

REPORT No. 13/09
PETITION 339-02
ADMISSIBILITY
VINICIO POBLETE VILCHES
CHILE ¹
March 19, 2009

I. SUMMARY

1. This report is on the admissibility of petition 339-02. Proceedings were initiated by the Inter-American Commission on Human Rights (hereinafter "Inter-American Commission," "Commission," or "IACHR") following its receipt of a petition lodged on May 15, 2002 by Mses. Blanca Margarita Tapia Encina² and Cesia Leyla Poblete Tapia, and Mr. Antonio Poblete Tapia (hereinafter "the petitioners") against the Republic of Chile (hereinafter "Chile" or "the State"), regarding the death of Mr. Vinicio Antonio Poblete Vilches on February 7, 2001, in a public hospital of the city of Santiago.

2. The petitioners contend that the physicians treating Mr. Vinicio Poblete Vilches on February 7, 2001 in a public hospital of Chile were responsible for his death; they performed surgery on him without informing his next of kin or requesting his authorization, and discharged him from the hospital after the operation despite his serious health condition. They go on to say that they received contradictory information regarding the cause of death of the alleged victim, and lodged a criminal complaint against the physicians in 2001, which currently continues to be in the stage of a preliminary inquiry. They note that there has been an unjustified delay on the part of the court to carry out an investigation of the facts, and they report that they were humiliated by hospital personnel and by the court examining the case.

3. The State, for its part, contends that the complaint should be declared inadmissible because there is not yet a final judgment in the investigation on a possible negligent homicide of the alleged victim, and hence it cannot be reasonably considered that available domestic remedies in the Chilean judicial system have been exhausted. The State also asserts that the petition should be declared inadmissible on the grounds that it is manifestly groundless.

1 Commissioner Felipe González, a Chilean national, did not participate in study and decision of this report, in compliance with Article 17(2)(a) of the Commission's Rules of Procedure.

2 The petitioners informed the Commission in a January 25, 2003 communication that Ms. Blanca Margarita Tapia-Encina died on January 13, 2003.

4. Without prejudging the merits of the case, in this report the Commission concludes that it is competent to examine the instant petition regarding the alleged violations of the rights to life, to a fair trial, to equal protection, and to judicial protection, pursuant to articles 4, 8, 24, and 25 of the American Convention on Human Rights (hereinafter "American Convention" or "Convention") in connection with article 1(1) of same. The Commission also decides to notify the parties of this decision, to publish it and to include it in its Annual Report to the General Assembly of the Organization of American States (OAS).

II. PROCESSING BEFORE THE COMMISSION

5. The petition is dated April 24, 2002 and was received by the IACHR on May 15, 2002. The petitioners submitted additional information on September 6, 2002 and requested information on the status of the petition's processing on November 10, 2002. The Commission requested additional information from the petitioners on December 13, 2002, which was submitted by them on April 29, 2002 and January 23, 2003. The Commission again requested additional information from the petitioners on April 23, 2003, which was submitted on May 7, 2003.

6. The relevant parts of the petition were forwarded to the State on June 4, 2003, granting it two months to submit its observations. On September 15, 2003 the State requested a 30-day extension to submit its response to the petition. On September 23, the Commission requested the State to present its observations as soon as possible. On December 1, 2003 the Commission reiterated to the State that it should submit its observations to the petition. The petitioners requested information on the status of processing on July 10, 2003, October 30, 2003, and April 10, 2004.

7. The State submitted its observations to the instant petition on June 9, 2004. The State's observations were duly forwarded to the petitioners on June 29, 2004. The petitioners presented their observations, dated July 20, 2004, to the State's response and submitted additional information on July 27, 2004. The petitioners requested information from the Commission on the processing of their petition on December 24, 2004 and July 20, 2005.

8. On March 16, 2005, the IACHR received a February 18, 2005 communication from the Inter-American Court, in which it forwarded a communication from Vinicio Poblete Tapia, received by the Court on

January 17, 2005. Said communication was included in the case file of Petition 339-02.

