

THE INTER-AMERICAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS AND THE CASE DAMIÃO XIMENES LOPES

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RESUMO

Trata-se de analisar no presente estudo o caso Damião Ximenes Lopes, no qual o Brasil foi condenado pela Corte Interamericana de Direitos Humanos e os seus desdobramentos no ordenamento jurídico pátrio. Para tanto se examina com acuidade o sistema interamericano de proteção dos direitos humanos, o papel desenvolvido pela Comissão e a pela Corte Interamericana de Direitos Humanos. De igual modo, se estuda o status normativo conferido aos tratados de direitos humanos no Brasil e a posição adotada pelo Supremo Tribunal Federal, bem como as alterações recentes na legislação e na jurisprudência nessa matéria. Por fim, examina-se o Caso Damião e em que medida houve uma maior garantia dos direitos humanos com a adesão do Brasil ao sistema interamericano de direitos humanos.

PALAVRAS CHAVES: Direitos Humanos; Sistema interamericano de Proteção aos direitos humanos; Caso Damião Ximenes Lopes.

ABSTRACT

It is analyzed in this study the case Ximenes-Lopes, in which Brazil was condemned by the Inter-American Court of Human Rights and the developments in the national legal order. Therefore we examine accurately the inter-American system of human rights protection, the role of the Commission and to the Inter-American Court of Human Rights. Similarly, studying the legal status granted to human rights treaties in Brazil and the position adopted by the Supreme Court as well as the recent changes in legislation and jurisprudence. Finally, it examines the case Damian and to what extent there was a greater guarantee of human rights with Brazil's adherence to the inter-American human rights system.

KEYWORDS: Human Rights; Inter-American system for the protection of human

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rights; Case Ximenes-Lopes.

INTRODUCTION

Although the concern with the issue of human rights is old, its international positivization is a recent phenomenon, the result of a process that begins after the Second World War.

The main international instruments for the protection of those rights arise initially as an attempt to avoid a repetition of the violations committed by totalitarian systems, such as fascism and Nazism. From there, the subject of human rights had to have binding status on the international schedule.

Currently, it appears that the law goes through a process of internationalization, to the degree that also notes a constitutionalization of international law.³ And this process of internationalization of law necessarily involves the international protection of human rights.⁴

Because of this process, start to proliferate internationally conventions establishing minimum safeguards the welfare of the human person, whose best known instrument is the Universal Declaration of Human Rights, signed on 10 December 1948 under the United Nations General Assembly United.⁵

From the signing of the Declaration, the protection of human rights would be considered no more as the internal affairs of each State, but focused in the common interest of all mankind.⁶

This process of universalization of human rights, in turn, leads to the formation of oriented protection systems to ensure these rights as the Universal Protection System,

³ According to H el ene Tourard: "The internationalization of the Constitutions goes beyond the context of relations between the state and international law. It protrudes beyond the problematic relationship between international law and domestic law. This is actually to address the issue of the relationship between constitutional law and international law in a less abstract perspective (...) considered the reality of political phenomena and international relations." (TOURARD, H el ene. *L'internationalisation des Constitutions Nationales*. Paris: L.G.D.J., 200, p.11) (free translation).

⁴ SILVEIRA, Vladimir; MEYER-PFLUG, Samantha Ribeiro. "Tratados de Direitos Humanos e a evolu  o jurisprudencial do Supremo Tribunal Federal". In.: *A problem tica dos Direitos Humanos Fundamentais na Am rica Latina e na Europa – desafios materiais e efic cias*. Coordenadores BAEZ, Narciso Leandro Xavier, Joa aba: UNOESC, 2012, p. 179.

⁵ MARTINS, Ana Maria Guerra. *Direito Internacional dos Direitos Humanos*, Coimbra: Almedina, 2006, p. 125

⁶ COMPARATO, Fabio Konder. *Afirma  o hist rica dos Direitos Humanos*. S o Paulo: Saraiva, 3^oed. 2003, p. 54.

which formed the United Nations, and the Regional Protection Systems: European,⁷ American⁸ and African⁹. It develops as well, which was named International Law of Human Rights.¹⁰ In this sense, we have that "human rights must be interpreted and applied as a coherent whole because indivisible."¹¹

In Brazil the law internationalization process has deepened with the enactment of the Constitution of 1988, which gave special emphasis on protection of human rights and other principles governing international relations, and of course the integration of forecast with the Latin American community, already premiered with MERCOSUR, among other initiatives.

The protection of human rights in Brazil, was also more effective because of its accession to the American Convention on Human Rights and, in consequence, his submission to the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, to the extent that opened another avenue of access to the individual in the protection of their rights.

In this vein, will be analyzed in this study Case Damião Ximenes Lopes in which Brazil was convicted in the Inter-American Court of Human Rights and its impact on parental rights.

1. INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

International trends for the protection of human rights in the Americas resulted in the proposal by the Organization of American States - OAS, in 1948, the Charter of the Organization of American States, which culminated in the adoption of the American Declaration of the Rights and Duties of Man.

The American Declaration of the Rights and Duties of Man, adopted ten months

⁷ The European Court of Human Rights, based in Strasbourg, take care to apply the 1950 Convention. REZEK, Francisco. *Direito Internacional*. São Paulo: Saraiva, 12^oed., 2010, p. 228 e 229.

⁸ The Inter-American Court of Human Rights, based in San Jose, Costa Rica, ensures validity to the 1969 Convention. REZEK, Francisco. *Direito Internacional*. São Paulo: Saraiva, 12^oed., 2010, p. 229.

⁹ The creative treaty of an African Court of Human Rights came into force in January 2004, then ratified by fifteen countries, including Algeria, South Africa and Senegal. This Court will only start working after chosen a seat and elected its first judges. REZEK, Francisco. *Direito Internacional*. São Paulo: Saraiva, 12^oed., 2010, p. 230 e 231.

¹⁰ Available in: <http://www.agu.gov.br/sistemas/site/TemplateImagemTextoThumb.aspx?idConteudo=113927&ordenacao=1&id_site=4922>. Accessed on: 14 fev. 2011.

¹¹ DELMAS- MARTY, Mireille. *Três desafios para um direito mundial*. Rio de Janeiro: Lumen Iures, tradução Fauzi Hassan Choukr, 2003, p 40.

before that signed the United Nations General Assembly, was in fact the first major instrument in the field of international protection of human rights.¹²

In 1959, the Inter-American Commission on Human Rights was established, the body that began to receive and consider complaints from individuals against violations of human rights that occurred in the United States.

