

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 40/09; Petition 442-05
Session:	Hundred Thirty-Fourth Regular Session (16 – 27 March 2009)
Title/Style of Cause:	Laura Carmen Mancilla Saldivia v. Chile
Doc. Type:	Decision
Decided by:	President: Luz Patricia Mejia Guerrero; First Vice President: Victor Abramovich; Commissioners: Sir Clare K. Roberts, Florentin Melendez, Paolo Carozza. Commission member Felipe Gonzalez, a Chilean national, did not participate in the deliberations or the decision in this case, according to Article 17(2) of the Rules of Procedure of the Commission.
Dated:	27 March 2009
Citation:	Mancilla Saldivia v. Chile, Petition 442-05, Inter-Am. C.H.R., Report No. 40/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
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I. SUMMARY

1. On April 18, 2005 the Inter-American Commission of Human Rights (hereinafter the “Inter-American Commission,” “Commission,” or “IACHR”) received a complaint lodged by Mr. Carlos Balladares Vega and Mrs. Laura Carmen Mancilla Saldivia (hereinafter “the petitioners”) which alleged that the Republic of Chile (hereinafter the “State” or “Chile”) had incurred international liability for the violation of the right of every person to a hearing within a reasonable time (Article 8(1)) and to effective recourse (Article 25(1)), in keeping with the general obligation to respect the human rights established in Article 1(1) of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”), against the petitioner Laura Carmen Mancilla Saldivia. According to Mrs. Mancilla Saldivia, her left kidney was removed without her consent and replaced with a plastic prosthesis during an operation conducted at the Eduardo Pereira Public Hospital in Valparaiso, while she underwent surgery to remove her gallbladder.

2. The State, for its part, asked the Commission to find the petition inadmissible due to failure to exhaust domestic remedies, as well as because the Chilean system of justice had done everything necessary to clarify the facts. According to the background information in the case file, the State asserts that no kidney was removed from Mrs. Mancilla and that therefore there was no violation of the American Convention.

3. After analyzing the available information and verifying fulfillment of the admissibility requirements established in Articles 46 and 47 of the American Convention, the Commission declares the case inadmissible because from the information submitted by both parties, no

elements can be identified that would tend to establish a violation of rights under the American Convention. Therefore, based on Article 47(b) of the American Convention, the IACHR determines that the petition is inadmissible and also decides to notify the parties of this report, to publish it, and to include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

4. The petition was submitted on April 18, 2005 and the petitioners sent additional information on May 26, 2005, January 18, 2006, April 11, 2007, and August 15, 2007.

5. The Commission transmitted the relevant parts of the petition to the State on August 22, 2005. On March 29, 2006, May 21, 2007, and January 10, 2008 it forwarded the additional observations from the petitioners. The Commission reiterated to the State on December 21, 2007 that it should submit its observations to the petitioners' message of April 11, 2007.

6. The State, in turn, submitted observations on November 22, 2005 and April 26, 2006. These messages were duly transmitted to the petitioners on December 1 and 13, 2005 and June 5, 2006.

III. POSITIONS OF THE PARTIES

A. The petitioners

7. The petitioners alleged that at the end of 1999 Mrs. Laura Carmen Mancilla Saldivia experienced sporadic abdominal pains[FN2] and went to the Valparaiso public health service, an entity under the National Health Fund (FONASA) to get a routine check-up. As a result of the check-up, Ms. Mancilla Saldivia was referred to surgeon Eusebio García Benito, who diagnosed a severe gallbladder condition and indicated that her gallbladder should be surgically removed. On August 7, 2000, Mrs. Laura Carmen Mancilla Saldivia underwent surgery at the Eduardo Pereira Public Hospital in Valparaiso.

[FN2] The petitioners state that this was established in the police report of January 10, 2001 by the Investigative Police of Chile, Criminal Investigation Brigade, Valparaiso, to the Second Criminal Court of Valparaiso in Case N° 135.432-1.

8. The petitioners indicate that shortly after the surgery, Mrs. Mancilla Saldivia began to feel acute pain and discomfort,[FN3] and that the attending physicians concluded that this was normal and prescribed some sedatives. Since the pain persisted, the petitioners indicate that Mrs. Mancilla Saldivia was examined by specialists at the expense of the petitioners, who concluded that not only had her gallbladder been extracted, but also her left kidney had been taken out and replaced by a plastic and silicon prosthesis. The petitioners allege that in various medical tests paid for privately, a PH level of 6 had been detected in Mrs. Mancilla Saldivia's urine, which she was told is indicative of factor 6 hydrogenated polymers associated with plastic substances.