9. On March 29, 2007, the Commission reiterated to the petitioners its request for their observations to the State's response, which had been sent to them on June 29, 2004. In a May 10, 2007 communication, the petitioners forwarded their July 20, 2004 response to the Commission's request for observations. This response was duly transmitted to the State on August 9, 2007. The petitioners requested information from the Commission on the status of the processing of the instant petition on January 7, 2008.

10. The petitioners presented additional observations on March 7, 2008 and on March 10, 2008. Both communications were forwarded to the State on April 3, 2008. The petitioners requested information from the Commission regarding the processing of the instant petition on March 19, 2008. The petitioners submitted additional observations on May 3, 2008, which were transmitted to the State on June 13, 2008. The petitioners presented additional observations to the Commission on May 30, 2008, June 18, 2008, June 28, 2008, July 7, 2008, July 8, 2008, July 14, 2008, July 21, 2008, July 17, 2008, and August 6, 2008. These communications were all forwarded to the State on August 26, 2008. The petitioners presented additional observations to the Commission on August 18, 2008, and these were transmitted to the State on September 17, 2008.

11. On August 26, 2008 the Commission requested additional information from the parties, including copies of the domestic court record of the case. The requested information was submitted by the petitioners on September 25, 2008 and by the State on October 15, 2008. These communications were duly forwarded to the parties on January 14, 2009 and November 5, 2008, respectively.

12. The petitioners submitted additional information to the Commission on October 3, 2008, October 13, 2008, October 20, 2008, October 27, 2008, October 27, 2008, November 1, 2008, December 1, 2008, and December 29, 2008. These communications were duly forwarded to the State on January 14, 2009. The petitioners again submitted additional information to the Commission, dated February 6, 17, and 18. Said communications were duly transmitted to the State on February 25, 2009.

III. POSITIONS OF THE PARTIES

A. The petitioners

13. The petitioners, in handwritten submissions to the Commission, report the facts of which their father was allegedly a victim: Mr. Vinicio Antonio Poblete Vilches (hereinafter the alleged victim). They state that on January 17, 2001 they called an ambulance because the alleged victim, 76 years of age, had problems with breathing. The ambulance, which according to them was late in arriving, took the alleged victim to the emergency unit of the *Complejo Asistencial Doctor Sótero del Río* [Dr. Sótero del Río Medical Complex], a public hospital in Santiago, Chile (hereinafter "Sótero del Río Hospital" or "the hospital").

14. According to the petitioners, the alleged victim was kept in the Intensive Care Unit of the aforementioned hospital, until January 22, 2001, when he was moved to one of the hospital's wards. The petitioners, who personally accompanied Mr. Poblete Vilches during his stay in the hospital, maintain that the alleged victim received degrading treatment in the hospital. In particular, they complain that Mr. Poblete Vilches went hungry; that he was kept in a drugged state and unconscious; and that he was naked and his hands and legs were tied, which prevented blood circulation. They state that the hospital physicians were overbearing with the petitioners and other next of kin of Mr. Poblete; they were humiliated by the doctors when they asked for information on the alleged victim's state of health, they were kept from viewing the medical record to learn about the treatment he was receiving, and even restricted family visits.

15. The petitioners claim they informed the hospital that the alleged victim suffered from two types of diabetes, and therefore he could not undergo surgery. They state that on January 26 the alleged victim underwent surgery without his next of kin having been informed or without requesting their authorization. In fact, they report that in said clinic an authorization was forged to carry out the operation: the alleged authorization appears as written and signed by Blanca Margarita Tapia Encina, who did not know how to read or write. Moreover, the medical record shows Ms. Tapia Encina authorizing surgery for her father, when Mr. Poblete Vilches was in fact her husband. They further contend that they were informed after surgery had been performed "to determine if he had fluids in the heart" but after the operation they found three large wounds on the right side of his waist, to which a drainage tube was attached.

16. They report that on February 2, 2001 they received a call from the hospital requesting that they pick up the alleged victim, who had been discharged. They came to the hospital and requested a physician to inform them regarding the care and treatment for the alleged victim, but no doctor responded to their call. According to the complaint, when he was discharged from the hospital the alleged victim's condition was so serious that his family had to pay for a private ambulance to take him home.³ They contend that the hospital's medical personnel acted irresponsibly in releasing the patient after only six days had passed since his operation, and whose state of health was so serious, considering his age and his diabetic condition.