On November 22, 1969, exceeded the discussions on the political expediency of creating up an institutional system aimed at monitoring of human rights on the continent, was finally adopted the American Convention on Human Rights, also known as the Pact of San José, Costa Rica.¹³

The American Convention on Human Rights, discipline in detail the duties of the member states of the organization and structure definitively the Inter-American System of Human Rights Protection, predicting later, the creation of a court to judge the violations that occurred in the region.

The Convention entered into force in 1978, after reaching the minimum of eleven ratifications, and the following year in the same city of San José, Costa Rica, was founded the Inter-American Court of Human Rights.

The Inter-American Human Rights is therefore biphasic, with two separate bodies: the Inter-American Commission on Human Rights¹⁴ and the Inter-American Court of Human Rights.¹⁵

¹² Norberto Bobbio: "The Declaration favored - so writes an authorized internationalist in a recent written about human rights - the emergence, however feeble, faint and hindered, the individual, within a space once reserved only to sovereign states. He set in motion an irreversible process with which everyone should be happy. "(*A era do direito*. Tradução de Carlos Nelson Coutinho. Rio de Janeiro: Elsevier, 2004.p. 5)

¹³ There are detailed - in civilian areas, political, economic, social and cultural - individual rights located between that elementary track regard to life, physical integrity and freedom, and that other, more trouble on nationality, to private property, access to sources of science and culture. In between these plans, is the Covenant to have on the principle of prior criminal law, and the conditions of its retroactivity; on freedom of conscience, expression and confessional worship; on the protection of honor and the right of reply; on political rights, the meeting and the association; on the principle of equality before the law; and the protection owed by the State to its nationals and foreign findable within its sovereignty. "(REZEK, Francisco. *Direito Internacional*. São Paulo: Saraiva, 12^oed., 2010, p. 228 e 229.)

¹⁴ "The Commission acts as primary instance to the jurisdiction of the Court. It is large its power to request information and make recommendations to the governments of pactuantes States. The real pre-court letter from the Commission can bring an action against a state party, by accusation or complaint - regards the violation of rule expressed in the substantive area of the Covenant - made (a) by any person or group of persons, (b) by non-governmental entity in regular operation, and (c) by another State Party; in this case, however, under the condition that the denounced State has recognized the competence of the Commission to equate this unique form of confrontation, with or without reciprocity requirement ".(REZEK, Francisco. *Direito Internacional*. São Paulo: Saraiva, 12^oed., 2010, p. 229.)

¹⁵ While "judicial body that is, the Court does not report, or propose, or recommend, but makes judgments, that the Pact points as final and unappealable. Stating, in the grounds of Aresto, the occurrence of violation of right protected by the treaty, the Court determines whether such right is ready

Remember that both the Commission on Inter-American Court are not permanent bodies, meeting therefore at predetermined sessions periods throughout the year.

The procedure for consideration of cases of violation of human rights within the inter-American system is relatively simple, and you can access to any person, group of persons, or any nongovernmental entity legally established in one or more member states of the Organization, which may submit to the Inter-American Commission petitions containing allegations of violations of any of the rights and guarantees protected by the American Convention on Human Rights.

For a petition to be admitted, the claimant must describe the facts, the alleged violations and their victims, indicating the state responsible for the violation and the efforts that led to the exhaustion of domestic remedies before activating the inter-American system.¹⁶

Important to note here that in Brazil in 2004 the National Congress sensitive to the reality of internationalization of law and in view of the dualist position adopted by the Federal Supreme Court promulgated a constitutional amendment to paragraph 45 (Judicial Reform), which added two new paragraphs to Article 5^o¹⁷ They are: "3. International treaties and conventions on human rights that are approved in each house of Congress, in two rounds, by three-fifths of the votes of its members, shall be equivalent to constitutional amendments "and" §4 The Brazil submits to the Criminal Court of jurisdiction International and whose creation has manifested accession. "

Adding the these two new paragraphs represented a new phase in Brazilian Law of the internationalization process. In this sense, the old understanding of the STF on

restored, and orders, if applicable, the payment of fair compensation to the injured party. Annual reports to the OAS General Assembly, the Court "... the cases in which a state has not complied with its judgments". (REZEK, Francisco. *Direito Internacional*. São Paulo: Saraiva, 12^oed., 2010, p. 230).

¹⁶ In every circumstance, the Pact states complaint admissibility requirements, among which stands out the exhaustion of resources provided by domestic law. The proceedings before the Commission implies request for information from the State on charges, for a limited period, and several investigations, leading finally to draw up a report. Dead that are propositions or recommendations, and exhausted reasonable time, can it get to that which seems to be the culmination of uses pre-judicial powers, ie, the publication of its conclusions on the case. Alternatively, the Commission has quality to submit the matter to the Inter-American Court of Human Rights .(REZEK, Francisco. *Direito Internacional*. São Paulo: Saraiva, 12^oed., 2010, p. 230.)

¹⁷ In this sense Sylvie Torcol stresses that "the internationalization of constitutions affects the state institutional balance the executive branch in its capacity as the principal actor in international relations; the legislature as a normative power and control of the organs of government; and the judiciary in its application function of the sources of law to specific situations. " TORCOL, Sylvie. *Les mutations du constitutionnalisme à l'épreuve de la construction européenne*. PhD thesis defended in 12/12/2002 perante a Faculdade de Direito da Universidade de Toulon et du Var, Lille, A.N.R.T.

the Pact of San José, Costa Rica was overcome in the vote of extraordinary appeal n. 466.343-SP.¹⁸

The Federal Supreme Court to examine the constitutionality of the human rights treaties approved before the EC n. 45/04, or treaties that have not approved the new form of paragraph 3 of Article 5º planned signed understanding that they have “supralegal” status and no more than simple ordinary law.¹⁹

The Supreme Court amended its law to empower approved treated before EC n.45/04 “supralegal” character, in other words, below the Constitution and above the ordinary laws.²⁰The Supreme Court chose to create a new regulatory species that is below the Constitution and above the ordinary law. Note that this normative species has no provision in the Constitution. The Justice Gilmar Mendes in vote cast in Extraordinary Appeal No. 466343-1/SP said:

One cannot deny, on the other hand, the reform also turned out to highlight the special character of human rights treaties in relation to other treaties of reciprocity between the pactuantes States, giving them a privileged place in the legal system. (...) the constitutional change at least points to a failure of the theory of ordinary legality of international treaties and conventions already ratified by Brazil (...)

