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Title/Style of Cause: Jorge Adrian Sotomayor Corrales v. Chile  
Doc. Type: Decision  
Decided by: President: Florentin Melendez;  
First Vice-President: Paolo Carozza;  
Second Vice-President: Victor Abramovich;  
Commissioners: Evelio Fernandez Arevalos, Sir Clare K. Roberts, Freddy Gutierrez.  
Dated: 23 July 2007  
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## I. SUMMARY

1. On August 8, 2001, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a complaint from Mr. Jorge Adrián Sotomayor Corrales (hereinafter “the petitioner”) wherein he alleges that the Republic of Chile (hereinafter “the State” or “Chile”) is responsible for violation of his right to personal liberty (Article 7) and his right to a fair trial (Article 8), all in relation to the obligation erga omnes to respect rights, undertaken with Article 1(1) of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”). The latter alleges that he was unlawfully detained on November 4, 1999, while riding in a collective cab, and later charged with various counts of robbery with violence. During the criminal proceeding pursued against him, he alleges that manufactured evidence was used to win his conviction and have him sentenced to 10 years in a high-security prison.

2. The State, for its part, asked the Commission to hold that the State did not violate Articles 7 and 8 of the American Convention and that the petitioner had not exhausted all domestic remedies, for which reasons the petition should be declared inadmissible.

3. Then, on October 7, 2003, the Inter-American Commission received another complaint from the petitioner, this one by way of the President of the Association of Relatives of Inmates at Acha Penitentiary – Arica “Solidaridad”, related to the conditions in which the petitioner was serving his sentence, specifically his irregular transfer from the Education and Labor Center (Centro de Educación y Trabajo - C.E.T) to the Acha Penitentiary in Arica. In that complaint, the petitioner alleges that the State is responsible for violation of the right to humane treatment (Article 5), the right to a fair trial (Article 8), the right to equal protection (Article 24) and the

right to judicial protection (Article 25), in conjunction with its obligation erga omnes to respect human rights, undertaken in Article 1(1) of the Convention.

4. On June 14, 2004, the Commission received a submission from the petitioner's father, Mr. Mateo Sotomayor Torreblanca, reporting how his son had died under very strange circumstances at a hospital in Valparaíso, after being transferred from the Acha Penitentiary by order of Commandant Juan Moya Lazo.

5. Without prejudging the merits of the case, in this admissibility report the IACHR concludes that the petition is admissible, as it meets the requirements set forth in Articles 46 and 47 of the American Convention. The Commission therefore decides to notify the parties of the decision and to proceed with the analysis of the merits of the case concerning the alleged violation of Articles 4, 5, 7, 8 and 25 of the American Convention, in relation to Article 1(1) thereof. The IACHR also decides to publish the decision and include it in its Annual Report to the OAS General Assembly.

## II. PROCESSING WITH THE COMMISSION

6. The original petition was lodged by Jorge Adrián Sotomayor Corrales on August 8, 2001. Following an initial study as to processing, the Commission, pursuant to Article 30(2) of its Rules Procedure, forwarded the relevant parts of the petition to the State on September 24, 2001, with the request that it deliver its observations within two months. On November 27, 2001, a note was received from the State requesting an extension until December 24, 2001. On November 26, 2001, the Commission received additional information from the petitioner.

7. On February 11, 2003, a note was received from the State containing its observations on the petition. That information was then forwarded to the petitioner on February 13, 2003, which was asked to present his observations within one month. The petitioner presented his observations on April 7, 2003, which the Commission forwarded to the State on June 23, 2003, with the request that it present observations within one month. By a note received at the Commission on July 23, 2003, the State requested a 30-day extension on the deadline for presenting its observations. The Commission granted the extension on September 17, 2003.

8. On October 7, 2003, the petitioner sent the Commission new facts related to the conditions in which he was serving his sentence. Those facts were relayed to the State on November 19, 2003, which was given one month in which to present its observations. A copy of the Commission's September 17 communication was also sent for a second time. In the petitioner's October 7, 2003 communication, he authorized Mr. Sigifredo Urrutia, President of the Association of Relatives of Inmates at Acha Penitentiary – Arica "Solidaridad," to represent him with the Inter-American Commission on Human Rights.

9. On June 14, 2004, the petitioner's father, Mr. Mateo Sotomayor Torreblanca, informed the Commission that his son, Mr. Jorge Adrián Sotomayor Corrales, had died on May 3, 2004, under very strange circumstances. The Commission forwarded this communication to the State on June 25, 2004.

10. On April 30, 2007, the Commission reminded the State of the IACHR's June 25, 2004 request for information, which was the same communication in which it informed the State of the petitioner's death while an inmate at the Valparaíso Penitentiary Complex. On April 30, 2007, the Commission requested information from the petitioner's father concerning the cause of Mr. Jorge Adrián Sotomayor Corrales' death and the findings of the inquiry into his death. The Commission received a communication from the petitioner's wife on May 27, which was forwarded to the State on June 4, 2007. That same day, the State requested an extension. On June 6, 2007 the Commission granted the State a 15-day extension. The State presented its observations on June 25, 2007, which the Commission forwarded to the petitioner on July 12, 2007.

### III. POSITIONS OF THE PARTIES

#### A. The petitioners

11. In his original complaint, dated August 8, 2001, the petitioner, Mr. Jorge Adrián Sotomayor Corrales, alleged that he was detained by two Carabineros (Corporal Santibáñez and Hernán González Morales) in Arica, his hometown, as he was riding with two other passengers in a collective taxi cab at 2:15 a.m. on November 4, 1999. The detention occurred when the vehicle was searched in a routine police check.

12. The petitioner states that during their search of the vehicle, the Carabineros found a small bag containing a toy pistol and a woolen cap. When the driver was asked about the objects, he said they were his and that he used them because he worked only at night. He said that he used the cap because he was almost bald. He had the toy gun because of the many robberies committed by drug addicts roaming about the city. As for the passengers, the cab driver said that they were in his car as passengers and that two of them had gotten in some five blocks back, while the other had gotten in just as the cab was stopped for the routine check.[FN1] The cab driver and the three passengers were handcuffed and taken to a police station. They were not told why they were detained or shown a warrant issued by a Chilean court or judge.

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[FN1] According to the statement made by Jaime Carú Alcaino to the Court on November 4, 1999, he was the last passenger to get into the cab.  
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13. Once at the police station, Mr. Sotomayor Corrales was locked in one cell and the other three persons in another. He alleges that he was later moved to a room where they questioned him about various crimes that had occurred in the city some days earlier. He was also questioned about the toy gun found in the taxi cab, even though the driver had already said that it was his. The petitioner alleges that because he knew nothing, the Carabineros began to pull his hair and insult him, while claiming that he was the author of the recent crimes. The petitioner states that after this, he asked if he could telephone his family to tell them that he was in custody. Corporal Santibáñez answered that he "was in Chile where detainees had no rights."