17. On February 5, 2001, because of the seriousness of alleged victim's state of health, they called a private doctor who examined him at home, and realized that he was draining pus through some orifices in his chest, and diagnosed him as having high fever and suffering from septic shock and bronchopneumonia,⁴ and told them they needed to take him to the hospital. The petitioners maintain that, according to the private physician, it was inexplicable that the patient had been discharged in such a serious state of health. They report that on that same day the alleged victim was again admitted to the Sótero del Río Hospital, through the emergency room.

18. They contend that when he arrived at the hospital he was diagnosed with simple pneumonia. That night, they say, the alleged victim was transferred to the intensive care unit but that there were no available artificial respirators. They maintain that, in spite of their requests, the hospital did nothing to transfer him to another hospital where he could use a respirator.

19. On February 7, 2001, in the early hours of the morning, the alleged victim died in the hospital. The petitioners contend that the person who called from the hospital to inform him of the death stated that Mr. Vinicio Poblete Vilches had died of cardiac arrest. Subsequently, in the morgue, they received a death certificate stating the cause of death as septic shock and bilateral bronchopneumonia. In addition, a tape⁵ on his chest stated that he had died from a pulmonary edema. They maintain that his body was full of bruises, of which he also had some on his forehead. They go on to say that a nurse had informed

3 The petitioners attached a copy of the receipt given to them by the ambulance crew.

4 The petitioners attached a certificate issued by Dr. Sandra Castillo Montúfar, who is a specialist in General Medicine and Surgery.

5 The petitioners attached a copy of the tape that they claim was on the chest of the alleged victim.

them that the alleged victim had been injected with a drug to put him to sleep.

20. The petitioners stress that they received several diagnoses regarding the death of Mr. Poblete Vilches and hence they believe that the cause of his death has not been clarified. They report that the hospital authorities refused to give them his X-Rays and tests, and refused to perform an autopsy, in spite of the fact that they personally requested one several times at the hospital, and subsequently requested that one be ordered by the court that intervened in the investigation of the death of the alleged victim.

21. The petitioners report that Ms. Blanca Margarita Tapia Encina, wife of the alleged victim, lacking the wherewithal to hire a lawyer, sought support to lodge a criminal complaint for homicide before the justice authorities. On November 12, 2001, with the counsel of an attorney from the *Centro Jurídico Gratuito Yungay* [Yungay Free Legal Aid Center] of the *Universidad Bolivariana* [Bolivarian University], the petitioners lodged a criminal complaint against the physicians that treated the alleged victim, reporting them as guilty of the alleged crime of negligent homicide. Along with the complaint, they requested a series of procedures. They explained that their tardiness in filing their criminal complaint was due to their lack of the resources necessary to hire a lawyer and that they have changed counsel on several occasions due to the fact that the students graduate and it becomes necessary to again and again obtain a new legal representative to defend them without charge.

22. The petitioners allege that judicial authorities have acted with total indifference and negligence regarding the investigation of the facts object of their complaint. With respect to the lack of progress in judicial proceedings, the petitioners stress that "there is no justice in this country for humble people. Government authorities have no interest in investigating the death of people like my father." The petitioners highlight their concern that the accused continue to work as public servants in the hospital, located only 10 minutes from the competent court, in the same jurisdiction, and yet judicial authorities have not executed the warrants for arrest issued for the purpose of obtaining the testimony of the accused professionals.

23. On October 7, 2005, Mr. Vinicio Poblete Tapia, sponsored by the *Oficina de Derechos Humanos* [Human Rights Office] of the *Corporación de Asistencia Judicial* [Legal Aid Corporation], lodged a new complaint "against those found responsible for the crime of negligent

homicide” of his father, and requested a joinder of the case with the prior one in the same court, and for the same facts. The cases were joined on February 9, 2006. The petitioners allege that the investigation was closed on December 11, 2006, its dismissal without prejudice decided by the court in spite of the fact that the procedures requested by them, and so ordered by the same court, had not been carried out, such as the reception of testimony of the medical personnel that treated his father in the hospital. They contend that some of the witnesses they offered came of their own accord to the court but their statement was not taken. Therefore, on January 29, 2007, they requested that the case be re-opened and several procedures be carried out.