He also admits that:

we must consider, however, in the current context, in which one can observe the increasing readiness of the Constitutional State to supranational legal systems of human rights protection, this case would not have become completely outdated. One cannot forget that today we live in a "Cooperative Constitutional State", identified by Professor Peter Häberle as that which no longer appears as a Constitutional State turned in on itself, but it offers as a benchmark for other states Constitutional members of a community, and which becomes important the role of human and fundamental rights. To Häberle, although an international

¹⁸ MAUES, Antonio Moreira, “Supralegalidade dos tratados internacionais de direitos humanos e interpretação constitucional In. *A eficácia nacional e internacional dos direitos humanos*. MAUES, Antonio Moreira; LOPES, Ana Maria D’Avila. Rio de Janeiro: Lumen Juris, 2013, p. 30.

¹⁹ MAUES, Antonio Moreira, “Supralegalidade dos tratados internacionais de direitos humanos e interpretação constitucional In. *A eficácia nacional e internacional dos direitos humanos*. MAUES, Antonio Moreira; LOPES, Ana Maria D’Avila. Rio de Janeiro: Lumen Juris, 2013, p. 29.

²⁰ SILVEIRA, Vladmir; MEYER-PFLUG, Samantha Ribeiro. “Tratados de Direitos Humanos e a evolução jurisprudencial do Supremo Tribunal Federal”. In.: *A problemática dos Direitos Humanos Fundamentais na América Latina e na Europa – desafios materiais e eficaciais*. Coordenadores BAEZ, Narciso Leandro Xavier, Joaçaba: UNOESC, 2012, p.184.

perspective, often cooperation between States take the place of mere coordination and simple system for peaceful coexistence (ie mere delimitation of areas of national sovereignty) in the field of constitutional law national, such a phenomenon in itself, can induce at least the trends that point to a weakening of the boundaries between the internal and the external, creating a design that give precedence to the Community law over national law. In this context, even aware that the reasons leading to the design of a Cooperative Constitutional State are complex, we must recognize the sociological and economic aspects and moral ideal as the most obvious. And with regard to the ideal-moral aspect, one can not fail to consider the protection of human rights as the most concrete formula that has the constitutional system, requiring actors of state socio-political life a positive contribution to the maximum effectiveness of the standards of modern constitutions that protect the international friendly cooperation as a principle vector of relations between nation states and the protection of human rights as a consequence of itself guarantee the dignity of the human person.

The “supralegal” these treaties enables them to paralyze the legal force of any regulatory infra act with them conflicting. That means no infra normative act may contravene the provisions of the human rights treaty that is higher because of its “supralegal”.²¹

This new position adopted by the Supreme Court represented a breakthrough in the protection of human rights and the effectiveness of the Pact of San José, Costa Rica in the Brazilian legal system.

2. Inter-American Court of Human Rights²²

Created by the American Convention on Human Rights, the Inter-American Court of Human Rights, based in San Jose, Costa Rica, is an autonomous international judicial body of the Organization of American States system (OAS).²³

²¹ SILVEIRA, Vladimir; MEYER-PFLUG, Samantha Ribeiro. “Tratados de Direitos Humanos e a evolução jurisprudencial do Supremo Tribunal Federal”. In.: *A problemática dos Direitos Humanos Fundamentais na América Latina e na Europa – desafios materiais e eficaciais*. Coordenadores BAEZ, Narciso Leandro Xavier, Joaçaba: UNOESC, 2012, p. 187.

²² Available in:

<http://www.agu.gov.br/sistemas/site/TemplateImagemTextoThumb.aspx?idConteudo=113486&ordenacao=1&id_site=4922>. Accessed on: 10.jul.2010

²³ the full text of Legislative Decree n. 89 of December 3, 1998, which recognized the jurisdiction of the Court of Human Rights. LEGISLATIVE DECREE N. 89 OF 3 DECEMBER 1998 * Approves the recognition request the compulsory jurisdiction of the Court of Human Rights on all matters relating to the interpretation or application of the American Convention on Human Rights to events after

Has jurisdiction litigation and advisory, consisting of seven national judges of the Member States of the OAS, elected in a personal capacity from among jurists of the highest moral authority and of recognized competence in the field of human rights and meeting the conditions required for the exercise of the highest judicial functions, according to state law of which they are nationals.²⁴

The Inter-American Court of Human Rights has jurisdiction to hear a case concerning the interpretation and application of the provisions of the American Convention on Human Rights, provided that the States Parties to the case have recognized its jurisdiction. Only the Inter-American Commission and the States Parties to the American Convention on Human Rights can submit a case to the decision of this Court.²⁵

For the exercise of its advisory jurisdiction, the Inter-American Court is carrying out explanatory analysis of the scope and impact of the American Convention devices, issuing decisions that have facilitated the understanding of significant aspects of the Convention, contributing to the construction and evolution of the law International Human Rights in the context of Latin America.

In litigation plan, its competence to judge cases, limited to the States Parties to the Convention that have expressly recognized its jurisdiction, is the determination of issues involving allegations of breaches of law protected by the Convention, by any State Party. If recognizes that effectively occurred violation of the Convention, will determine the adoption of measures that are necessary to the then restore violated right and can order the State, including the payment of fair compensation to the victim.

recognition, in accordance with the provisions of paragraph one of Article 62 of that instrument internacional.O National Congress decrees: Article 1 - is approved recognition request the compulsory jurisdiction of the Court of Human Rights on all matters relating to the interpretation or application of the Convention on Human Rights to events after recognition, in accordance with the provisions of paragraph one of article 62 of that international instrument. Sole Paragraph - are subject to the approval of Congress any acts that could result in the relevant request review. Article 2 - This Legislative Decree shall enter into force on the date of its publication. * Issued in compliance with Message n. 1070, 1998, sent by the President to Congress.

²⁴ Article 52 (1) of the American Convention on Human Rights, in verbis: "Article 52 (1) The Court shall be composed of seven judges, nationals of member states of the Organization elected in their individual capacity from among jurists of the highest moral authority and of recognized competence in the field of human rights and meeting the conditions required for the exercise of the highest judicial functions, according to state law of which they are nationals or of the State that proposes them as candidates. "

²⁵ Article 62 (3) of the American Convention on Human Rights: "Article 62 (3) 3. The Court has jurisdiction to hear a case concerning the interpretation and application of the provisions of this Convention which is submitted, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration as to the preceding paragraphs, or by a special agreement ". The Brazilian State ratified the American Convention on September 25, 1992 and accepted the contentious jurisdiction of the Court on December 10, 1988 .