14. Minutes later, Corporal Víctor Santibáñez left the room to look for an alleged robbery victim by the name of Cristian Alfaro L. When the corporal returned in the company of the alleged robbery victim, the latter said he didn't recognize the petitioner. When shown the toy gun, Mr. Cristian Alfaro said that it was not the weapon and that the one used to assault him had been a revolver, not a pistol. The police then exhibited Mr. Sotomayor to Mr. Juan Estrada, who said he didn't know him. However, when the police insisted that Mr. Sotomayor Corrales had confessed, Mr. Estrada specifically asked the Carabineros to check to see whether the petitioner had dog bites or any signs of having been in a scuffle. Mr. Estrada explained that at the time of the robbery, a dog had bitten the assailant and he (Mr. Estrada) had hit him with a stick. The police then forced Mr. Sotomayor to strip in the presence of the complainants and the Carabineros. The petitioner alleges that he was subjected to a humiliating search of his person to find wounds, bruises, and dog bites. None were found.[FN2]

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[FN2] "Copy of the stamped record at No. 343 of the Second Guard's blotter for November 4, 1997: 7:40 a.m., Detainees sent to the Arica Detention Center ... they have no visible bruises or contusions ... Jorge Sotomayor Corrales, Ruben Dias Rojas..."

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15. The petitioner contends that immediately thereafter, a plot against him began to be hatched to make him appear to be guilty of the crimes. To that end, Corporal Santibáñez took the two complainants to an adjoining waiting room where he coached them about the testimony they should give to the court. At that very moment, a third person appeared by the name of Hernán Cáceres Leiva. He had been the victim of a robbery on November 3, as he was closing the Calling Center where he worked.[FN3] The petitioner alleges that even before Mr. Sotomayor Corrales was exhibited to Mr. Cáceres Leiva, the police suggested him to press charges against the petitioner as author of the crime of which he had been the victim at his place of business. However, the person declined and left the precinct.

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[FN3] See Report No. 720 handing over detainees, Mr. Sotomayor Corrales included, to the Third Criminal Court on November 4, 1999.

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16. Moments later, Corporal Santibáñez left the police station and returned soon thereafter in the company of Manuel Barreda Olavarría. The latter was asked to take a good look at the petitioner, so that he could identify him in court. They then took him to a small room to arrange the charge he would make against the petitioner in court.

17. The petitioner asserts that at the time of his detention, Carabineros were not armed with any warrant or order authorizing investigation, search or detention, issued by a competent court in connection with the robberies committed on November 1st and 2nd, 1999. The orders for investigation went to Chile's investigative police (not to the Carabineros) on November 2 and 4, and were received at the judicial police headquarters at 8:00 a.m. on November 4 and 9, respectively, as shown on the reverse sides of the orders themselves.[FN4] Mr. Sotomayor Corrales alleges that he was detained at 2:15 a.m. on November 4, 1999. He states that under

Chilean law, the name of any person detained by court order is to be entered into a ledger, which is a public record. The detainee's particulars are also entered into the record, as is the number of the respective order unless the person is caught in flagrante delicto. The petitioner alleges that at the time he was handed over to the Court, the police report No. 720 did not contain a number corresponding to an investigative order.[FN5] Nor does the report claim that the petitioner was detained in flagrante.

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[FN4] Order to investigate issued by Arica's Third Criminal Court on November 2, 1999, addressed to the Office of the Chief of Investigations "in order to establish whether the complaint brought by the Third Police Station at the request of Mr. Cristián Andrés Alfaro for the crime of robbery, is a valid one." As the stamp of the Chilean Investigations Police shows, it was received on November 4, 1999. Order to investigate issued by Arica's Third Criminal Court on November 4, 1999, and addressed to the Investigations Police, "to establish whether the complaint filed by Manuel Alejandro Barrera Olavarría alleging the crime of robbery with intimidation is a valid one." As the stamp of the Chilean Investigations Police, Arica Judicial Police Precinct shows, it was received on November 9, 1999.

[FN5] Report No. 720, dated November 4, 1999, Office of the Arica Prefect, Arica's Third Precinct, to the Third Criminal Court of Arica.

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18. The petitioner alleges that at around 9:00 a.m. on November 4, 1999, the four persons detained were brought before Arica's Third Criminal Court. Signed statements were taken from each one separately. Although the petitioner reported the above irregularities to the Clerk of the Court, the latter did not include them in the petitioner's statement. The four were then taken back to jail.

19. The next day (November 5, 1999), the four detainees were taken to court for a identification line, which was conducted at around 12:00 a.m. That very same day (November 5), before the i.d. line was held, the newspaper "La Estrella de Arica" (Arica's only local newspaper on that date) published a front-page article with a banner printed in large red letters "Band of Assailants Caught". The petitioner's full name appeared on page A-9, and he was described as the leader of the ring, taken by surprise as they were on their way to commit another robbery. The petitioner contends that Arica's Third Police Station had to have been the source of the information, a fact pointed out to the court during the proceedings on the case.

20. During the identification line (or i.d. line) conducted before the court, Mr. Estrada and Mr. Alfaro identified Mr. Sotomayor Corrales as the author of the robberies. The petitioner asserts that by that time, Mr. Estrada and Mr. Alfaro already knew him based on the i.d. line that took place at the Third Police Station on November 4, at 2:45 a.m., in violation of Article 19(7)(c) of the Chilean Constitution and Article 253 of the Code of Criminal Procedure.[FN6] The i.d. line was conducted before the court on November 5, at 2:45 p.m., almost a day and a half after the alleged robbery victims had previously identified the detainee in a "highly irregular" i.d. line at the police station.[FN7]

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[FN6] Article 253 of the Code of Criminal Procedure: “No one shall be arrested or detained except by order of a duly authorized public official and only after the person concerned is informed of the order in accordance with the law. However, a person caught in flagrante delicto may be detained, but for the sole purpose of bringing that person before the competent judge.”

[FN7] Records of the Identification of Detainee Jorge Sotomayor Corrales, by Manuel Alejandro Barreda Olavarría and Cristian Andrés Alfaro in the presence of the court, both on November 5, 1999, at 2:45 p.m.