24. On February 27, 2007, the case was reopened and on April 17 of that year the court ordered that it be returned to the stage of preliminary inquiry and that several procedures be carried out. On June 30, 2008, a dismissal without prejudice was again decided, until such time as new and better data from investigation should be obtained. The petitioners state that several of the physicians that did not appear to submit their testimony continue to work at the hospital, and no procedures have been executed to find them there. On August 4, 2008, the case was reopened again at the request of the petitioners.

25. They maintain that the judicial system delayed the case and later closed it without those responsible being punished, and hence the case’s result was one of impunity. They contend that they have not been heard either appropriately or in a timely manner, and that despite the passing of months the procedures requested by them to clarify the facts of the case have not been carried out. It is the petitioner’s opinion that the judicial authorities were covering up for the physicians who attended the alleged victim, and that therefore they are victims of a denial of justice. They state, in addition, that they were humiliated and intimidated at the court when they appeared before it to seek justice.

26. The petitioners report that, after a complaint was filed on January 13, 2006 by Vinicio Poblete Tapia against the Sótero del Río Hospital, a mediation hearing was held on April 4, 2006 in the mediation unit of the *Consejo de Defensa del Estado* [Council for the Defense of the State]. The hearing was attended by the petitioners and the hospital’s lawyer, but it was postponed until further facts were gathered, in particular with the physicians involved also attending, and with Mr. Poblete Vilches’ medical record. The Commission has no knowledge of any follow-up hearing having been held.

27. They report that they also sought relief before the Supreme Court of Justice but only received a March 6, 2008 communication from the President of the Court stating that he does not have the authority to intervene in proceedings underway in other courts of the Republic, and that the filing of appeals is the appropriate way to complain against judicial decisions that the parties consider unfavorable to their interests. The petitioners maintain that they attempted to reach other national authorities, including presidents of the Republic and ministers of health.

29. The petitioners state that the entire family depended upon the alleged victim for a living, especially one of his children, who suffers from a physical disability.⁶ They say that the State was indifferent to their repeated requests for help from the Government to maintain the alleged victim's disabled son, and that they have suffered from hunger and need. In July 2005 they reported to the Commission that Mr. Vinicio Poblete Tapia, son of the alleged victim, and petitioner in the instant case, was diagnosed with renal cancer. They claim that they have been forced to beg in order to buy medicine and food and that they were even forced to sell essential belongings, including a wheelchair, leaving their brother confined to a bed. They further claim that they have not been able to hire a lawyer in their state of indigence, and as proof they have attached reports of a social worker and a priest. They say that the legal aid they have received has been free of charge.

29. The petitioners claim to have the victims of humiliation on the part of judicial and hospital authorities, because they are "humble people." In particular, they have reported to the Commission that they received threats from the personnel of the court and were constantly harassed in their struggle for justice, to the point that they fear to seek relief in the court.

30. The petitioners informed the Commission that they had received an apology from the director of the *Servicio de Salud Metropolitano Sur Oriente* [Southeastern Metropolitan Health Services), Dr. Pedro Yáñez Alvarado, under which the Sótero del Río Hospital operates, but they claim that justice has not been served in their country. They request that the Government of Chile be held responsible "for the lack of interest in investigating the homicide of an impoverished Chilean."

⁶ The petitioners have attached documentation indicating that Gonzalo Poblete Tapia, born on January 10, 1976, has brain damage and is physically an invalid as a result of a chronic ailment of his spine, which has deformed his body. In addition, Gonzalo Poblete does not master verbal or written language, his limitations prevent him from communicating and from mobility, he has no sphincter control and has no schooling because of his state of health.