The Inter-American Court of Human Rights has already heeded eight cases against the Brazilian State,²⁶ with a reference to acts against mental patient process.

The inclusion of the decision of the IACHR came from the fact that the first decision of the Court on the offense to the mental patient rights and in the case of an enriching event.²⁷

3. Case Damião Ximenes Lopes

On October 1, 1999, Ximenes-Lopes was admitted to the Guararapes Rest Home - unique in Sobral region of Ceará, for medical treatment, as the patient's Health System, being in perfect physical condition.

On October 4, 1999, his mother, Albertina Ximenes, returned to the clinic to visit him and was informed, at the gate of the Rest Home, which Damian had no conditions for visitors.

Disagreeing, forcibly entered the clinic, yelling his son's name that came towards him, in highly deplorable, unsteady state, hands tied back, bleeding and several abrasions and bruises on his face and body. At that moment, Damian could still talk and, though having trouble breathing, asking for help to the police.

Opposite occurred, Albertina Ximenes asked the officials of the Home Guararapes home to bathe your child to a doctor and the answer. Found the Clinical Director and Medical Guararapes Rest Home, Francisco Ivo de Vasconcelos, who, without performing physical examinations in Ximenes-Lopes, prescribed some medicine and then withdrew from the hospital.

It was not given proper care Ximenes-and because of the lack of care, the patient was at the mercy of all sorts of aggression and accidents that could put your life at risk

²⁶ The cases presented to the Inter-American Court of Human Rights are divided as follows: I. contentious cases: i). If Ximenes Lopes Vs. Brazil; ii) If Nogueira de Carvalho and others Vs. Brazil - death squad in Rio Grande do Norte; iii). If Escher et al vs. Brazil - illegal interception and monitoring of telephone lines by the Military Police, the State of Paraná; iv) If Garibaldi vs. Brazil - integral murder of the landless movement in illegal occupation in the state of Paraná. II. Provisional measures regarding Brazil: i) Subject Urso Branco Prison; ii) Subject of persons deprived of liberty in the "Dr. Sebastião Martins Silveira, in Araraquara, São Paulo; iii) Subject of Children and Adolescents deprived of liberty in the "Tatuapé Complex" House Foundation; iv) Subject Gomes Lund et al (Araguaia guerrilla movement). III. Supervision sentences Compliance: i) If Escher et al vs. Brazil; and ii) If Ximenes Lopes Vs. Brazil.

²⁷ . CARNEIRO, Eduardo Sá; LIMA JUNIOR, Jayme Benvenuto. *Damião Ximenes e Gilson Nogueira: Os primeiros casos contra Brasil perante o Sistema Interamericano de Direitos Humanos*. Available in <http://www.lfg.com.br> . Accessed on: 18 mar. de 2010. "The case Damião Ximenes against Brazil tried before the Inter-American Court of Human Rights is currently important case law, especially regarding the rights of the mentally disabled, serving as a starting point and reference for the adoption of measures that are necessary both in global, national ".

Ximenes-Lopes died on October 4, 1999, in Guararapes nursing home in violent circumstances, without being assisted by some doctor at the time of his death, since the health unit had no doctor at that time.

Just over two hours after medicated Damian, the doctor Francisco Ivo de Vasconcelos was called and the return to the Guararapes Rest Home, examined the body of Ximenes-Lopes and attested his death as "cardio-respiratory arrest."

To reach his home in the city of Varjota, Albertina Viana Lopes received the message to return to the Guararapes Rest Home. And getting there was informed of the death of his son.

Under the circumstances, the same day, the family of Ximenes-Lopes requested a necropsy. The body was moved from the city of Sobral to the city of Fortaleza, where the autopsy was performed. On the way the body had massive bleeding, with the sheet that covered him soaked.

Performed autopsies at the Medical Legal Institute (IML) of Fortaleza, even in the face of all evidence of violence, the report testified only that it was "death of undetermined cause"

Not satisfied, the family contacted the competent authorities: Civil Police, State Prosecutor and Human Rights Commission of the Legislative Assembly of Ceará. The competent authorities remained inert to appropriate legal action regarding the accountability of the crime, Irene Ximenes Lopes Miranda, sister of Damião Ximenes Lopes, decided to appeal to the Inter-American Commission on Human Rights to be referred this case to the Inter-American Court of Human Rights.

In what was successful, since despite all the difficulties to access the Inter-American Court of Human Rights, its action was accepted and judged before the actions proposed in Brazil.

Then the content of the judgment that condemned Brazil for the first time, in an action proposed and decided by an international court. The IACHR decided:

1. To accept the partial acknowledgment of international responsibility by the State for violating the rights to life and personal integrity enshrined in Articles 4.1 and 5.1 and 5.2 of the American Convention, in relation to the general obligation to respect and ensure the rights set out in Article 1.1 that treaty, to

the detriment of Damião Ximenes Lopes, in accordance with paragraphs 61-81 of this judgment.²⁸

The IACHR declared unanimously that:

2. The State violated, to the detriment of Damião Ximenes Lopes, as recognized, the rights to life and personal integrity enshrined in Articles 4.1 and 5.1 and 5.2 of the American Convention, in relation to the general obligation to respect and ensure the rights set out in Article 1.1 of this treaty, in accordance with paragraphs 119-150 of this Judgment.

3. The State violated, to the detriment of Albertina Viana Lopes and Irene Ximenes Lopes Miranda and Francisco Leopoldino Lopes and Cosme Ximenes Lopes, relatives of Mr. Damião Ximenes Lopes, the right to humane treatment embodied in Article 5 of the Convention, in relation to the general obligation to respect and ensure the rights set out in Article 1.1 of this treaty, in accordance with paragraphs 155-163 of this Judgment.

4. The State violated, to the detriment of Albertina Viana Lopes and Irene Ximenes Lopes Miranda, relatives of Mr. Damião Ximenes Lopes, the rights to a fair trial and judicial protection enshrined in Articles 8.1 and 25.1 of the American Convention, in relation to the obligation general to respect and ensure the rights set out in Article 1.1 of this treaty, in accordance with paragraphs 170-206 of this Judgment.

5. This judgment constitutes per se a form of reparation, pursuant to paragraph 251 of that judgment.²⁹

And yet, provides that:

6. The State shall, within a reasonable time, the internal process to investigate and punish those responsible for the facts of this case and take their appropriate action, in accordance with paragraphs 245-248 of this Judgment.³⁰

7. The State shall publish, within six months in the Official Gazette and in another nationwide daily newspaper, once, Chapter VII on the proven facts of this Judgment, without the corresponding footnotes and its operative part, in accordance with paragraph 249 of this judgment.