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21. Three days after the identification line took place before the court, the petitioner and the other three persons detained with him were taken back to court. The other three were released without any type of explanation.[FN8] Nevertheless, the judge issued the order binding the petitioner over for trial, and asked him to sign a paper in which he was notified of the order.[FN9] At no time was he told that he could appeal the order and he never had access to the services of a defense attorney. Four days after his detention, on November 8, 1999, the court named a court-appointed attorney,[FN10] after having notified him of the order to stand trial. Mr. Sotomayor Corrales alleges that during the preliminary proceedings in his case (the statement taken from him, the line-up and the indictment), he was not assisted by defense counsel, which was a violation of the accused’ right to defend himself.

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[FN8] According to Carabinero Report No. 720, all four people (Mr. Sotomayor Corrales among them) were in a taxi in the early morning hours of November 4 and were brought before the Third Criminal Court of Arica as having been “taken into custody for robbery”.

[FN9] Order to stand trial, dated November 8, 1999, Third Criminal Court of Arica. Trial is ordered on the basis of the police reports, the statements made by Cristian Andrés Alfaro León, Manuel Alejandro Barreda Olavarría and Ignacio Dios Estrada Pino, and “the statements made by Jorge Adrián Sotomayor Corrales himself”.

[FN10] In the “Personal Notification of the Order to Stand Trial,” Mr. Jorge Sotomayor observes that he is not represented by a private attorney; it is then that the court appoints names Mabel Valdes Rojas to represent him and Luis Daza González as prosecutor.

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22. Some days later, a private attorney, Francisco Cataldo, was retained to defend Mr. Sotomayor Corrales and petitioned the court seeking a hearing, with Mr. Sotomayor Corrales present, where the complainants would give their version of what happened at the Carabinero precinct.[FN11] The judge denied the petition without stating his reasons, in violation of articles 109 and 351 et seq. of Chile’s Code of Criminal Procedure, and Article 8(2)(f) of the American Convention. An appeal of this ruling was filed with the Arica Appellate Court, which upheld the lower court’s ruling without explaining its grounds.

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[FN11] In the line-up conducted on November 5, Messrs. Estrada and Alfaro said that they did not want “to come face to face with the detainee for fear of future reprisals.”

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23. Mr. Sotomayor Corrales alleges that the preliminary proceedings were riddled with irregularities, which were spelled out both in the answer to the indictment (brief of March 7, 2000)[FN12] and in the brief setting out the challenges or objections to the witness list (which completes the answer to the indictment), dated April 13, 2000.[FN13]

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[FN12] Reply to the indictment, pursuant to articles 447 et seq. of the Code of Criminal Procedure, received at Arica's Third Court of First Instance on March 7, 2000.

[FN13] Received by Arica's Third Court of First Instance on April 13, 2000.  
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24. In the brief filed to appeal the decision closing the preliminary phase, dated January 19, 2005,[FN14] the petitioner requested a number of measures, all of which were denied as "inadmissible." The judge pro tempore of Arica's Third Criminal Court, Geni Morales Espinoza, ruled as "inadmissible" the petitioner's July 4, 2000 request that measures be ordered to better solve the case, one of which was that Mr. Hernán Cáceres Leiva be summoned to tell the court why he had withdrawn from the trial and had not pressed charges regarding the crime committed against him.[FN15] Once the preliminary phase was concluded, the court also denied the request that the petitioner be released on bail, a request filed by his attorney on July 25, 2000.

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[FN14] In the brief, the petitioner requested that the following steps be ordered: "1) request medical treatment voucher No. B/A 27561, dated November 1, 1999, from Juan Noé Hospital; 2) summon Mr. Cristian Alfaro León to appear in court to provide the voucher for the medical treatment he received at the Mutual de Seguridad; 3) order a hearing to compare the apprehending officers' explanations of the contradiction with regard to the petitioner's alleged location inside the vehicle on the day the events in question occurred and to explain how it was that the complainant told them that the accused had been bitten by a dog."

[FN15] Presented to Arica's Third Lower Court on July 4, 2000.  
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25. On September 29, 2000, Geni Morales Espinoza, Judge Pro Tempore of the Third Criminal Court of Arica, convicted the petitioner and sentenced him "to serve ten years and one day in prison, absolute lifetime disqualification from public office, government positions and political rights, and absolute disqualification from practicing any certified profession for the duration of his sentence, and payment of court costs; as author of the crimes of robbery committed with violence (i.e. an assault committed for the purpose of stealing another's property) against the persons of Cristián Andrés Alfaro León and Manuel Alejandro Barreda Olavarría in this city on November 1 and 2, 1999." [FN16] The petitioner was acquitted of the charge of "attempted robbery with violence" against the person of Ignacio de Dios Estrada Pino, (...) in this city on November 3, 1999," in other words, just moments before the petitioner was taken into custody.[FN17] The sentence expressly states that based on the petitioner's family history and background, "he has no criminal record prior to the present case." [FN18]

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[FN16] Ruling of September 29, 2000, p. 20.

[FN17] Ruling of September 29, 2000, p. 18.

[FN18] Ruling of September 29, 2000, p. 19, Consideranda twenty-three. See excerpt on parentage and family history, issued November 26, 1999: “No notations”.

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26. The petitioner contends that under the provisions of Article 500 of the Code of Criminal Procedure, the court decision must include a description of the facts that, albeit brief, is still detailed and precise enough to form a judgment as to the facts. He argues that the sentence that convicted him does not contain a single fact that is sufficiently established to constitute full proof that a punishable offense was committed or that the person convicted of the crime had actually participated in it. The petitioner alleges that the decision held by court of first instance failed to establish that an act constituting a crime (robbery) had occurred, since the actual existence of the money allegedly stolen was never established (all the court had to go on were the extrajudicial statements made by the alleged victims). The petitioner maintains that there are a number of conflicting accounts of the assailant’s physical features, as reported in the statements made by the alleged victims; the court decision do not describe the assailant’s physical characteristics or clothing, which were most assuredly not his.[FN19]

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[FN19] In the judgment of September 29, 2000, only the apprehending police officers made reference to Mr. Sotomayor’s physical features as “matching the physical description of the assailant given by the victim” or “one of them matching the assailant’s physical features as indicated by the victims...” “ See pp. 6 and 7 of the judgment.

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27. The petitioner states that on October 17, 2000 he appealed the ruling held by the court of first instance on the grounds that he had been detained on suspicion, only to be convicted based on the statements of two persons who claimed to be the victims of the alleged crimes and the police reports on those two incidents, which simply recounted the facts as reported by the complainants, without any other evidence.[FN20] On November 21, 2000, the appellate court confirmed the verdict of the court of first instance.[FN21] The petitioner reports that he filed a petition for cassation on the merits, on the grounds that Article 546(7) of the Code of Criminal Procedure lists violation of the rules of evidence as one of the grounds for cassation. However, on February 8, 2001, the Tribunal of Cassation declared this remedy to be inadmissible.