[FN3] The petitioners submitted documentation showing that Mrs. Mancilla Saldivia was seen in the emergency department of the Clinica Reñaca S.A., on September 17, 2000 for pain in the kidneys and lumbar area.

9. The petitioners reported that because of the gravity of the situation, on September 12, 2000 they filed with the Valparaiso Criminal Court a criminal complaint against those responsible, which was recorded as Case No. 135.432. The petitioners indicated that since they could not afford to pay for a private attorney, they asked to be represented by free attorneys, who “after a time indicated that they could not pursue the case further because of powerful pressures”, without providing any further details. Later the petitioners were represented by the Free Judicial Assistance Corporation of the Ministry of Justice of Chile. The petitioners allege that at the time they filed the petition with the IACHR they had not had legal representation for six months.[FN4] The petitioners also indicated that although the Court should have appointed an attorney, it did not.[FN5]

[FN4] The petitioners indicated that ORD. N° 1254/2004 of October 27, 2004 in which the Deputy Director for the Fifth Region, Judicial Assistance Corporation of Valparaiso Region, answered the letter from Mr. Carlos Balladares Vega dated October 22, indicated that: “... it has been verified that it is impossible for this institution to assume the defense of the matter in court, because there is record that the Valparaiso Legal Clinic, criminal section, had previously resigned as your legal representative, because the case had been dismissed and it could not be verified that there were any useful steps to be taken, for the reasons that were already amply explained, without obtaining any agreement from you,...”.

[FN5] The petitioners submitted a copy of the brief received on February 11, 2005 in the Valparaiso Second Criminal Court in which the petitioners asked that Court to bear in mind that “attorney Ms. Marcela Leroy who represented us through the Free Judicial Assistance Corporation, abandoned the case leaving us without an attorney and obliging us to appear and represent ourselves.”

10. In their petition, the petitioners indicated that four and a half years had lapsed since they had filed the criminal accusation, yet the trial had not gone forward[FN6] and the case remained in the secrecy of the preliminary stage.[FN7] The petitioners alleged in their petition that although the court had ordered -two years earlier- that Mrs. Mancilla Saldivia be examined by an expert, such exam was never conducted. Thus they were forced to file formal appeals to the Full Court of Appeals of Valparaiso as the higher jurisdictional body, which in turn simply ordered the lower court to carry out the pending steps. For this reason, the petitioners indicated, they filed an appeal for the Protection of Constitutional Rights (Case N° 711-2000), which was denied with the argument that since a trial was pending, the Court of Appeals of Valparaiso could not interfere in the matter.

[FN6] According to the petitioners, the police report dated January 10, 2001 of the Investigative Police of Chile, Criminal Investigation Brigade, Valparaiso, to the Valparaiso Second Criminal Court in Case N° 135.432-1, expressly indicates that two of the accused physicians from Valparaiso Hospital did not go to the Investigation Brigade's offices to be interviewed by the investigating officer.

[FN7] The petitioners cite a brief received on February 11, 2005 in the Valparaiso Second Criminal Court from the petitioners to that Court stating: "based on the case file, the time lapsed since the investigation was started, and that prescribed in Article 79 of the Criminal Procedures Code, we ask SS to grant a preliminary hearing to us so that we can cooperate with the court action."

11. In a message dated March 31, 2007, the petitioners stated that despite all the time which had lapsed since the filing of their petition, no progress had been made in clarifying the facts they were reporting. The petitioners indicated that after the Criminal Court of Valparaiso repeatedly instructed the San Jose Hospital in the city of Santiago to conduct the exams required to verify whether or not there was an artificial kidney in Mrs. Mancilla Saldivia's body,[FN8] such exams were finally conducted, albeit it improperly, according to the petitioners. The petitioners indicate that the results of these exams were never reported to the court that had ordered them, although this had been officially requested.[FN9] Consequently, on three occasions the petitioners asked the court to accept an accusation of obstruction of justice and contempt of court,[FN10] but this was never done.