8. The State must continue to develop a training and education

²⁸ Corte IDH., Caso Damião Ximenes Lopes VS. Brasil. Sentença de mérito, reparações e custas de 4 de julho de 2006, parágrafo 1, p. 83. Available in: <http://www.corteidh.or.cr/docs/casos/articulos/seriec_149_por.pdf>. Accessed on: 13 Feb. 2011.

²⁹ Corte IDH., Caso Damião Ximenes Lopes VS. Brasil. Sentença de mérito, reparações e custas de 4 de julho de 2006, parágrafos 2 a 5, p. 83. Available in: <http://www.corteidh.or.cr/docs/casos/articulos/seriec_149_por.pdf>. Accessed on: 13 Feb. 2011.

³⁰ Corte IDH., Caso Damião Ximenes Lopes VS. Brasil. Sentença de mérito, reparações e custas de 4 de julho de 2006, parágrafo 6, p. 83. Available in: <http://www.corteidh.or.cr/docs/casos/articulos/seriec_149_por.pdf>. Accessed on: 13 Feb. 2011.

program for medical personnel, psychiatry and psychology, nursing and nursing assistants and all people linked to mental health care, in particular on the principles that should govern the treatment of people with mental disabilities, according to international standards on the subject and those set out in this judgment, in accordance with paragraph 250 of this judgment.

9. The State must pay in cash to Albertina Viana Lopes and Irene Ximenes Lopes Miranda, within one year, as compensation for property damage, the amount set out in paragraphs 225 and 226, in accordance with paragraphs 224-226 herein.

10. The State must pay in cash to Albertina Viana Lopes and Irene Ximenes Lopes Miranda and Francisco Leopoldino for Lopes and Cosme Ximenes Lopes, within one year, as compensation for non-pecuniary damage, the amount specified in paragraph 238, in accordance with paragraphs 237-239 of this Judgment.

11. The State must pay in cash, within one year, in respect of costs and expenses generated in the domestic sphere and in the international proceedings before the inter-American system of human rights protection, the amount specified in paragraph 253, which should be delivered to Albertina Viana-Lopes, pursuant to paragraphs 252 and 253 of this judgment.

12. Oversee the integrity compliance with this judgment and will close this case once the State has complied fully with the provisions of this Judgment. Within one year from the date of notification of this Judgment, the State shall submit to the Court report on the measures taken to comply with it.³¹

These were the terms of the IACHR decision condemned Brazil for the atrocities committed towards Damião Ximenes Lopes. Once again it is good to note that it was the first conviction of Brazil for an international tribunal.

4. Considerations about the decision of the IACHR

An analysis of the decision of the IACHR, several points should be discussed, including: (i) the right to life; (ii) the search for justice; (iii) the State responsibility and (iv) effective judicial remedies. Therefore, these are the main points to be analyzed, considering the fundamental rights and guarantees and the protection of international human rights.

³¹ Corte IDH., Caso Damião Ximenes Lopes VS. Brasil. Sentença de mérito, reparações e custas de 4 de julho de 2006, parágrafos 9 a 12, p. 84. Available in: <http://www.corteidh.or.cr/docs/casos/articulos/seriec_149_por.pdf>. Accessed on: 13 Feb. 2011.

(I) the right to life

A decision by the IACHR noted several points that are important, but one that should be considered extremely important is that you have the right to life as a law which requires the implementation of public policies for an existential minimum.

The IACHR consigned it is not enough not to violate illegitimately the right to life, whether as a result of acts or omissions of its public officials, but should be adopted necessary measures to establish a normalization able to prevent any threat to the right to life.

Thus, in relation to mental patients admitted compulsorily, the first major state obligation will protect your life. It may seem counter-intuitive to state that in a psychiatric hospital the first priority should be the protection of life of patients who are hospitalized there.

Unfortunately, it is not. And the present case and the evidence, as well as two other deaths within the Clinic, with no any explanation by the State.

The positive obligation of a State towards the protection of life involves the implementation by the regulatory measures hospitals, especially to ensure the protection of life of their patients.

What's more, the state must ensure that, in hospitals and elsewhere, of a procedure for the investigation of cases of medical malpractice, medical malpractice or deaths in medical centers.

The purpose of this research would be to ensure the effective application of domestic law protecting the right to life and, in cases involving organs or state agents, ensure their responsibility for the deaths that occurred under his tutelage, with the participation of the victim's relatives, in certain phases of research.³²

As regards the duty to investigate, noting its importance to be well fulfilled by the State, Milton C. Feuillade teaches that

*[...] The Court has been clear in pointing out the features observed in the investigation so that it is in accordance with standards developed by the Inter-American System. In this regard, the court stressed that the Duty to Investigate must comply seriously and be their ultimate goal the search for truth.*³³

³² Since the publication or disclosure of police reports and legacy materials research may involve sensitive issues such as the possibility of harmful effects on individuals or other investigations.

³³ FEUILLADE, Milton C. El Deber de Investigar, en la Jurisprudencia de la Corte Interamericana de Derechos Humanos. *Revista Mestrado em Direito. Direitos Humanos Fundamentais*. Vol. 10, n. 2, 2010,

He continues:

[...] The desarrólase research, it must be quickly and effectively implying that the State diligently use all means within disposable. According to the nature and gravity of the facts, the State will fulfill this requirement ex officio investigation in the shortest time possible violations of Human Rights.³⁴

What is argued here is that the obligation extends to the need for an effective and independent system for determining the cause of death of an individual who is in the care and under the responsibility of health professionals, establishing the obligation thereof.

The State should establish an effective justice system, able to investigate, punish and redress any arbitrary deprivation of life, and shall ensure decent conditions.

The IACHR also approached the concept existential minimum as an essential component of Article 4, which has the right to life under the American Convention on Human Rights.

(ii) search for justice

The violent death of Ximenes-Lopes, to seek medical treatment, had a devastating effect on all the immediate family.

But his sister,³⁵ Irene Ximenes Lopes Miranda, found the strength to seek the real punishment of the guilty, is the practice of acts or not to perform the inspection of services provided by hospitals accredited by the state.

The anguish expressed by the sister of Damião Ximenes Lopes, the day of the public hearing before the Court, declaring have sworn on his brother's deathbed not settle down as justice was not done, reminded me of Rudolf von Ihering³⁶ comment, in his *The fight for the right*, in as Shylock feels wronged, with a tragic end, although believed in the law.

p. 16. Available in: <http://intranet.unifieo.br/legado/edificio/index.php/rmd/article/view/453/496>. Accessed on: 20 Feb. 2011.