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[FN20] See brief titled “Observations on the Ruling,” addressed to the Arica Appellate Court and presented on October 17, 2000.

[FN21] Judgment of November 21, 2000.

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28. Later, by which time the petitioner was already serving the fourth year of his prison sentence, Mr. Sigifredo Pereira Urrutia -President of the Association of Relatives of Inmates at Acha Penitentiary - Arica “Solidaridad”- submitted a brief dated October 7, 2003, in which he lodged another complaint in connection with petition P-538/01, this one alleging violation of Articles 5, 8, 24 and 25 of the American Convention, to the detriment of the petitioner and by

virtue of the torture, cruel, inhuman and degrading treatment, and the denial of justice that the petitioner had endured at the hands of Carabineros Andrés Gallegos, Jorge Renato Ojeda Lagos, Sergio Zapata Ramos and others, as well as the Court of Appeals.

29. The petitioners point out that on Tuesday, July 15, 2003, Mr. Jorge Adrián Sotomayor Corrales was transferred from the Acha High Security Penitentiary (a "closed" prison system) to the Education and Work Center [Centro de Educación y Trabajo - C.E.T] (a semi-open system in Arica). The latter featured a certain type of treatment whose goal was to get inmates reincorporated into society.[FN22] When he arrived at the C.E.T., the petitioner was received by prison guard Andrés Gallegos. In an allusion to the petition that Mr. Sotomayor Corrales had lodged with the Inter-American Commission, the guard told him that he didn't like "traitors" and that he had many friends on the Appellate Court of Arica.

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[FN22] Article 17 of Decree Law No. 518, published in the Official Gazette on August 21, 1998. Article 30 of Decree Law No. 518 reads as follows: "Establishments in the semi-open system are facilities in which sentences are served in an environment organized around work and training, where the security measures emphasize the convicts' self-discipline." These facilities operate on the basis of the trust that the prison administration has in the inmates, who are able to move about unguarded within the confines of the institution and whose living conditions are very similar to conditions on the outside.

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30. Several hours after his arrival at the Center, the petitioner asked guard Andrés Gallegos to lend him a phone so that he might tell his family about his transfer. The guard refused, in violation of Article 19 of Decree Law No. 518.[FN23] After some time, however, guard Andrés Gallegos called Mr. Sotomayor Corrales and took him to Patricio Lynch Street, outside the C.E.T.'s walls, to make his call from a public telephone. The petitioner called his mother and then his wife. As he was speaking to his wife, the guard told the petitioner that he needed to go back to the C.E.T. for a moment and that he would return quickly. Mr. Sotomayor Corrales found the guard's behavior odd, since the petitioner had already served four years in a high security prison and still had another six years to serve before completing his sentence. He looked in the direction of the street corners and saw two people with "crew cuts" and in civilian dress eying him nervously. Right away the petitioner realized that they had set a trap and that they wanted him to attempt an escape so that they could get him on a violation of the "flight law." He hung up the phone just as a woman was passing by the public telephone. He walked alongside her as far as the door to the C.E.T., which was open.

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[FN23] Article 19 of Decree Law No. 518 recognizes inmates' right "to inform their family -or the party they specified upon being admitted to the institution- that they have been incarcerated or transferred. This notification shall be made by the inmate himself, who for that purpose shall be allowed one call from a telephone inside the establishment ..."

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31. The following day, Wednesday, July 16, 2003, Mr. Sigifredo Pereira Urrutia states that he observed armed and uniformed gendarmes at the C.E.T., which was highly unusual. Just as unusual was the fact that the door to the C.E.T. was opened and the gendarmes were furtively guarding the petitioner. That afternoon, inmate Guillermo Chamorro, a friend of the petitioner as they had sailed together for many years on boats owned by different fishing businesses, went over to speak with one of the uniformed gendarme by the name of Castillo. The latter told Mr. Chamorro that they knew Mr. Sotomayor was going to escape. The inmate was worried and told the petitioner about his conversation with gendarme Castillo.

32. On July 28, 2003, thirteen days after the petitioner's transfer to the C.E.T., guard Gallegos summoned Mr. Sotomayor Corrales to take his statement. He was told that he was being accused of an "escape attempt." After that, the guard allowed the petitioner to gather some of his personal effects and sent him back to the Acha Penitentiary (a "closed" system). When he arrived back at Acha Penitentiary, it was without the required papers –an order signed by some duly authorized official-. He was therefore placed in a cell at the entrance to the prison for four hours. The petitioner was then sent to a punishment cell, isolated from the rest of the prison population, where he had to sleep on the floor with no mattress. Later, and only after making many inquiries, Mr. Sotomayor Corrales was sent back to his old unit E-3 (the area for convicted persons), awaiting information from the office of the chief of the gendarmerie.

33. Given the situation, the petitioner submitted an application for amparo (recurso de protección) before the Arica Appellate Court on August 11, 2003, in an attempt to get some authority to look into his situation. However, the Appellate Court has still not ruled on the amparo (recurso de protección). Some days later, the petitioner filed a petition before the Head of the Acha Penitentiary, Jorge Ojeda Lagos, seeking an explanation as to why he had been returned to the Penitentiary since neither the Head of Unit E-3 nor the professionals on the Acha Penitentiary Technical Board knew it. Since the Head of the Penitentiary did not answer Mr. Sotomayor's petition (which Article 58 of Decree Law No. 518 expressly requires him to do), on August 22, 2003 the petitioner submitted another application for amparo (recurso de protección) before the Arica Appellate Court. That petition was also ignored.

34. On September 2, 2003, the Acha Penitentiary Board of Conduct met but was unable to evaluate the petitioner's conduct since the C.E.T. had not filed any conduct report about Mr. Sotomayor Corrales.[FN24] On September 15, 2003, i.e. 49 days after the petitioner's transfer, he was notified of the "Decision" that allegedly ordered his transfer to the Acha Penitentiary.[FN25] However, this decision had a number of irregularities: 1) it was signed by the Head of the Acha Penitentiary, Jorge R. Ojeda Lagos, even though he does not have that authority. Under Article 28 of Decree Law No. 518, the National Director –and the Regional Directors when so delegated- may order inmates admitted or transferred to departments, cellblocks or special establishments; that decision must state the reasons for the order. 2) The reasons for the decision must be spelled out and are not in this particular case. The decision simply reads: "I hereby resolve, to authorize the inmate's transfer from Arica's Semi-Open C.E.T. to the Arica Penitentiary Complex...", as if the order were some type of permit. 3) Article 76 et seq. of Decree Law No. 518 stipulates that the decision must specify the article or rule that the purported offender is alleged to have violated, which the decision in the petitioner's case does not.[FN26] 4) The decision is dated August 11, but when the Conduct Board met on

September 2, it did not have the background information and Mr. Sotomayor Corrales did not sign the decision until September 15, 2003.