[FN8] The petitioners sent a copy of the brief Mr. Balladares had submitted to the Second Court of Valparaiso on November 22, 2004 in which he indicated "through message 1912-04 dated October 26 of this year, the SS Court order the San Jose Hospital to conduct a specific exam on my wife: pyelography in the area of the left renal cavity and x rays of both kidneys on a single slide. The Clerk, Mr. Francisco Ramirez, has informed me by telephone that Dr. Maria Sanchez refused to conduct the exams that had been ordered, without giving any reason to justify that position"

[FN9] The petitioners sent a copy of Message No. 1907 from the Valparaiso Criminal Court dated March 9, 2006 addressed to the Director of the San Jose Hospital in Santiago. The petitioners also submitted a brief dated May 10, 2006 in which the Assistant Managing Clerk of the Valparaiso Criminal Court certified that on that date there had been phone communication with the San Jose Hospital in Santiago and it had been learned that the messages sent by the Court seeking information on the requested had been sent to Radiology and that as of that date there was no response.

[FN10] The petitioners submitted a copy of a brief submitted by Mr. Balladares to the Second Court of Valparaiso on November 22, 2004.

12. According to the petitioners, they only learned through a telephone conversation with the director of the San Jose Hospital that the exam results had been lost. For this reason, through the free attorney appointed to them, they requested that the exams be repeated at the Clinical Hospital of the Investigative Police of Chile in Santiago. Furthermore, they requested that an

expert be present when the medical exams were performed, to give greater credibility to the results obtained. The Court issued the respective order, and asked Mrs. Mancilla Saldivia to appear through a citation that was issued with less than 24 hours notice,[FN11] which made it impossible for the petitioners to travel to Santiago since they did not have the financial means to do so and since Mrs. Mancilla Saldivia needed to prepare herself adequately for the tests.

[FN11] The petitioners submitted a copy of the citation issued by the Radiology Unit of the Investigative Police of Chile, Office of the Chief of Health Services, to conduct an examination of the following areas—simple renal area, lumbosacral column, sacrum and coccyx, and simple abdomen—on August 17, 2006 a 10:30 a.m. It is stamped “received in the Second Criminal Court on August 16, 2006.” The citation indicates the dietary restrictions the patient must follow on the previous day and the day of testing.

13. The petitioners allege that they later asked the court to get the hospital to reschedule the medical exams and to notify the petitioners with sufficient time to ensure that they could make the appointment. The court granted the request; however, although the judicial order was reiterated to the hospital over the course of several months, there was never any response. The petitioners indicate that finally an officer from the Investigative Police of Chile answered a phone call from the court indicating that said institution was barred from seeing private parties at that medical facility by order of the Controller General of the Republic. The petitioners indicate that thanks to their persistence, they were able to learn the name of the police officer who had given this response and made a request for clarification to the regional officer of the Controller General. Finally, the Office of the Controller responded that the police officer’s statement was not true and that such instructions had never been given. With this information in hand, the petitioners asked the Criminal Court of Valparaiso to issue the respective judicial order,[FN12] which was issued by the court on March 15, 2007 through message N° 2245; however, it did not set a date. The petitioners indicated that by that time, Mrs. Mancilla Saldivia was completely incapacitated with fever and pain.

[FN12] Brief submitted by the petitioners to the Second Criminal Court of Valparaiso on February 21, 2007.

14. The petitioners later reported[FN13] that finally, in 2007, some exams were conducted on Mrs. Mancilla Saldivia at the Hospital of the Investigative Police of Chile. However, there was no expert present. Furthermore, they indicate that these exams were not the appropriate ones to determine whether or not one of Mrs. Mancilla Saldivia’s kidneys was a prosthesis, and that therefore the results were not useful for the purposes of the investigation. The petitioners indicate that based on those results, on May 30, 2007, the Criminal Court of Valparaiso ruled that the preliminary investigation was closed. On June 1, 2007, the petitioners filed an appeal of the decision denying the request to reopen the preliminary investigation. This, in turn, was ruled on by the Court of Appeals of Valparaiso on July 13, 2007 confirming the May 30, 2007 decision to maintain the preliminary investigation closed. The petitioners allege that their government-paid

and appointed attorney never appeared for the hearing on July 13, 2007, despite their multiple requests to this effect.

[FN13] Message dated July 24, 2007, received in the Executive Secretariat of the IACHR on August 15, 2007.

15. The petitioners feel that despite the time lapsed, the State never demonstrated a serious and real willingness to clarify the events reported and that, for this reason, it was not “determined whether there is a renal prosthesis in my wife’s body, which would allow for an investigation of who was responsible for conducting such a surgery without our authorization.”[FN14]

[FN14] The petitioners submitted a copy of their brief to the Special Investigating Judge of the Court of Appeals of Valparaiso, received on July 31, 2007 in that court, in which they asked the court to investigate their potential denial of justice.