³⁴ Idem, *ibidem*, p.16.

³⁵ the content of Irene Ximenes Lopes Miranda statement: "On the day of burial [the] brother in the cemetery [she] kneeled on the coffin and it jur [or] that [his] soul not rest [was] until there was justice in case [of Damião Ximenes Lopes], and [is] six years [she] seeks justice [...] ". Corte IDH., Caso Damião Ximenes Lopes VS. Brasil. Sentença de mérito, reparações e custas de 4 de julho de 2006, parágrafo 161, p. 58. Available in:< http://www.corteidh.or.cr/docs/casos/articulos/seriec_149_por.pdf>. Accessed on: 13 fev. 2011.

³⁶ VON IHERING, Rudolf. *A luta pelo direito*. 12 ed. Rio de Janeiro: Forense, 1992, p. XIII

In both situations, we do not injustice? The Jewish one excluded from European society, who are not guaranteed the right of constant letter and Damian - mentally ill, an outcast of society, which was the victim of abuse, the place where it should have been treated.

Precious are the words of AA Cançado Trindade, in his dissenting opinion in the decision Ximenes Lopes Vs. Brazil, in paragraph 14:

Nevertheless, even if deprived of happiness, and abandoned to chance [...], the human being can not abandon the struggle for justice while maintaining the capacity of indignation. Otherwise, is deprived not only happiness, but also the search for meaning in life, even so brief and ephemera.³⁷

In today's world, to speak of justice and, particularly, in Brazil, is relevant decree the need for awareness of the various inequalities fed by an oppressive structure, and the purpose of it subsidizes.

This evidence appears to attempt to achieve the equal and fair law, provisions of the 1988 Federal Constitution, as follows: "All are equal before the law, without distinction of any kind [...]".

In the words of Rui Barbosa:

The rule is no more than equal to the unequal quinhour unevenly, in so far as it desigualam. In this social inequality, provided the natural inequality, is that if you think the true law of equality. [...] Dealing with inequality at equal or unequal with equality, inequality would act, and not real equality.³⁸

In this sense, eloquent design of Boaventura de Sousa Santos, who believes that "[...] we have the right to equality whenever difference makes us inferior; we have right to be different whenever equality characterizes us."³⁹

Also very important to place Celso Lafer describing, through a dialogue with the thought of Hannah Arendt, that equality as inherent to the human condition is "more than a reality devoid of abstraction. It is an easily verifiable illusion an extreme situation

³⁷ Regarding the exclusion, agreed the words of Boaventura de Sousa Santos: "The extreme degree of exclusion is the extermination: the extermination of Jews and Gypsies in Nazism, ethnic cleansing of our days." ". *A construção multicultural da igualdade e da diferença*. Coimbra: CES, 1999, p. 4.

³⁸ BARBOSA, Rui. *Oração aos moços*. São Paulo: Martin Claret. 2003, p. 26.

³⁹ SANTOS, Boaventura de Souza. *A construção multicultural da igualdade e da diferença*. Coimbra: CES, 1999, p. 61.

with refugees or interned in concentration camps ".⁴⁰

Hence the importance to guarantee to individuals access to the inter-American system, because access to justice must effectively be universal, not only required by law, but as a means of struggle in search of justice for all those who have their rights violated.⁴¹

Irene, sister of Damião Ximenes Lopes, cried and fought for justice, and through the struggle for justice for the death of his brother was not in vain showed that the indivisibility of human rights served to the recognition of other rights occurred.

At first, the sister of Damian, Irene, sought justice to repair the death of his brother, but his public record took a wingspan able to reflect in public mental health policies directed against people with mental disorders. This reveals that rights are manifestations of social forces.

Cançado Trindade emphasizes the growth of so-called International Tribunals and realize the validity of the decisions of these courts as valid judicial process in the peaceful settlement of international disputes, in his words, "the international human rights tribunals have built a rich jurisprudence emancipation of the human vis-à-vis their own state. "⁴²

Thus, initiatives taken forward by people like Irene, collaborate to an expansion of global awareness of the universal principles of human rights. While the sister of Damian publicly denounced the incident with his brother unknowingly was reinforcing a particular struggle: the human rights of people with mental disorders.

(iii) the responsibility of the State

The ruling of the IACHR understood to be the Free State to delegate the implementation of public health services, but such delegation to private entities does not eliminate its primary responsibility for any abuse and negligence.

The IACHR did appear in the sentence that the acts committed by Nursing Home Guararapes and its officials are the Brazilian state responsibility, for it was this that oversaw and paid their services with public funds derived from the National Health

⁴⁰ LAFER, Celso. *A reconstrução dos Direitos humanos*. São Paulo: Companhia das Letras, 2006, p. 150.

⁴¹ PIOVESAN, Flavia. *Direitos Humanos e o Direito Constitucional Internacional*. São Paulo: Max Limonad, 1996. p. 300.

⁴² TRINDADE, Antonio Augusto Cançado. *A proteção internacional dos direitos humanos*. São Paulo: Saraiva, 1991, p. 26.

System.⁴³

Note that the IACHR held that the State has a contract with the private sector, but responsibility for processing, in regulation and supervision, continues to state responsibility, since the private sector operates in a complementary fashion, health is the duty of the State and citizen's right.

As the State invested in the duty of care of the population. This duty of care implies recognizing that the state should ensure that there is no depreciate the living conditions, the person who is in treatment."

(iv) Effective judicial Resources

The state has the obligation to provide effective judicial remedies to victims of human rights violations, substantiated in accordance with the rules of due process, all understood that the general obligation to ensure the free and full exercise of the rights recognized by the Convention to all persons that falls under its jurisdiction.

Article 25.1 of the Convention establishes the obligation of States to ensure to all persons within their jurisdiction an effective judicial remedy against acts that violate his fundamental rights, not just by the formal existence of resources.

It is necessary that such remedies are effective, capable of producing results or responses to rights violations forth in the Convention, since the existence of this warranty sets forth the rule of law bases in a democratic society in the sense of the Convention.

Thus, the victims of human rights violations, or their families, should have ample opportunity to be heard and to act in their processes, both in an attempt to clarify the facts and punish those responsible, as the search for a proper repair.

In the case of Ximenes-Lopes, in response to cruel, inhuman and degrading treatment that have been foisted and subsequent death, the first feature that would be for the State would have provided an effective investigation and judicial proceedings conducted in accordance with existing laws .