B. The State

31. The State contends that the instant petition should be declared inadmissible because there is yet no final judgment in the investigation regarding possible negligent homicide of the alleged victim; the available domestic remedies in the Chilean legal system cannot be reasonably considered to have been exhausted. It goes on to say that the petition should also be declared inadmissible because it is manifestly groundless.

32. In its response to the petition, the State maintains, with respect to the lack of a reasonable exhaustion of domestic remedies, that "the procedure followed by the *Primer Juzgado de Letras de Puente Alto* [First Court of Puente Alto] is still in the investigation stage." Thus, the State emphasizes that the investigative process has not been exhausted and that even less so can it be said that domestic remedies have been exhausted; hence the petition is inadmissible. The State also maintains that the petitioners have not provided evidence to prove that they are in a condition of, or similar to, indigence.

33. Regarding the characterization of possible human rights violations regarding the facts alleged in the petition, the State contends that it has fully complied with the provisions of article 8 of the Convention, since there has been "a complex investigation, before a Court of the Republic with a specialized jurisdiction established by law, and where the guarantees of impartiality and independence are fully recognized and operational."

34. The State explains that the guarantee of a reasonable time period needs to be understood in the light of the circumstances of each particular case, of the topic's complexity, and the party's and the court's actions. In this regard, considering that the investigation of a possible negligent homicide resulting from negligent medical practice requires that the judge be assisted by expert witnesses, and presents its own difficulties with respect to the gathering of sufficient evidence, the complexity of the case justifies an apparent delay in the administration of justice.

35. In addition, it is the opinion of the State that in the instant case the requirement of diligence on the part of the plaintiff is not fulfilled, considering that more than nine months passed between the death of the alleged victim and the lodging of the complaint. Moreover, although the complaint was filed by a free legal service, the petitioners

gave up said counsel in the first semester of 2002, stating that they were being advised by a private attorney. The State also reports that on October 14, 2003, representation in the case was assumed by the attorney Raúl Meza Rodríguez, who took no action in the trial until November 22, 2004, the day on which he delegated representation in another lawyer. In this respect, the State maintains that the petitioners did not adequately pursue progress in the proceedings initiated by their complaint.

36. The State also notes that diligence in the actions of the court investigating the case is evident. In particular, once a dispute over jurisdiction was resolved, on February 13, 2002 the complaint was received, admitted for processing, and an order to investigate was issued. In addition, the State reports that witness testimony was taken and arrest warrants were issued for two witnesses who did not appear for questioning. Moreover, the State explains, the proceedings have suffered from a certain delay since the summons and notification of the accused had to be carried out by the First Court of Puente Alto through a request to another court, since the accused had their domicile outside the territorial jurisdiction of the court.

37. In its response to the instant petition, the State said it was carrying out a process of reform of the criminal justice system in Chile in order to "radically eliminate the vices of the old criminal justice system, avoiding, *inter alia*, situations such as those faced by the petitioner." The State clarifies that it does not accept responsibility for the facts imputed to it, but considers that the reform will avoid the repetition of violations of the right to obtain swift and fair justice for all citizens.

38. On October 16, 2008 the State provided the Commission with Court Record No. 75.927-M of the First Court of Puente Alto regarding the investigation of the death of Mr. Vinicio Poblete Vilches. The State noted that the case was dismissed only twice, but that it is still pending resolution under the domestic judicial system.

39. Regarding this point, the State reports that on December 11, 2006, since there was insufficient evidence of the existence of the crime object of the complaint, the case was dismissed without prejudice until such time as new facts and better data resulted from investigation. On April 17, 2007, following a request filed by the Human Rights Office of the Legal Aid Corporation, the case was reopened. One year later, on June 30, 2008, the case was again dismissed without prejudice, until such time that new and better facts were gathered.

40. In the month of December, 2008 the State reported, without providing any further additional information, that the Department of *Ex Gratia* Pensions of the Ministry of the Interior, had granted an increase in the *ex gratia* pension benefit to Mr. Vinicio Poblete Tapia on September 11, 2008.