B. The State

16. In its reply to the initial petition, the State argued that Mrs. Laura Carmen Mancilla’s petition should be found inadmissible because although the case was temporarily dismissed on July 19, 2001 for lack of evidence indicating the existence of any punishable act, there were still steps pending at the request of the petitioners which the court had agreed to follow.[FN15] The State indicated at that time that an exam was scheduled for July 7, 2005, but that Mrs. Mancilla Saldivia went to the hospital not properly prepared, as is stated in the certificate of that date issued by the Court clerk. The State adds that, later, Mrs. Mancilla Saldivia asked to reschedule and a date was set for August 11, 2005.[FN16] The State indicates that there is no documentation in the file indicating that the petitioner showed up for the exam.[FN17] In its message dated November 22, 2005, the State alleged that the criminal trial initiated by Mrs. Mancilla Saldivia still had some pending steps, and that the delay in repeating the medical exam was the exclusive responsibility of the alleged victim.

[FN15] The State submitted to the Commission a copy of the court file for criminal case N° 135.432.

[FN16] From the copy of the court file, the Commission observes the documentation indicating that the test could not be conducted, as well as the rescheduled date and a call made by the court staff to the San Jose Hospital to ask whether an expert could be present during the study; the reply was negative.

[FN17] From the copy of the court file, it is seen that the court called the hospital several times and was informed that “a review of the computer system regarding exams and x-rays performed at that hospital does not show Ms. Laura Mancilla among the patients seen.”

17. The State argued that the first medical examination of Mrs. Laura Carmen Mancilla Saldivia conducted on August 30, 2000, a few days after the surgery in which the petitioners alleged that her kidney was extracted, showed the normal presence of two kidneys.

18. The State further argued that in the instant case, the facts described do not constitute a violation of rights established in the American Convention on Human Rights, since the judicial file contains various pieces of evidence showing that Mrs. Mancilla Saldivia's kidney was not extracted. The State particularly points out the Report by Medical Experts on sheet 75 of the court file, which verifies the presence of two kidneys in the body of the complainant. This is also seen in the ecotomography report of August 30, 2000 (sheet 62 in the court file). The State also argues that there was no violation of the right to a fair trial, since the petitioner was adequately represented in court and was at all times represented by both her privately hired attorneys and by appointed attorneys from the Chilean judicial system.

19. The State asked the Commission to declare the petition inadmissible for failure to exhaust domestic remedies and because in this case there was no violation of the American Convention. In a subsequent message, the State reported[FN18] that it had no further observations and it reiterated its position from its initial reply to the petition.

[FN18] Letter from the Director of Human Rights in the Ministry of Foreign Affairs of Chile, Amira Esquivel Utreras, dated April 10, 2006 and received in the Executive Secretariat of the IACHR on April 26, 2006.

III. ANALYSIS OF ADMISSIBILITY

A. Competence of the Comission *ratione personae*, *ratione materiae*, *ratione temporis* y *rationi loci*

20. According to Article 44 of the American Convention and Article 23 of the Rules of Procedure of the IACHR, the petitioner is entitled to lodge petitions with the Commission regarding alleged violations of the rights established in said treaty. As for the State, Chile is a party to the American Convention and, therefore, must answer in the international sphere for violations of that instrument. The alleged victim is a natural person whose rights under the American Convention the State undertook to protect. For these reasons, the Commission has competence *ratione personae* to review the complaint.

21. The IACHR has competence *ratione materiae* as the petition refers to violations of human rights protected by the American Convention. It also has competence *ratione temporis* because the obligation to respect and protect the rights protected in that treaty was in effect for the State on the date when acts alleged in the petition took place, since Chile ratified the American Convention on August 21, 1990. Finally, the Inter-American Commission has competence *ratione loci* because the petition alleges violations of rights protected by the American Convention to have taken place within the territory of a State party to said instrument.

B. Other admissibility requirements

1. Exhaustion of domestic remedies and time period for lodging the petition

22. Article 46(1) of the Convention establishes that in order for a petition to be admissible, “the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law.”[FN19] Both the Inter-American Court of Human Rights (hereinafter the “Court” or “Inter-American Court”) and the IACHR have repeatedly maintained that “(...) under the generally recognized principles of international law and international practice, the rule which requires 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 before an international body to charges imputed to it, before it has had the opportunity to remedy them by internal means.”[FN20]

[FN19] See I/A Court H.R., Exceptions to 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, paragraph 17.