And in this sense, the manifestation of the IACHR in paragraphs 194 and 195 of the judgment. Here is your content:

⁴³ CF/88Article 199, § 1 "Art. 199. Health care is open to private enterprise. § 1 - Private institutions may participate in a complementary manner in the unified health system, according to the guidelines of this by public law contracts or agreements, preference being given to philanthropic and nonprofit.

194. In response to cruel, inhuman and degrading treatment he underwent Ximenes-Lopes, and his subsequent death, the first feature that it was for the State have provided was an effective investigation and judicial proceedings conducted in accordance with the requirements Article 8 of the Convention, with a view to clarifying the facts, punishment of those responsible and the provision of adequate compensation.

195. Convention Article 8.1 provides, as one of the elements of due process, the courts decide cases submitted to it within a reasonable time. A reasonable time must be assessed in relation to the total duration of the criminal proceedings. In criminal matters this period starts when presented the first act of proceedings against a person as likely responsible for some offense and ends when it gives final and definitive judgment.

Among the main supporters of a just legal system, lies the need to ensure a skilled legal protection, which can protect the individual whose subjective rights claimed to the State, guaranteeing that managed to the State intervention is not necessary for the solution of conflict.

Unconcerned is the state with its power/Judicial duty, will be confronting constitutional principles that characterize real guarantees of the citizen in a democratic state.

With the inclusion of item LXXVIII of Article 5, the Constitution shall guarantee the right of citizens to see their demands decided in a reasonable time, as "justice delayed is not justice, but qualified and manifest injustice."⁴⁴

Family members of Ximenes-Lopes was denied reasonable processing time and the means to guarantee the speed of its proceedings, recognized by the IACHR, in paragraphs 247 and 248, transcribed below:

247. In this case the Court established that, after more than six years of the facts, the authors of cruel, inhuman and degrading treatment, as well as the death of Ximenes-Lopes, were held liable, prevailing impunity (par. 170-206 supra).

248. The Court notes that the State must ensure that within a reasonable time the internal process to investigate and punish those responsible for the facts of this case freak out their proper effect, giving direct applicability in domestic law to the American Convention protection standards.⁴⁵

⁴⁴ BARBOSA, Rui. *Oração aos moços*. São Paulo: Editora Martin Claret. 2003. p. 49.

⁴⁵ Corte IDH., Caso Damião Ximenes Lopes VS. Brasil. Sentença de mérito, reparações e custas de 4 de julho de 2006, parágrafos 247 e 248, p. 80. Available in: <http://www.corteidh.or.cr/docs/casos/articulos/seriec_149_por.pdf>. Accessed on: 13 fev. 2011.

To get to the concept of what would be reasonable in relation to the processing time, you can analyze the importance of the case for the person concerned, the complexity of the process and the behavior of the applicant and the competent authorities.

On the importance of the case for the person concerned, which must be considered is the impact that the late solution of the impasse could lead in the jurisdictions that that claims a provision.

In the present case, the applicant committed itself to the extreme where the blame for the death of his brother held accountable. However, one cannot say the same for the state, beginning with the autopsy Ximenes-Lopes and, continuing in other legal acts.

And oddly enough, after more than ten years of the death of Damian, now has legal responses. In a decision, the Court of the State of Ceará, condemned the Guararapes Rest Home Ltd., Mr. Sérgio Antunes Ferreira Gomes and Mr. Francisco Ivo de Vasconcelos, in a claim for moral hazard, because of the death of Damian, including setting forth who were referred to the Court,

[...] Copy of the administrative document 2009.0031.8165-5, originally the residence of this Sodality, which tells the rapporteur forwarding this new Resolution mining the Inter-American Court of Human Rights on 21 September 2009, which warned that the obligation to Brazil in operative paragraph 6 of the decision of the International Court of 'guarantee within a reasonable time, the internal process to investigate and punish those responsible for the facts of this case freak out their proper purpose' remains pending compliance.⁴⁶

⁴⁶ Here the decision menu: Menu .: I. For patent remains evidenced the degrading condition it has undergone human being deserving of dignity by their very existence. II. The dignity of the human person, the Charter of the factual basis of 1988 figures as ethical core of fundamental rights and holds the thread function of the rights of this nature in order to print the Constitution axiological unit. III. Constitutional Sobreprincípios violated, with clear affront to personal rights, which entails civil damages for pain and suffering. Precedents of the STJ. IV. There are three basic requirements for the measurement of subjective liability for tort enshrined in article text. 186 of the Civil Code, namely, the agent's fault, the damage from the act and the causal link between the conduct and the injury suffered by the injured party, which in the case in question, remained set by intense concussion suffered sentimental; V. was consolidated understanding, both in the courts and in the patriotic doctrine, that the responsibility emanates from the obligation to repair damage caused by the fault, the legal circumstances justifying (presumed guilt) or by objective circumstances; VI. It is understood, both in doctrine and in the homelands held that for fixing the value of the material damage, the judge must hold up the evidential content, and the objective reality of facts ensejadores of compensation, not only to the economic condition of defendant, arbitrating it reasonably, so that not conducive to the author attracting undue advantage. VII. The nature of the individual appellant and the constitutional protetório round about his

Finalize the decision as follows:

Thus, the values arbitrated as damages are due to Mrs. Albertina Viana Lopes as justice to charges that it was generated, constitute only one solace to the suffering that was imposed in an attempt to give you at least a little dignity given to you taken together with the life of his son.⁴⁷

Perhaps, then, the family of Damian feel partially offset by the delay of the Brazilian court to judge those responsible for the death of Damião Ximenes Lopes, having achieved justice for their loved one.

In the words of Dalmo de Abreu Dallari, which teaches that one must

[...] That the requirement of respect for human rights is part of the Brazilian customs, setting up end to institutional violence and unjust policies, establishing a permanent priority to human dignity.⁴⁸

We can conclude by stating that the inter-American system of human rights protection, represented by the Commission and Court of Human Rights Inter-American, was much more agile and effective than the Brazilian State⁴⁹, which proved unprepared and unstructured upon realization of procedural acts⁵⁰ to the end conviction of the accused for torture and ill-treatment carried out in Ximenes-Lopes.

right of access to court, prove to be able to motivate the grant of the benefits of judicial gratuity, in that Law No. 1,060 / 50, in his art. 4, only requires for granting the benefit alluded to part of the declaration of poverty, in which states not hold a position to provide the court costs and attorneys' fees, non-self or family loss, becoming dispensable documentary proof of such condition. APPEAL KNOWN AND PARTIALLY PROVIDED. BRAZIL. Court of the State of Ceará. Civil Appeal No. 14219-63.2000.8.0167 / 1, 2nd Civil Chamber, Appellants: The Guararapes Rest Home Ltd, Mr. Sérgio Antunes Ferreira Gomes and Mr. Francisco Ivo de Vasconcelos. Appealed: Albertina Viana Lopes. Reporting Judge: FRANCIS OF ASSISI FILGUEIRA MENDES, tried in March 31, 2010 ..