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[FN24] Alongside Mr. Jorge Sotomayor Corrales' name, the record of the meeting expressly states: "Background information pending, Semi-open C.E.T."

[FN25] Certification dated August 11, 2003, issued by the Warden of the Arica Penitentiary Complex (signed by Mr. Sotomayor Corrales on September 15, 2003).

[FN26] The Association of Relatives of Inmates at Acha Penitentiary – Arica "Solidaridad" point out that even assuming, arguendo, that Mr. Sotomayor Corrales had committed some infraction while at the C.E.T., transfer is not one of the permissible punishments under Decree Law No. 518. The foregoing notwithstanding, Mr. Sotomayor Corrales was effectively transferred from the C.E.T. and held in solitary for three days; his conduct rating was lowered by two grades, to "average."

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35. Then, in a communication received at the IACHR on June 14, 2004, the petitioner's father, Mr. Mateo Sotomayor Torreblanca, reported that his son, Mr. Jorge Sotomayor Corrales, had died in Valparaíso on May 3, 2004, at Carlos Van Buren Hospital, under very strange circumstances. The petitioner's father alleges that his son was moved to Valparaíso by order of the Commandant of the Acha Penitentiary Complex, Juan Moya Lazo, who did not specify the reason for the measure ordered.

36. In May 2007, the wife of the deceased Jorge Sotomayor Corrales, Yanira Ledesma, sent a note to the Commission concerning the circumstances surrounding her husband's transfer from the C.E.T. to the Acha High Security Prison and other circumstances having to do with his death. She states that when her husband was sent back to Acha Penitentiary, he was personally threatened by Commandant Moya because of the petition that Mr. Sotomayor Corrales had filed with the Inter-American Commission. That threat prompted the petitioner's mother to file a petition of protection with the Arica Appellate Court on September 1, 2003. To date the Court has not ruled on that petition.

37. In early February 2004, when the petitioner's wife and a relative went to the Acha Penitentiary to visit her husband, Commandant Moya told her that Mr. Sotomayor Corrales had been transferred to Valparaíso on February 1, 2004, because he was a negative influence on the other inmates and his conduct was poor.[FN27]

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[FN27] The petitioners indicate that according to the "Conduct Certification" by the Superintendent of the Penitentiary Complex Unit, which appears in Book 12 of the Inmate's Life in the Establishment, his conduct is listed as "Very Good" from November to December 2002; "Very Good" in January-February 2003, and "Very Good" from March to April 2003.

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38. In late February 2004, Mrs. Nilza Godoy, a relative of the petitioner, went to Valparaíso and was able to see Mr. Sotomayor Corrales. On March 25, 2005, the social assistant at the

prison, Solange Videla, contacted Mr. Sotomayor Corrales' sister, Rosa Sotomayor Corrales, to inform her that her brother had been in Carlos Van Buren Hospital for five days. By the time Mrs. Yanira Ledezma González was able to get to Valparaíso, which was May 3, 2004, her husband was already dead.

39. Although an autopsy was done, as of this writing the findings have not been provided to the deceased's widow and she has not been told the cause of her husband's death. The only information the family has is the "Health Report" from the Health Clinic at the Valparaíso Penitentiary Complex, dated April 29, 2004, which stated that inmate Jorge Adrián Sotomayor Corrales had been sent to Van Buren Hospital at 9:30 in the morning, where he remained hospitalized. The tentative diagnosis was acute pneumonia, respiratory insufficiency (he was connected to a mechanical ventilator), septic shock, renal failure, general condition grave." Oddly, all the expenses associated with the funeral and the shipment of the remains to Arica, were paid by the Gendarmerie of Chile, even though when an inmate dies in prison of natural causes, his family is responsible for all the expenses.

40. Over three years have passed since Mr. Sotomayor Corrales' death, and his wife, children and other family members still do not know why the petitioner was moved to the Valparaiso Penitentiary Center or the circumstances and causes of his death.

#### B. The State

41. In its answer to the original petition, the State alleges the following with regard to the facts denounced by the petitioner: a string of violent nighttime robberies were committed in the city of Arica on November 1st and 2nd, 1999; the victims reported these crimes, whereupon the Chilean Carabineros launched an investigation into the matter.

42. The State asserts that the first robbery was committed against Cristian Andrés Alfaro León. According to what he told the Carabineros, at around 2:40 a.m. on November 1st, 1999, someone approached him from behind, pointed a firearm at his back, and forced him to hand over the money picked up at the "Copec" service station. A struggle ensued, in which Alfaro fell to the ground. The criminal seized the opportunity to beat him on the head with the firearm, leaving him semi-conscious and taking 32,500 pesos from his trouser pocket, whereupon he fled. The State contends that the criminal would have fled in a northerly direction, to get into a collective taxi cab that was near the scene of the events, with other persons inside.

43. According to the police reports for November 3 and 4, 1999, the second crime was said to have occurred at around 23:15 hours on November 2. This time, the victim was Manuel Alejandro Barreda Olavarría, who was in the process of closing up the calling center owned by Hernán Alfonso Cáceres Leiva. Someone threatened him with a gun, forcing him to hand over the 30,000 pesos that he had in his possession. Once the assailant had the money, he hit the victim on the head with the gun and fled.

44. The other robbery occurred at a service station at around 1:50 a.m. on November 4, 1999. The modus operandi was similar to the one used in the previous crimes. This time the victim was Ignacio de Dios Estrada Pino, who put up a fight and fended off the assailant.

45. The State contends that Carabineros began to search for a criminal who moved about in a collective taxi cab. At 2:15 a.m. on November 4, Carabineros were patrolling the vicinity of a group of service stations when they noticed a collective taxi cab parked on Avenida Capitán Avalos, in front of the Hotel Sol de Arica, with four people inside. The Carabineros observed the occupants of the cab for a prudent period of time and then decided to search them.

46. The State maintains that when the vehicle was searched a bag was found under the front passenger seat, which is where Jorge Sotomayor Corrales had been sitting. The bag contained a blue woolen cap and a “toy gun” (both items were handed over to the Third Criminal Court of Arica). The State maintains that when the driver was asked whether the items belonged to him, he said they were his property and that he used them because he only worked at night.