[FN20] See I/A Court H.R., Decision in the matter of Viviana Gallardo et al of November 13, 1981, Series A N° 101/81, paragraph 26.

23. According to the applicable burden of proof, a State alleging non-exhaustion must indicate the domestic remedies that should be exhausted and provide evidence of their effectiveness.[FN21] Regarding the reported facts, in its submission of November 22, 2005, the State alleged that domestic remedies had not been exhausted because there were still steps to be taken within the criminal trial since the court had accepted the petitioners’ request to repeat the medical tests on Mrs. Mancilla Saldivia. The State maintained that the delay in conducting some tests, and of the trial in general, was in large measure due to the petitioners’ refusal to go to their appointments or to allow certain studies to be done because they deemed that they were not appropriate or because the medical center indicated was not the most convenient for them.

[FN21] IACHR Report N° 32/05, petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral and others affected by HIV/AIDS, Guatemala, March 7, 2005, paras. 33-35; I/A Court HR, 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.

24. The petitioners, for their part, reported that two years after filing their criminal accusation in the Second Criminal Court of Valparaiso, the court ordered that the tests requested by the representatives of the alleged victim be conducted. However, they clarify that on several occasions they had to make formal claims before the Court of Appeals of Valparaiso to get this court to order the lower court to conduct the necessary steps to set a date and time for the test to

be performed, until they finally submitted an appeal for the Protection of Constitutional Guarantees, which was denied. The petitioners allege that an unreasonable amount of time had lapsed in the criminal trial, because of the lack of diligence on the part of the court hearing the case, which limited itself to issuing orders at the request of the petitioners.

25. The Commission observes that the State submitted no further information after its observations sent on November 22, 2005 in which it stated that it was awaiting the results of various pending measures. However, it did not indicate which other remedies needed to be exhausted.

26. In addition, the Commission notes that on September 12, 2000 the criminal trial began in Case N° 135,432 before the Second Criminal Court of Valparaiso based on the accusation filed by Mrs. Mancilla. Said trial was temporarily suspended on July 19, 2001 based on insufficient evidence to justify the commission of the alleged crime. As the petitioners felt that it was necessary to conduct further tests within the preliminary investigation, they repeatedly asked that this stage be reopened; when these requests were denied, the court agreed to take several steps requested by the petitioners. Through a brief dated May 29, 2007 and after the kidney x-rays that were performed on Mrs. Mancilla on May 2, 2007, the petitioners again asked the court to reopen the preliminary investigation. After this request was denied, on May 30, 2007, the petitioners filed an appeal with the Court of Appeals of Valparaiso, which reaffirmed the lower court's decision on July 13, 2007.

27. The Commission observes that the complaints made by the petitioners are primarily based on some alleged omissions within the preliminary investigation related to evidence-gathering while the case was temporarily dismissed. In light of these considerations, and considering that Mrs. Mancilla had asked for the preliminary investigation to be reopened on several occasions, the Commission concludes that with her appeal submitted to the Court of Appeals of Valparaiso of the refusal to reopen the preliminary investigation, Mrs. Mancilla exhausted the remedies available within the legal system of the State. Therefore, the petition meets the requirements of Article 46 of the American Convention.

2. Time period for lodging a petition

28. According to Article 46(1)(b) of the Convention, in order to be admitted a petition must be lodged within six months from the date on which the allegedly injured party was notified of the final decision within domestic jurisdiction.

29. In the instant case, one must consider that after the decision handed down by the Second Criminal Court of Valparaiso to not reopen the preliminary investigation, the petitioners filed an appeal which resulted in a confirmation of the first court's decision on July 13, 2007. The Commission observes that the petition was received in its Executive Secretariat on April 18, 2005, that is, before the ruling was made within the domestic jurisdiction, and that therefore the requirement established in Article 46(1)(b) of the American Convention has been met.

3. Duplication of proceedings and res judicata

30. The petition file does not contain any information indicating that the present matter is pending in another international proceeding for settlement or that it was previously studied by the Inter-American Commission. Therefore, the IACHR concludes that the exceptions described in Articles 46(1)(c) and Article 47(d) of the American Convention do not apply.