⁴⁷ BRAZIL. Court of the State of Ceará. Civil Appeal No. 14219-63.2000.8.0167 / 1, 2nd Civil Chamber, Appellants: The Guararapes Rest Home Ltd, Mr. Sérgio Antunes Ferreira Gomes and Mr. Francisco Ivo de Vasconcelos. Appealed: Albertina Viana Lopes. Reporting Judge: FRANCIS OF ASSISI FILGUEIRA MENDES, tried in March 31, 2010.

⁴⁸ DALLARI, Adilson de Abreu. *Elementos de Teoria Geral do Estado*. São Paulo: Saraiva, 16^{ed.}, 1991, p. 17.

⁴⁹ WEISS, Carlos. *Direitos Humanos Contemporâneos*. 2 ed. São Paulo: Malheiros Editores. 2010 p.158.

⁵⁰ In relation to criminal proceedings, indicated that lacked diligence in the process of office, principally statements as of lords Francisco Ivo de Vasconcelos, João Alves da Silva and Sebastian Vieira Filho, statements considered important by the witness, that compromised both the hospital and the state ". Corte IDH., Caso Damião Ximenes Lopes VS. Brasil. Sentença de mérito, reparações e custas de 4 de julho de 2006, p. 14. Available in <http://www.corteidh.or.cr/docs/casos/articulos/seriec_149_por.pdf>. Accessed on 03 march 2015.

CONCLUSIONS

It can be said that Brazil has not remained indifferent to the internationalization process of law, however, led to changes effect in the Constitution to allow greater penetration of international law into domestic law, and greater protection of human rights.

The added protection of human rights was felt both when granting constitutional status to human rights treaties approved in accordance with §3º Art. 5, in other words, with qualified quorum of three-fifths, as the position taken by the Supreme Court granted that status “supralegal” standard treaties of past human rights the date of enactment of Amendment to the Constitution n. 45/04.

In this context, there is the Pact of San José, Costa Rica began to use the legal system of a different legal status of other common law therefore holder of greater effectiveness and applicability.

In the case of Damiano Ximenes Lopes, in which Brazil was convicted, it was found that the inter-American human rights system was more effective in protecting human rights than the Brazilian legal system.

On the other hand, one has to admit that Brazil met in full the decision of the Inter-American Court of Human Rights. It would seem that with the change of the legal status of the Pact of San José, Costa Rica in Brazil, there will be greater protection of human rights.

BIBLIOGRAPHY

BARBOSA, Rui. *Oração aos moços*. São Paulo: Editora Martin Claret. 2003.

BOBBIO, Norberto. *A era do direito*. Tradução de Carlos Nelson Coutinho. Rio de Janeiro: Elsevier, 2004.

CARNEIRO, Eduardo Sá; LIMA JUNIOR, Jayme Benvenuto. *Damião Ximenes e Gilson Nogueira: Os primeiros casos contra Brasil perante o Sistema Interamericano de Direitos Humanos*. Available in <http://www.lfg.com.br>

COMPARATO, Fabio Konder. *Afirmção histórica dos Direitos Humanos*. São Paulo: Saraiva, 3ºed. 2003.

DALLARI, Adilson de Abreu. *Elementos de Teoria Geral do Estado*. São Paulo: Saraivam 16ºed., 1991.

DELMAS- MARTY, Mireille. *Três desafios para um direito mundial*. Rio de Janeiro: Lumen Iures, tradução Fauzi Hassan Choukr, 2003.

FEUILLADE, Milton C. El Deber de Investigar, en la Jurisprudencia de la Corte Interamericana de Derechos Humanos. *Revista Mestrado em Direito. Direitos Humanos Fundamentais*. Vol. 10, n. 2, 2010, p. 16. Available in: <http://intranet.unifieo.br/legado/edifio/index.php/rmd/article/view/453/496>. Accessed on : 20 Feb. 2011

LAFER, Celso. *A reconstrução dos Direitos humanos*. São Paulo: Companhia das Letras, 2006.

MAUES, Antonio Moreira, “Supralegalidade dos tratados internacionais de direitos humanos e interpretação constitucional In. *A eficácia nacional e internacional dos direitos humanos*. Coordenadores: MAUES, Antonio Moreira; LOPES, Ana Maria D’Avila. Rio de Janeiro: Lumen Juris, 2013.

MARTINS, Ana Maria Guerra. *Direito Internacional dos Direitos Humanos*, Coimbra: Almedina, 2206

PIOVESAN, Flavia. *Direitos Humanos e o Direito Constitucional Internacional*. São Paulo: Max Limonad, 1996.

REZEK, Francisco. *Direito Internacional*. São Paulo: Saraiva, 12^oed., 2010.

SANTOS, Boaventura de Souza. *A construção multicultural da igualdade e da diferença*. Coimbra: CES, 1999.

SILVEIRA, Vladimir; MEYER-PFLUG, Samantha Ribeiro. “Tratados de Direitos Humanos e a evolução jurisprudencial do Supremo Tribunal Federal”. In.: *A problemática dos Direitos Humanos Fundamentais na América Latina e na Europa – desafios materiais e eficaciais*. Coordenadores BAEZ, Narciso Leandro Xavier, Joaçaba: UNOESC, 2012.

TORCOL, Silvie. *Les mutations du constitutionnalisme à l’épreuve de la construction européenne*. Tese de doutorado defendida em 12/12/2002 perante a Faculdade de Direito da Universidade de Toulon et du Var, Lille, A.N.R.T.

TOURARD, Hélène. *L’internationalisation des Constitutions Nationales*. Paris: L.G.D.J., 2000.

TRINDADE, Antonio Augusto Cançado. *A proteção internacional dos direitos humanos*. São Paulo: Saraiva, 1991.

VON IHERING, Rudolf. *A luta pelo direito*. 12 ed. Rio de Janeiro: Forense, 1992.

WEISS, Carlos. *Direitos Humanos Contemporâneos*. 2^oed. São Paulo: Malheiros Editores. 2010.