41. Finally, the State categorically denies the statements made by the Poblete family to the press, in which they asserted that the Director for Human Rights of the Ministry of Foreign Affairs had offered them a monetary compensation in exchange for their abandonment of their claims before international organizations.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence of the Commission

42. According to the provisions of article 44 of the American Convention, the petitioners have standing to file a petition before the Commission. The instant petition indicates that the alleged victim was under the jurisdiction of the Chilean State at the time of the facts alleged. Regarding the State, Chile is a State-Party to the American Convention, having deposited its instrument of ratification on August 21, 1990. Consequently, the Commission is competent *ratione personae* to examine the complaint. The Commission is also competent *ratione materiae* because the petitioners claim that there have been violations of rights protected by the American Convention.

43. The Commission is competent *ratione tempore* to examine the petition because it is based on the allegation of facts occurred from January 17, 2001 onwards. The facts alleged therefore occurred after the entry into force of the obligations of the State as a party to the American Convention. In addition, since the petition alleges the violation of rights protected by the American Convention within the territory of a State-Party, the Commission concludes that it is competent *ratione loci* to examine the case.

B. Other requirements for the admissibility of the petition

1. Exhaustion of domestic remedies

44. Article 46 of the American Convention establishes, for the admission of a case, the requirement that "the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." The purpose of this

requirement is to allow national authorities to take cognizance of an alleged violation of a protected right and, if appropriate, to resolve the case before it is examined in an international venue.

45. The requirement of exhaustion of domestic remedies established by article 46 of the American Convention refers to available judicial remedies, which must be appropriate and effective to remedy the alleged human rights violations. The Inter-American Court has established that petitioners are exempted from the obligation of exhausting domestic remedies in those situations where they cannot be exhausted because they are not available to them either as a matter of law or as a matter of fact.⁷

46. In the instant case, the petitioners have alleged the existence of two reasons for them having been prevented from exhausting domestic remedies: first, they allege that their inability to afford legal services limited their capacity to effectively use available domestic remedies according to the law. In the second place, they maintain that the remedies to be exhausted in the instant case continue to be indefinitely delayed by the judicial authorities, and therefore the death of Mr. Vinicio Poblete Vilches has not been clarified although more than seven years have elapsed since the facts occurred.

47. With respect to the first reason preventing the exhaustion of domestic remedies, i.e., the alleged indigence of the petitioners, it is necessary to recall that the fact that a person is indigent, taken by itself, does not mean that he or she must not exhaust domestic remedies, but that the indigent must or must not exhaust domestic remedies, according to whether the law or circumstances allow him or her to do so.⁸ Regarding cases of indigence, the Inter-American Court has held that the State that does not provide legal assistance free of charge for indigents cannot later argue that the process exists but was not exhausted.⁹

48. In its analysis of the facts of the instant case, the Commission notes that the petitioners, eligible due to their economic

7 I/A Court H.R., *Exceptions to the Exhaustion of Domestic Remedies* (Art. 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990, Series A, No. 11, paragraph 17.

8 I/A Court H.R., *Exceptions to the Exhaustion of Domestic Remedies* (Art. 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990, Series A, No. 11, paragraph 20.

9 I/A Court H.R., *Exceptions to the Exhaustion of Domestic Remedies* (Art. 46(1), 46(2)(a) and 46(2)(b) American Convention on Human Rights). Advisory Opinion OC-11/90 of August 10, 1990, Series A, No. 11, paragraph 128.

circumstances, have made use, *inter alia*, of the free legal services of the Bolivarian University and of the Human Rights Office of the Legal Aid Corporation, the latter a public service offered by the Chilean State. In this respect, the petitioners' economic circumstances have not prevented them from obtaining access to legal remedies and therefore they are not exempt from the obligation of exhausting them.

49. Regarding the second reason that would prevent them from exhausting domestic remedies, i.e., the alleged unjustified delay in the investigations, it is the opinion of the Commission that, pursuant to article 31(3) of its Rules of Procedure, the State has the burden of proving that certain domestic remedies continue to offer an effective reparation for the alleged harm.