47. The Carabineros observed that Sotomayor Corrales’ appearance matched the physical description and dress of the perpetrator of the crimes under investigation. When the occupants of the vehicle were questioned about their involvement in the crimes, they denied having anything to do with them. The Carabineros then asked Mr. Sotomayor Corrales for his national identification card. Because he did not have the card on his person, they took him to the nearest police unit (the Third Precinct) to check his identity and domicile. The State contends that there, at the Third Precinct, the victims of the assaults identified the petitioner as the robber, whereupon the detainee was read his rights, in accordance with articles 284 and 293 of the Code of Criminal Procedure.

48. The State argues that in the present petition, both the Carabineros and the officers of the Chilean courts have complied with the procedures established by law and with the provisions of Articles 7 and 8 of the American Convention on Human Rights. The State points out that under Chilean law, a person may briefly be held in custody if there are reasonable grounds to suspect that he has committed a crime, or that he will not be forthcoming with the timely cooperation that the law requires him to provide in the investigation of a punishable offense (Article 252 of the Code of Criminal Procedure). The State notes further that in the instant case, a bag was found under the seat of the collective cab in which the petitioner was riding, and that the bag contained a woolen cap and a starting pistol. Mr. Sotomayor Corrales’ clothing on the night he was detained matched the description given by the two victims.

49. The State asserts that the first robbery on the night of November 3 was committed at 11:15 p.m., which was followed by another robbery at around 1:50 a.m. on November 4. It states that because of the robberies, the Carabineros requested the national identification cards of all the occupants of the vehicle at around 2:15 a.m. The State claims that because the petitioner did not have his card on his person, he was taken to the closest precinct at 2:20 a.m.

50. The State’s contention is that Mr. Sotomayor Corrales’ detention was in accordance with the laws in force. It was not done on a suspicion; rather, the Carabineros were armed with an order to investigate, issued by a competent judge, and giving them the authority to detain the perpetrator of the crimes under investigation.

51. The State alleges that the judicial decision to prosecute the petitioner was well-founded and could be appealed either orally or in writing, and no lawyer need have intervened. However, as the case record shows, when the defendant was notified of this decision, he said that he consented and waived the appeal.

52. The State contends that the lower court ruling met all the requirements stipulated in subparagraph 4 of Article 500 of the Code of Criminal Procedure. In the *consideranda*, it set out all the evidence: 1) police reports; 2) the statements of the victims (Mr. Cristián Alfaro León and Mr. Manuel Alejandro Barreda Olavarría; 3) the extrajudicial statement to the effect that the stolen money did in fact exist; 4) the testimony of the apprehending officers (Mr. Hernán Alejandro González Morales and Mr. Víctor Leonardo Santibáñez Rivas); 5) the identification of the perpetrator in a prisoner line-up; and 6) the detectives' report. This evidence, taken together, constituted a body of judicial presumptions that, when carefully weighed, constituted full proof of two robberies with violence perpetrated by the petitioner.

53. The State alleges that the petitioner appealed the ruling of the court of first instance and that the higher court reviewed both the facts and the law applied. The appellate court ruling stated that the lower court had carefully scrutinized the crimes of which the petitioner was ultimately convicted. The appellate court also found that Mr. Sotomayor Corrales had not been altogether truthful since in his pretrial statement he claimed he had never been detained, even though his record showed that he had been detained five times. The State observes that although Richard Henríquez Vásquez, the driver of the collective taxi cab in which the petitioner was riding and where the starting pistol and woolen cap used by Sotomayor to commit the crimes were found, claimed that those items were his property, he never claimed ownership in a court of law.

54. The State asserts that when the Appellate Court upheld the lower-court ruling the defendant filed a petition of cassation based on grounds 7 of Article 546 of the Code of Criminal Procedure, which is exclusively procedural and cannot be the sole grounds for such a petition; instead, it the procedural cause of action must be combined with a merits-related cause. Assuming, *arguendo*, that the violations denounced did occur, the State contends that the tribunal of cassation would have had no frame of reference to deliver a new decision. The State also alleges that in the instant case, the evidence that the petitioner committed the crimes of petty theft and robbery was carefully weighed, so that no violation of the laws governing evidence as grounds for nullifying an appellate court ruling can be alleged. Hence, the petition of cassation was declared inadmissible. Summing up, the State asserts that articles 7 and 8 of the American Convention were not violated.

55. Afterward, on June 25, 2007, the State contested that the petition is inadmissible because the petitioner did not exhaust domestic remedies. The States asserts that Mr. Sotomayor Corrales could have presented a motion for revision (“*recurso de revisión*”) against the judgment of September 29, 2000. The State alleges that a motion for revision (“*recurso de revisión*”) can be presented before the Supreme Court: 1) when the decision is based on documents which have been declared to be false by a later judgment; 2) when the decision is based on witnesses testimonies who later have been convicted under false testimony; 3) when the decision has been reached by means of violence or fraud which existence has been declared on a judgment; 4)

when the decision has been held against a prior firm judgment, which was not brought during the trial .

56. The State contested that the petitioner did not exhaust either domestic remedies regarding Mr. Sotomayor transfer and his later casualty. Concerning Mr. Sotomayor transfer from Acha prison in Arica to Valparaíso Jail, under the penitentiary rules of procedure, the petitioner could have presented an administrative claim either before the relevant penitentiary authorities or the Justice Department. Moreover, the petitioner could have presented a motion for amparo (recurso de protección) before the appropriate Court of Appeals. The State observed that “the same can be said regarding the alleged circumstances surrounding Mr. Sotomayor death”.<sup>[FN28]</sup> The State asserts that none of the above remedies were exhausted.

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<sup>[FN28]</sup> State communication of June 25, 2007, page 3.  
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#### IV. ANALYSIS OF ADMISSIBILITY

##### A. Competence of the Commission *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci*

57. Under Article 44 of the American Convention and Article 23 of the Rules of Procedure of the IACHR, the petitioner has standing to lodge petitions with the Commission alleging violations of the rights established in that Convention. As for the State, Chile is a party to the American Convention and therefore answerable at the international level for violations of it. The alleged victim is a natural person whose Convention-protected rights Chile has pledged to ensure. Based on all these considerations, the Commission has competence *ratione personae* to examine the complaint.

58. The IACHR has competence *ratione materiae* because the petition alleges violations of human rights protected by the American Convention. It also has competence *ratione temporis* because the obligation to respect and ensure the rights protected in the Convention was already binding upon the State on the date the facts alleged in the petition were said to have occurred, since Chile ratified the American Convention on August 21, 1990. Finally, the Inter-American Commission has competence *ratione loci* to examine the petition because the latter alleges violations of rights protected under the American Convention said to have occurred within the territory of a State party to that instrument.

