

**REPORT NO. 67/10<sup>1</sup>**  
PETITION 305-05  
ADMISSIBILITY  
JUAN LUIS PIMENTEL ROMÁN  
CHILE  
July 12, 2010

**I. SUMMARY**

1. This report addresses the admissibility of Petition 305-05, opened by the Inter-American Commission on Human Rights (hereinafter “Inter-American Commission,” “Commission,” or “IACHR”) based on a petition, received on March 18, 2005, that was lodged by the Human Rights Office of the Legal Assistance Corporation (Corporación de Asistencia Judicial, hereinafter “the petitioners”) on behalf of Juan Luis Pimentel Román—who was 44 years of age at the time the petition was presented—against the State of Chile (“the State” or “the Chilean State”). The petitioners allege that the State has incurred responsibility under the American Convention on Human Rights (“the American Convention” or “the Convention”), specifically by discriminating against the alleged victim based on his Peruvian nationality, by refusing to provide him with the medical care he needed and subsequently by denying him the judicial guarantees and protection that would allow this arbitrary act to be resolved.

2. The petitioners indicate that in June 2004, Mr. Juan Luis Pimentel Román, a Peruvian national who at the time was vacationing in the State of Chile, suffered a vehicular accident while he was traveling on a bus. The driver reportedly took him to a first-aid station, where he was only given medication to control the pain. The petitioners allege that, days later, he had a medical test that showed damage to his liver, and that he was given authorization for a consultation at the Hospital Cordillera, a public service facility. They allege that on two occasions, on July 22 and July 30, 2004, staff at the hospital refused to provide him with the medical care he needed on the grounds that he was Peruvian. The petitioners report that Mr. Pimentel currently lives in Chile and that since the time of the accident he has been unable to perform physical activities, and that he has yet to receive the medical treatment that his state of health requires.

3. The petition states that representatives of Mr. Pimentel filed a motion for protection (*recurso de protección*) with the judicial system based on their belief that his life was in danger. In that motion, they asked that the necessary measures be ordered so that Mr. Pimentel could receive the medical care that his state of health required. That motion for protection was reportedly rejected for being untimely, and further appeals of the first rejection were also rejected. The petitioners allege that the first motion for protection was rejected in error and that on account of that rejection, the facts were not investigated, Mr. Pimentel did not receive medical attention, and his right to the protection of judicial guarantees was violated.

4. For its part, the State indicates that the National Constitution specifically prohibits unequal and discriminatory treatment, and thus the allegations indicated in the petition are not true. It also emphasizes that the alleged victim’s attorneys made inappropriate and imprudent use of national resources, as the motion for protection was filed outside the time frame established under Chilean law. Thus, the State alleges that the fact that the jurisdictional authorities have been unable to investigate the allegations is due to actions attributable to the alleged victim and not to the State.

5. Following an analysis of the petition, and pursuant to the provisions of Articles 46 and 47 of the American Convention, as well as Articles 30 and 36, and in keeping with the Commission’s Rules of Procedure, the IACHR concludes that it has jurisdiction to hear the complaint filed by the petitioners, based on the alleged violation of Articles 8 (right to a fair trial) and 25 (judicial protection) of the American Convention in conjunction with Articles 1(1) and 2 of the same accord, to the detriment of the alleged

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<sup>1</sup> Commissioner Felipe González, of Chilean nationality, did not participate in the deliberations or the decision in this case, in accordance with the provisions of Article 17(2)(a) of the Commission’s Rules of Procedure.

victim. In addition, based on the application of the *iura novit curia* principle, the Commission concludes that the petition is admissible based on the presumed violations of Articles 5 (right to humane treatment) and 24 (equal protection of the law) of the Convention in conjunction with Articles 1(1) and 2 of the same instrument. Finally, the Commission resolves to notify the parties, make this admissibility report public, and include it in the Annual Report for the General Assembly of the Organization of American States.

## **II. PROCESSING BY THE COMMISSION**

6. The complaint was filed by the petitioners with the Executive Secretariat of the Commission on March 18, 2005, and the IACHR began processing it on September 13 of that year, when it forwarded the relevant parts of the petition to the State and asked the State to present its response within a period of two months. The State sent its response in November 2005 and sent new observations on August 1, 2006. The petitioners sent observations on May 23, 2006, and September 7, 2007, and this was forwarded to the State on October 4, 2007. In March 2010, the Commission requested additional information from the petitioners, which was received on April 15, 2010, and was sent to the State for its information on June 8, 2010.

## **III. POSITIONS OF THE PARTIES**

### **A. Position of the petitioners**

7. The petition indicates that Mr. Juan Luis Pimentel, of Peruvian nationality, entered Chile on June 14, 2004, on a tourist visa, in order to spend a period of time with his daughter, who was living in the city of Santiago.

8. The petition adds that on June 17 of that year, Mr. Pimentel was on a minibus, traveling toward the municipality of Macul, and that on the way, an accident reportedly occurred and some of the passengers were injured, including Mr. Pimentel. Because of the accident, the minibus driver went to a medical station, where the alleged victim was given morphine to calm his pain. He was subsequently taken in an ambulance to the Hospital del Salvador, where he reportedly spent four hours in observation, with fluids being administered.