50. In this respect, the State has contended that the investigation is not over, that there is no final judgment, and that the proceedings are following their course and await new and better facts. The State has said that the apparent delay in the investigation is justified by the complexity of the matter, since expert witnesses are needed and there are difficulties in obtaining sufficient evidence. The State also affirms that several months went by between the death of the alleged victim and the filing of the criminal complaint by the petitioners. It also affirms that the petitioners have not acted to appropriately move the process forward, to the degree that on certain occasions several months have gone by without any action on their part in the proceedings.

51. However, the State has not provided the Commission with specific information as to what concrete steps, if they exist, the petitioners must take in order to exhaust domestic remedies. The State has not provided, either, information explaining the delay in the resolution of the case, which continues to be in the stage of preliminary investigation. In any event, the State has not refuted the petitioners' arguments that several of procedures they requested were not ordered to be carried out by the court and that among those that were ordered not all have been carried out, despite the fact that more than seven years have elapsed since the complaint was filed.

52. The Commission notes that once the petitioners filed a criminal complaint stating the facts of the case, and requested a series of investigative procedures, the matter was in the hands of the judicial system and it is its responsibility to ensure due investigation of the complaint. The Commission also notes that the facts alleged took place in a public hospital, and the relevant information is held by the State,

and therefore it was the State who had the duty and the means to investigate the facts of the complaint.

53. The Commission cannot require the petitioners to continue to promote the carrying out of procedures that they have already requested, since appeals for remedy that are not decided in a reasonable time period cannot be considered to be available or effective. The Commission has held that, as a general rule, a criminal investigation must be carried out promptly to protect the interests of the victims, to preserve the evidence, and also to safeguard the rights of all persons deemed suspects in the investigation.¹⁰ The Inter-American Court has also held that although all criminal investigations must meet a series of legal requirements, the rule of prior exhaustion of domestic remedies must not mean that international action in support of the defenseless victim is halted or delayed to the point of uselessness.¹¹

54. In the instant case, the petitioners do not only allege that there has been a delay in the judicial proceedings, they state the such delay has been unreasonable. After analyzing the facts, the Commission concludes that there has been an unwarranted delay in the legal proceedings, and that the exception provided for by article 46(2) (c) of the American Convention is hence applicable. It should be noted that article 46(2) by its nature and purpose, is a norm that stands alone vis-à-vis the substantive norms of the Convention. Consequently, the determination of whether the exceptions to the rule of exhaustion of domestic remedies is applicable to the case at hand must be decided as a prior and separate matter from the merits of the case, since it depends upon a different standard of evaluation from that used to determine a possible violation of the Convention.¹²

2. Time period for lodging the petition

55. Pursuant to the provisions of article 46(1)(b) of the Convention, to be admissible, a petition that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment in his or her domestic venue.

10 IACHR, Report on Admissibility No. 86/06, Petition 499-04 *Marino López et al. (Operation Genesis)*, Colombia, October 21, 2006, para. 48.

11 I/A Court H.R., *Case of Godínez Cruz. Preliminary Objections*. Judgment of June 26, 1987, Series C, No. 3.

12 IACHR, Report on Admissibility No. 86/06, Petition 499-04 *Marino López et al. (Operation Genesis)*, Colombia, October 21, 2006, para. 52.

56. However, since one of the exceptions to the requirement of prior exhaustion of domestic remedies has been applied, the Commission must consider the date upon which the alleged violation of human rights occurred and the circumstances of each case in order to decide if the petition was filed in a reasonably timely manner.

57. In the instant case, the exception to the requirement of prior exhaustion of domestic remedies provided for by article 46(2) (c) of the Convention is applicable, and the occurrence of the facts object of this petition began on January 17, 2001. The petition was filed with the Commission on May 15, 2002. Bearing in mind the circumstances of the case, including the existence of judicial proceedings that remain in their preliminary stage, it is the opinion of the Commission that the time period within which the petition was lodged was reasonable.

3. Duplication of procedures

58. Article 46(1) (c) of the American Convention provides that the admissibility of a petition is subject to the requirement that the matter "is not pending in another international proceeding for settlement," and article 47(d) of the Convention provides that the Commission cannot admit a petition that "is substantially the same as one previously studied by the Commission or by another international organization." In the instant case the parties have not raised the existence of any of these circumstances leading to inadmissibility, nor do they arise from the proceedings so far.