4. Characterization of the alleged facts

31. Article 47(b) of the Convention establishes 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. To this end, the Commission shall proceed to analyze whether the reported facts in the instant case would constitute a violation of the Articles of the Convention invoked by the petitioners.

32. The petitioners have alleged that during a surgery on Mrs. Mancilla on August 7, 2000 at the Eduardo Pereira Public Hospital in Valparaiso, whose purpose was exclusively to remove her gall bladder, Mrs. Mancilla's left kidney was also removed, without her consent, and that a plastic prosthesis was inserted in place of the kidney. The petitioners clarify that they learned of this a few days after the operation when Mrs. Mancilla developed severe pain and underwent various medical tests with private physicians, which detected a PH level of 6 in Mrs. Mancilla Saldivia's urine. She was told that this was caused by factor 6 hydrogenated polymers, associated with plastic substances. They also indicated that because the physicians who had performed the surgery on Mrs. Mancilla refused to explain these circumstances, she filed a criminal complaint against those responsible for the situation.

33. The petitioners have argued that the court in charge of the criminal trial did not take the measures necessary to clarify the facts because the studies ordered by the court were not suitable to determine whether in fact Mrs. Mancilla's left kidney had been removed, in order to proceed to determine criminal liability on the part of the physicians involved in the surgery on August 7, 2000.

34. The State, for its part, argued that although on July 19, 2001 the judicial authorities had temporarily dismissed the case for lack of evidence, the State had agreed to pursue various steps requested by the petitioners to gather further evidence. The State also indicated that according to the studies performed under court order within the criminal trial, there was documentation to the effect that Mrs. Mancilla still possessed her two kidneys and that no kidney had been removed. Thus the State asserted that Mrs. Laura Carmen Mancilla Saldivia suffered no violation of her human rights under the American Convention.

35. The Commission has analyzed the documentation in the file of the criminal trial and finds that while it is true that between the time of their initial accusation and the beginning of this year the petitioners regularly submitted briefs asking the Second Criminal Court of Valparaiso to take measures, it is also true that the court generally responded positively to these requests. The court ordered that several steps be taken, including a request for an expert opinion from the Institute of Legal Medicine on October 26, 2000, which determined "that the presence of both kidneys is verified, as can be seen in the ecotomography report of August 30, 2000, after the surgery was performed." [FN22]

[FN22] Legal Medical Expert's Report N° 237-2000 of July 4, 2001.

36. On July 19, 2001 the court determined

“2. That from the information in the file, insufficient evidence is found to verify the commission of the crime which led to the preliminary investigation.

And according to the provisions of Articles 406, 407,409 number 1 and 418 subparagraph 3 of the criminal procedure code, it is declared:

To temporarily dismiss this case until new information appears to allow the case to continue being processed.”

37. The Commission notes that subsequently, on several occasions the petitioners asked for the preliminary investigation to be reopened. And although that investigation was never formally reopened, on October 3, 2001 the Second Court asked that the file be taken out of the archives,[FN23] and agreed to conduct some steps. On December 29, 2001 it received a report from the Medical Legal Service which reported that a review of the clinical file of Mrs. Laura Carmen Mancilla Saldivida “indicated no kidney lesion and that no renal surgical procedure had taken place.”[FN24] Without prejudice to the status of the case, on March 13, 2002, the court ordered that the witnesses offered by the petitioners be summoned. The court also reported that its staff issued several orders and communicated by telephone with several medical facilities to verify whether it was possible to conduct the medical studies which the alleged victim was requesting.

[FN23] The agreement of October 3, 2001 is in the file, which ordered “that the case be removed from the archives.” Also, the agreement of October 9, 2001 which mentions “Case N°135.432-I removed from the archives and allowing directly for the presentation Denies the request to reopen the preliminary investigation.”

[FN24] Medical Legal Report N° 2312-2000.

