting of the provisional measures, it was necessary to remember “that the lifting of the provisional measures did not imply that the State was relieved of its conventional protection obligations”.

The Brazilian legal doctrine about human rights and Constitutional Law considers that the human rights protection system provides an international supervision and control above the state acts and activities, when the state mechanisms are absent or failed in protecting and putting in effect human rights rules². Accordingly International Law, the responsibility on human rights violations lies on the Federal Union which has legal personality in the international order.

In the Brazilian legal system the President of the Republic is authorized to conclude international treaties because of his duty as the State Chief of the Brazilian Republic. International norms are of national territory, binding all the branches and spheres of the Federation according their constitutional competences and obligations³.

² PIOVESAN, Flávia. Direitos humanos e o Direito Constitucional Internacional (Human Rights and International Constitutional Law). 7. ed. São Paulo: Saraiva, 2006, p. 279.

³ TIBURCIO, Carmen; BARROSO, Luís Roberto. Direito Constitucional Internacional (International Constitutional Law). Rio de Janeiro: Renovar, 2013, p. 131.

Each state in Brazil, like the State of Rondônia, has no legal personality in the international order. In 2004 the Brazilian Federal Constitution created a new mechanism about prosecuting the huge violations on human rights with the objective of effectiveness of the international treaties on human rights in Brazil: the removal of the jurisdiction on a specific case from the state justice to the federal justice when the state organisms failed about investigating or prosecuting the criminals whose illegitimate behaviors are related to the human rights violations.

The National Council of Justice, in Brazil, carried out some activities to identify compliance with the deliberations of the Inter-American Court of Human Rights. In 2014, the National Council of Justice held a prison task force at the “Urso Branco” Penitentiary, presenting a diagnosis regarding the situation of the prison establishment, which still had overcrowding problems and the lack of adequate health care for prisoners.

The verification of prison overcrowding problem occurred again in the “Urso Branco” Penitentiary showed that, even after the formal closing of the case before the Inter-American Court of Human Rights, the management of the prison system has again incurred violations of human rights at the same level as the most critical period between 2002 and 2006. Other violations were also found by the National Council of Justice: lack of hygiene in the Penitentiary's premises, infiltrations with fungi and bacteria in the area, insufficient number of penitentiary agents for the unit prison, and lack of a custody hospital. There were reports that two prisons were under construction in the state of Rondônia and that, once opened, they would greatly reduce the problem of prison overcrowding.

In 2019, two new prisons in the State of Rondônia were already in operation, the “Urso Branco” Penitentiary was vacated to carry out the renovation of its infrastructure. And the State Government of Rondônia decided that, after the necessary reform in the Penitentiary's premises, the “Urso Branco” should only be used for the imprisonment of convicted criminals who are of low danger, which has been happening ever since.

On 12.17.2020, Edson Fachin, judge of the Supreme Federal Court in Brazil, granted the preliminary injunction⁴ in part regarding the determination of Brazilian judges to evaluate

⁴ BRAZIL, Supreme Federal Court, Precautionary measure Habeas Corpus n. 188.820/DF,

prison cases for people incarcerated in establishments in addition to the number of existing vacancies, members of the group of COVID-19, involving other conditions.

The research presented at the LSA 2021 event presents the case involving the “Urso Branco” Penitentiary, in particular the Resolutions of the Inter-American Court of Human Rights, generated some modification of the Brazilian national penitentiary system, notably in matters relating to the effectiveness human rights to life, integrity and protection of prisoners.

In the same way, it’s important to verify if the Brazilian organs of the prison system control - National Council of Justice, Prisons Corrections Department, Public Prosecutor's Office, Public Defender's Office - have acted effectively to give concreteness to the determinations of the Inter-American Court.

Finally, the work clarifies the investigations and punishments involving the massacres that took place in the “Urso Branco” Penitentiary. The State of Rondônia is bound by the international norms of the American Convention on Human Rights and, within the limits of its constitutional competences, has the duty to comply with them⁵. And also all the Inter-American Court judgments are mandatory for the Brazilian Federative Republic, which includes all the twenty six states and the Federal District.

The Inter-American Court of Human Rights has already stated that a State cannot claim its federal structure to fail to comply with an international obligation⁶.

The “Urso Branco” case, from the State of Rondônia in the Brazilian Republic, highlights the importance of the internationalization process of human rights. The national states, due to the relativization of their sovereignties, were able to be held accountable internationally, when violations of the rules established in international human rights treaties and conventions were found.

Author: Union Public Defender's Office; Patients: prisoners beyond the capacity of vacancies, members of groups at risk for COVID-19 and who have not committed crimes with violence or serious threat.

⁵ TIBURCIO, Carmen; BARROSO, Luís Roberto. Direito Constitucional Internacional (International Constitutional Law). Rio de Janeiro: Renovar, 2013, p. 135.

⁶ Corte IDH. *Caso Escher y otros vs. Brasil*, sentença de 06.07.2009, Série C, n. 200, p. 65-66; Corte IDH, *Caso Garibaldi vs Brasil*, sentença de 23.09.2009, Série C n. 203.

The inter-American human rights system is composed basically by four normative instruments of relevance: the OAS Charter (1948), the American Declaration of Human Rights and Duties (also 1948), the American Convention on Human Rights - also known as the San José Pact of Costa Rica (1969) - and the Additional Protocol to the American Convention on Economic, Social and Cultural Rights, better known as the San Salvador Protocol (1988).

Even though problems remain that need to be constantly monitored in the Brazilian penitentiary system, the “Urso Branco Penitentiary” case is paradigmatic in demonstrating how the Inter-American Human Rights System can act effectively to reduce or even reverse the situation of serious violations of human rights, as it was the example of homicides, serious body injuries verified in the period from 2002 to 2006 in Rondônia, State of the northern region of Brazil.

It is true that the presence of civil society entities in the field of human rights, combined with the performance of public control bodies - Public Defender, Public Prosecutor's Office, National Council of Justice, National Council of the Public Prosecutor's Office, for example - are essential for the identification of violations and the forwarding of reports of serious affront to human rights. In this way, the international system for the prevention and protection of human rights will work satisfactorily, seeking to implement the fundamental objectives of fraternity and solidarity among peoples worldwide, in the search for peace and amicable solutions to conflicts that may exist.

The role of the International Courts, in addition to acting against serious abuses and violations against human rights, is also to re-politicize and re-legalize the public human rights policies of national states, at least in what minimally consolidated themselves as rights inherent to human beings in their dignities. Although the sanctions imposed by the International Courts are more political than coercive at various times, they serve as reliable references regarding the internal human rights policies of a civilized nation and based on humanist values.