##### B. Other admissibility requirements

###### 1. Exhaustion of domestic remedies and deadline for lodging the petition

59. Under Article 46(1) of the Convention, one of the requirements for a petition to be admissible is that “the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.”<sup>[FN29]</sup> Both the Inter-American Court of Human Rights (hereinafter “the Court” or “the Inter-American Court”) and

the IACHR have repeatedly held that “(...) under the generally recognized principles of international law and international practice, the rule which requires the prior exhaustion of domestic remedies is designed for the benefit of the State, for that rule seeks to excuse the State from having to respond to charges before an international body for acts imputed to it before it has had the opportunity to remedy them by internal means.”[FN30] The foregoing notwithstanding, the Convention itself provides that this provision shall not apply when the domestic remedies cannot be exhausted because they are not available either as a matter of law or as a matter of fact.

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[FN29] See I/A Court H.R., Exceptions to the Exhaustion of Domestic Remedies (Arts. 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, para. 17.

[FN30] See I/A Court H.R., In the matter of Viviana Gallardo et al., Advisory Opinion, Series A No.G 101/81, para. 26.

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60. Under international law and as reflected in the precedents set by the Commission and the Inter-American Court, the respondent State can either tacitly or expressly waive its right to invoke that rule.[FN31] Second, the objection asserting non-exhaustion of domestic remedies, to be timely, must be raised with the Commission at an early stage of the proceedings lest a waiver of the requirement on the interested State’s part be presumed.[FN32] Thirdly, as to the burden of proof, the State that alleges a failure to exhaust domestic remedies is required to prove that local remedies remain to be exhausted and that they are effective.[FN33] Consequently if the State in question does not make its arguments regarding this requirement in a timely manner, the presumption shall be that it has waived its right to allege a failure to exhaust domestic remedies, in which case no burden of proof obligation exists.

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[FN31] IACHR, Report N° 69/05, Petition 960/03, Admissibility, Iván Eladio Torres, Argentina, October 13, 2005, para. 42; I/A Court H.R., Case of Ximenes Lopes. Preliminary Objection, Judgment of November 30, 2005. Series C No. 139, para. 5; I/A Court H.R., Case of the Moiwana Community, Judgment of June 15, 2005. Series C No. 124, para. 49; and I/A Court H.R., Case of the Serrano Cruz Sisters. Preliminary Objections. Judgment of November 23, 2004. Series C No. 118, para. 135.

[FN32] I/A Court H.R., Case of the Mayagna (Sumo) Awas Tingni Community. Preliminary Objections. Judgment of February 1, 2000. Series C No. 66, para. 53; Castillo Petruzzi et al. Case, Preliminary Objections. Judgment of September 4, 1998. Series C No. 41, para. 56; and I/A Court H.R., Loayza Tamayo Case. Preliminary Objections. Judgment of January 31, 1996. Series C No. 25, para. 40. The Commission and the Court have established that “an early stage of the proceedings” should be understood as “the admissibility stage of the proceeding before the Commission, in other words, before any consideration of the merits (...)” See, for example, IACHR, Report N° 71/05, Petition 543/04, Admissibility, Ever de Jesús Montero Mindiola, Colombia, October 13, 2005, which cites I/A Court H.R., Case of Herrera Ulloa. Judgment of 2, 2004. Series C No. 107, para. 81.

[FN33] IACHR, Report N° 32/05, Petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral et al. (persons living with HIV/AIDS), Guatemala, March 7, 2005, paras. 33-35; I/A Court H.R., Case of the Mayagna (Sumo) Awas Tingni Community. Preliminary Objections, supra note 3, para. 53; Durand and Ugarte Case. Preliminary Objections. Judgment of May 28, 1999. Series C No. 50, para. 33; and Cantoral Benavides Case. Preliminary Objections. Judgment of September 3, 1998. Series C No. 40, para. 31.

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61. As to the facts alleged in the original petition, on October 17, 2000, the petitioner filed an appeal with the Arica Appellate Court challenging the ruling issued by Arica's Third Criminal Court, which sentenced him to ten years and one day of incarceration in a high-security prison. The Appellate Court confirmed the lower court ruling on November 21, 2000, whereupon the petitioner filed a petition for cassation as to the merits, which was declared inadmissible on February 8, 2001 and notified on February 15 of that year. The State contests that the petitioner did not exhaust domestic remedies because Mr. Sotomayor Corrales did not present a motion for revision (*recurso de revisión*) against the September 29, 2007 court decision that condemned him to serve 10 years in jail because of having committed aggravated robbery.

62. The Commission considers that motion for revision (*recurso de revisión*) is an extraordinary remedy which can be filed only under four specific circumstances[FN34] not applicable to the present case. Thus, the above remedy could have not relieved the petitioner's alleged violations.[FN35] The Commission therefore finds that Mr. Sotomayor Corrales exhausted all available domestic remedies.

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[FN34] See para. 55 of the present report.

[FN35] IACHR Report N° 104/99 of September 27, 1999, Case 11.400 (Argentina), para. 54: "Secondly, regarding the exhaustion of the extraordinary unconstitutionality remedy referred to by the State, the Commission recognizes that in some cases unconstitutionality remedies, which are in principle extraordinary, offer appropriate and effective remedies for human rights violations. In the case at hand, however, the State has neither claimed nor shown that a decision on the unconstitutionality of Article 29 of Law 21.499 and Ordinance 43.529/89 would have in any event resolved the alleged violations described by the petitioners".

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63. As for the facts alleged concerning Mr. Sotomayor Corrales' transfer from the C.E.T. to the Acha Penitentiary and those alleged to have occurred starting on July 28, 2003, the petitioners filed two petitions with the Arica Appellate Court seeking protective relief on behalf of Mr. Sotomayor Corrales, one on August 11, 2003 and another on August 22, 2003. They were asking the court to be informed of the reason why the petitioner was transferred from one prison to another. On September 1, 2003, the petitioner's mother, Margarita Ana Corrales Gallardo, also filed a petition for protection on behalf of Mr. Sotomayor Corrales, because of threats, psychological mistreatment and arbitrary application of penitentiary regulations. These remedies were never decided. The State is not claiming the failure to exhaust domestic remedies regarding the above alleged violations and therefore, it can be presumed to have tacitly waived its opportunity to argue the failure to exhaust domestic remedies.[FN36] The Commission therefore

considers that these new allegations are admissible based on Article 46(2)(c) of the American Convention on Human Rights and Article 31(2)(c) of the Commission's Rules of Procedure, which allow exceptions to the rule requiring exhaustion of domestic remedies when there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

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[FN36] See Inter-Am Ct HR, Case of Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987, Para. 88. See also: IACHR Report N° 30/96, Case 10.897, Guatemala, October 16, 1996, Para. 35 and Report N° 53/96, Case 8074, Guatemala, December 6, 1996. Annual Report of the IACHR 1996. Report N° 25/94, Case 10.508, Guatemala, September 22 1994, page 52. Annual Report of the IACHR 1994.