4. Characterization of the facts alleged

59. Article 47(b) of the Convention provides that the Commission shall declare any petition or communication filed inadmissible that "does not state facts that tend to establish a violation of the rights guaranteed by this Convention."

60. The Commission believes that it is not appropriate at this stage of the proceedings to establish whether a violation of the American Convention exists or does not exist. For the purposes of admissibility, the IACHR must decide whether there is a statement of facts that tend to establish a violation, as provided for by article 47(b) of the American Convention, and if the petition is "manifestly groundless" or if it is "obviously out of order," pursuant to the article's subparagraph (c).

61. The standard for the evaluation of these points is different from the one required to decide on the merits of a complaint. The IACHR must carry out a *prima facie* evaluation to determine whether the complaint provides grounds for the apparent or potential violation of a right guaranteed by the Convention and not to establish the existence of a violation. This examination does not imply prejudgment of the merits of the case. The Commission's own Rules of Procedure, in establishing two clearly separate stages of admissibility and of merits, reflect this distinction between the evaluation that the Commission must carry out to declare a petition admissible and that which is required to establish the existence of a violation.

62. In the instant case, the State has maintained that the petition is manifestly groundless and therefore should be declared inadmissible. The petitioners, in turn, did not invoke the violation of specific articles of the Convention. Nevertheless, it can be inferred from their claims that the petitioners allege the violation of their rights to life, to humane treatment, to equal protection, and to judicial protection and guarantees. Pursuant to the principle of *iura novit curia*, which obliges international organizations to apply all legally relevant norms even if they have not been invoked by the parties, the Commission shall examine the facts alleged in the light of the provisions of articles 4, 5, 8, 24 and 25 of the American Convention, in connection with the provisions of article 1(1) of same.

63. The Commission, based on the information and arguments submitted regarding the excessive time lapsed in the criminal investigation process of the facts object of this petition, notes that more than seven years have gone by from the moment the complaint was lodged and the proceedings continue to be in the stage of preliminary investigation, without a final judgment having been rendered. Insofar as the alleged responsibility of the medical personnel that cared for the alleged victim has not been either established or disproved, it is the opinion of the Commission that the allegations of the petitioners tend to establish the violation of article 25 of the Convention, regarding the right to prompt recourse to judicial protection, and to the judicial guarantees provided for by article 8 of the American Convention.

64. Bearing in mind that judicial proceedings have not yet concluded, and that the current examination is of a *prima facie* character, the Commission reserves its analysis regarding the applicability of article 4 (right to life) for the merits stage. It is also appropriate for the Commission to examine, in the merits stage, the petitioners' allegations regarding the obligation of the State to remove

possible obstacles in the access to justice for persons of scarce economic resources, in relation with the content of article 24 of the American Convention.

65. After examining the arguments in fact and in law made by the parties, as well as the evidence at its disposal, the Commission considers that it has insufficient evidence to declare that the facts tend to establish a violation of the right to humane treatment provided for by article 5 of the American Convention.

66. In the light of the aforementioned facts, the IACHR does not find that the petition is “manifestly groundless” or “obviously out of order” and considers that, *prima facie*, the petitioner has complied with the requirements of articles 47(b) and 47(c) of the American Convention on Human Rights.

V. CONCLUSIONS

67. The Commission concludes that it is competent to examine the instant case and that the petition is admissible pursuant to articles 46 and 47 of the American Convention.

68. In the light of the foregoing arguments in fact and in law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the instant case admissible regarding the alleged violations of the rights recognized by articles 4, 8, 24, and 25 of the American Convention, in connection with article 1(1) of same.
2. To notify the parties of this decision.
3. To continue with the analysis of the merits of the case.
4. To publish this report and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on March 19, 2009. (Signed): Luz Patricia Mejía Guerrero, President; Víctor E. Abramovich, First Vice-president; Paulo Sérgio Pinheiro, Sir Clare K.

Roberts, Florentín Meléndez, and Paolo Carozza, Members of the Commission.