38. On October 11, 2002, the Director of the Carlos Van Buren Hospital sent the Second Criminal Court the results of the helical computed tomography abdominal exam conducted on Mrs. Mancilla. It indicated that her kidneys were of a normal size; showed contours with lobulations; and that there were no focal lesions nor was there hydronephrosis.[FN25] The hospital informed the Second Court that in fulfillment of its order it would conduct the new study requested by the petitioners on December 24, 2003. However, Mrs. Mancilla did not appear for the testing and asked that the studies be done by the Legal Medical Service of Santiago. After taking several actions, Mrs. Mancilla was summoned to report to the San Jose Hospital on September 7, 2004 to undergo bilateral renal ecotomography. However, the alleged victim submitted a brief to the court on September 6, 2004 indicating that she would not go to the

medical appointment because she felt that such a study was inappropriate; she asked that instead pyelography and x-rays be taken of both kidneys. After the court inquired with several hospitals to request that these tests be done, an appointment was given to Mrs. Mancilla for May 5, 2005, and when she arrived unprepared, another appointment was given for August 11, 2005. It bears mention that a note issued on February 8, 2006 by the Director of the Northern Hospital Complex of the Valparaiso Criminal Court, indicates that “Mrs. Mancilla was given an appointment to conduct an elimination pyelography as requested in Order N° 2905. However, that test could not be conducted because the patient stated that she is allergic to iodine. ... Despite this situation, it is recommended that Ms. Laura be asked to undergo a simple renal x-ray in which both kidneys can be viewed.”[FN26]

[FN25] Report 59421 of September 4, 2002, done by the Scanner Unit.
[FN26] Order 165 of February 8, 2006.

39. The Commission also observes that in his submission dated June 21, 2006, the representative of the alleged victim asked the judge to order a simple x-ray of the two kidneys, which resulted in an appointment being set for August 17, 2006. The petitioners later indicated that they missed that appointment because they were only given 24 hours notice, so they asked for a new date. The new date was set for May 2, 2007, when several general studies were performed as well as the requested x-ray. These results showed: “Partially visible renal areas (shadows) and in good position (two kidney shadows are seen). No calcification of soft tissues is recognized... Note: a more specific exam to see the kidneys and noncontrast helical computed tomography.” On May 23, 2007, the court ordered that the x-rays remain in the custody of the court.

40. The Commission notes that in a brief submitted on May 29, 2007, the petitioners again asked the court to reopen the preliminary investigation. This request was denied on the 30th of that month. The petitioners then appealed this decision to the Court of Appeals of Valparaiso, which on July 13, 2007 confirmed the lower court decision of May 30, 2007.

41. The petitioners have alleged in their submissions that despite the time lapsed, the State demonstrated no serious or real willingness to clarify the facts reported, and that although some tests were conducted on Mrs. Mancilla, the most suitable ones to determine whether in fact one of her kidneys had been removed was never performed.

42. In the instant case, the Commission has no evidence that would allow it to infer from the actions of the Chilean courts, any acts or omissions that would tend to characterize violations of the right to due process under the American Convention. The right to judicial protection established in the Convention encompasses the right to a fair, impartial, and prompt trial which offers the possibility of, but never a guarantee of, a favorable result.[FN27] Thus, interpreting the law, determining the relevant procedures to be followed, and weighing the evidence, among other things, constitute the exercise of internal jurisdiction, which cannot be replaced by the IACHR.[FN28]

[FN27] IACHR Report N° 39/96, Case 11,773, S. Marzioni, Argentina, October 15, 1996, Report No. 48/98, Case 11,403, Carlos Alberto Marín Ramírez, Colombia, September 29, 1998, para. 42. Report 58/08, Case 12.122, Armando Sosa Peceros et al., Peru, July 24, 2008.

[FN28] IACHR, Report N° 39/05 (Peru), Petition 792/01, Carlos Iparraguirre and Luz Amada Vásquez de Iparraguirre.

43. In summary, from the allegations of the parties and the evidence in the file, no facts are found which would tend to constitute a violation of the right to judicial protection or to a fair trial which would have prevented the alleged victim from making use of remedies under internal jurisdiction.

44. In light of the above considerations, the Commission concludes that the facts alleged would not tend to constitute violations of the rights established in the American Convention, and that therefore, the petition must be found inadmissible.

IV. CONCLUSIONS

45. Based on the arguments of fact and of law set forth herein, the Inter-American Commission concludes that the petition is inadmissible according to Article 47(b) of the American Convention, because it does not state facts that tend to establish a violation of the rights guaranteed by that Convention.

46. For the above considerations,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present petition inadmissible according to Article 47(b) of the Convention.
2. To notify the parties of this decision..
3. 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 March 27, 2009. (Signed): Luz Patricia Mejía Guerrero, President; Víctor E. Abramovich, First Vice-president; Sir Clare K. Roberts, Florentín Meléndez, and Paolo Carozza, Members of the Commission.