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64. Regarding Mr. Sotomayor's transfer from Acha Prision in Arica to Valparaíso Jail, and the alleged irregularities surrounding the petitioner's casualty, the State affirms that the petitioner could have filed a motion for amparo (recurso de protección) before the suitable Court of Appeals and an administrative remedy before the penitentiary authorities or the Justice Department.

65. The Commission considers based on the fact that Mr. Sotomayor's casualty took place while he was under the State custody in Valparaíso Jail, that the State must investigate Mr. Sotomayor's death as its own legal duty. This burden cannot be contingent on the initiative of individuals or on the evidence they may provide.[FN37] This burden must be borne by the State as its own legal duty, not as an instrument of the interests of private individuals, and may not be contingent on the initiative of those individuals or on the evidence they may provide.

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[FN37] See IACHR, Report N° 24/06 of March 2, 2006, para. 37; Report N° 52/97, para. 96.

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## 2. Deadline for lodging a petition

66. Under Article 46(1)(b) of the Convention, for a petition to be admissible it must be "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." However, under Article 46(2) of the Convention and Article 32(2) of the Commission's Rules of Procedure, this "rule does not apply when it has been impossible to exhaust internal remedies due to a lack of due process, denial of access to remedies, or unwarranted delay in issuing a final decision (...) Nor does this rule apply where the allegations concern a continuing situation--where the rights of the victim are allegedly affected on an ongoing basis." [FN38]

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[FN38] See IACHR, Report N° 72/03 (Admissibility), Petition 12,159, Gabriel Egisto Santillán, para. 59; Report N° 33/99 (Admissibility), Case 11,763, Case of the Plan de Sánchez Massacre, Guatemala, April 16, 1999, paras. 29 and 30.

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67. In the instant case, the Commission finds that this requirement has been satisfied since the petitioner was notified of the ruling on the petition of cassation on February 15, 2001, and lodged his petition with the IACHR on August 8, 2001, in other words, within the six-month time frame stipulated in Article 46(1)(b) of the Convention.

3. Duplication of international proceedings and international res judicata

68. Nothing in the case file suggests that the subject of the petition is pending in another international proceeding for settlement or that it is substantially the same as one previously studied by the Commission or another international body. Thus, the Commission considers that the requirements established in Articles 46(1)(c) and 47(d) of the Convention have been met.

4. Characterization of the facts alleged

69. Article 47(b) of the American Convention provides that the Commission shall consider inadmissible any petition that does not state facts that tend to establish a violation of the rights guaranteed by the Convention.

70. At this stage in the proceedings, the Commission's examination of the petition is not intended to establish whether rights were violated, but rather whether the facts alleged, if proven, could tend to demonstrate a violation of a protected right. For admissibility purposes, the Commission must make a prima facie assessment, which does not imply any prejudgment as to the merits of the case.

71. The Commission wishes to note at this point in the proceeding that when a State deprives an individual of freedom, it puts itself in a special position as guarantor and must seek, by all means within its reach, to maintain the individual's enjoyment of his or her rights. The State must guarantee to that person the right to life and to humane treatment.[FN39] Inasmuch as Mr. Sotomayor Corrales died while serving a sentence at a Chilean State penitentiary, under circumstances that to date have not been explained,[FN40] the Commission will examine whether the petitioner's death could be a violation of Article 4 of the American Convention (right to life), in relation to the State's obligation erga omnes to respect and ensure this right.

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[FN39] I/A Court H.R., Neira Alegría et al. Case, Judgment of January 19, 1995, para. 60.

[FN40] Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 34, "Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. ...".

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72. In light of these considerations and as regards the facts that led to the original petition and the allegations of the parties, the Commission observes that Mr. Sotomayor Corrales may have

been taken into custody on November 4, 1999, without a warrant for his arrest and without being caught in flagrante; the evidence supporting Mr. Sotomayor Corrales' indictment and subsequent conviction may have been obtained when he was in custody at the Third Precinct, without benefit of defense counsel;<sup>[FN41]</sup> and the petitioner may have been denied the right to challenge testimony against him.<sup>[FN42]</sup> The Commission therefore considers that if the above allegations are proven, these could tend to establish a violation of the rights recognized in articles 7 and 8 of the American Convention, all in relation to the State's obligation erga omnes to respect and ensure those rights, as provided in Article 1(1) of that instrument.

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[FN41] In the Suárez Rosero Case, the I/A Court H.R. observed that the right to be assisted by counsel applies even when a person deprived of his or her liberty is being held incommunicado. Judgment of November 12, 1997, para.51.

[FN42] Article 8(2)(f) of the American Convention: "the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts."

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73. Furthermore, and in relation to the facts alleged by the petitioner on October 7, 2003, concerning his purportedly irregular transfer from Arica's semi-open penitentiary system to the "closed" system at the Acha Penitentiary Complex, and from there to the Valparaíso penitentiary, the Commission will examine whether the facts as alleged by the petitioner could tend to establish violations of the right to humane treatment (Article 5), the right to a fair trial (Article 8), and the right to judicial protection (Article 25) protected under the American Convention, all in relation to Article 1(1) thereof.

74. The Commission concludes that it is competent to examine the claims lodged by the petitioners alleging violation of articles 4, 5, 7, 8 and 25 of the American Convention, all in relation to Article 1(1) thereof and to the detriment of Mr. Sotomayor Corrales and that the petitions are admissible and meet the requirements established in articles 46 and 47 of the American Convention.

## V. CONCLUSIONS

75. The Inter-American Commission concludes that it is competent to examine the merits of this case and that the petition is admissible under articles 46 and 47 of the American Convention. Based on the foregoing considerations of fact and of law and without prejudging the merits of the petition,

## THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

### DECIDES:

1. To declare the petition admissible inasmuch as it alleges violations of the rights protected under articles 4, 5, 7, 8 and 25 of the American Convention, all in relation to Article 1(1) thereof.
2. To notify the parties of this decision.

3. To proceed to the analysis of the merits of the petition.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 23rd day of the month of July, 2007.  
(Signed): Florentín Meléndez, President; Paolo G. Carozza, First Vice-President; Víctor E. Abramovich, Second Vice-President; Evelio Fernández Arévalos, Sir Clare K. Roberts and Freddy Gutiérrez, Commissioners.