9. The petitioners note that because Mr. Pimentel continued to suffer pain and discomfort, on June 30, 2004, he went to the Consultorio Santa Julia, in the municipality of Macul, where he was sent for an ultrasound test. The results, obtained on July 15 of that year, found a diagnosis of "fatty infiltration of the liver. Rupture of the abdominal wall."<sup>2</sup> At the Consultorio Santa Julia he was given a referral sheet so that he could be seen at the Hospital Cordillera, since he would apparently need surgery. The petitioners then state that on July 22, 2004, Mr. Pimentel went to the Hospital Cordillera, where the director of the hospital informed him that "due to a Health Services Directive, he would not be able to be seen because of the fact that he was Peruvian," and thus he was denied medical and hospital care. The petitioners add that Mr. Pimentel, who was not satisfied with the response, went back to the same hospital on July 30 and received the same response from the director.

10. The petition indicates that on August 13, 2004, the Human Rights Office of the Legal Assistance Corporation filed a motion for protection with the Santiago Court of Appeals on behalf of Mr. Juan Luis Pimentel Román, so that the necessary steps could be taken "to reestablish the rule of law and ensure due protection for the person affected." It was alleged that they were faced with an illegal and arbitrary act which, as long as care continued to be denied, threatened the right to life and disturbed the constitutional guarantee of equality before the law, on a continuing basis. In a decision dated August 17, 2004, the Court reportedly declared the motion to be inadmissible based on untimely filing. In that regard, the petitioners clarify that the Court considered July 22, 2004, to be the date on which Mr. Pimentel had learned of the denial to give him medical care; however, they allege that the date that should have been taken into account was July 30, since he had gone back to insist and it was then that he was told again

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<sup>2</sup> The petitioners sent the Commission a copy of Mr. Pimentel's ultrasound results.

that he was being denied care. The petitioners also allege that the Court should have taken into account the fact that the violation to which Mr. Pimentel was subject was of a continuing nature, since as long as he continued to be denied medical attention, his life remained at risk. Thus, they affirm, the Court should not have ruled that the motion for protection was filed in an untimely manner.

11. On August 19, 2004, the petitioners countered the decision by filing an appeal for review (*recurso de reconsideración*) or reinstatement (*reposición*), indicating that the motion had been filed in a timely manner, since Mr. Pimentel had learned definitively and with certainty of the act that caused him harm on July 30, 2004, and also since the act involved a continuing harm. They indicate that the Court, in a decision dated August 26, 2004, rejected the appeal, arguing that the allegations presented by the petitioners did not change the grounds of the first decision. The petitioners add that as a result, on September 1, 2004, a complaint appeal (*recurso de queja*) was filed with the Supreme Court on the grounds that serious errors or abuses had been committed by ministers of the Santiago Appeals Court and that these had left Mr. Pimentel without legal defense.

12. The petitioners indicate that the Supreme Court's decision of September 7, 2004, declared the appeal inadmissible for being untimely, arguing that the first decision should have been appealed and not the rejection of the appeal for review. On September 10, 2004, an appeal for reconsideration was filed with the Supreme Court; this was also rejected, on September 21.

13. In a communication received on April 15, 2010, the petitioners reported that to date, Mr. Pimentel still had not received any medical treatment whatsoever and that he had only been given some tests to diagnose his health problem. They also indicated that as a result of the accident and the lack of medical attention, Mr. Pimentel had been prevented from performing physical activities and thus from finding a job, and as that therefore both he and his family were facing a precarious economic situation.

14. Based on what has been indicated, the petitioners allege that the facts represent a violation by the Chilean State of the right to justice and to a fair trial contained in Articles 8 and 25 of the American Convention, in relation to Articles 1(1) and 2 of the same Convention, to the detriment of Mr. Juan Luis Pimentel Román.

## **B. Position of the State**

15. In its first filings, the State alleged that the petition had been filed with the Executive Secretariat outside the time frame established by Article 46(1)(b) of the American Convention, given that the last internal decision was dated September 21, 2004, and the petition was from September 2005.

16. In subsequent briefs, the State alleged that the ostensible discrimination to which Mr. Pimentel was subject and which led to a lack of medical attention "is not true." It thus affirms that the alleged victim received in a timely manner the medical attention that the Chilean health system establishes for such cases, in which nationality would never have been a discriminatory element or factor in terms of being able to obtain health benefits in Chile.

17. The State added that the petitioners' main allegation is that Mr. Pimentel's human rights had been violated as a result of the filing of a motion for protection which Chilean justice found to be untimely. In that respect, the State indicates that such a circumstance allegedly occurred due to an action totally attributable to the complainant, based on the untimely filing of the motion for protection and on the failure to act diligently on behalf of the alleged victim.

18. Further, the State noted that the motion for protection, or *amparo*, is established in the Constitution of the Republic of Chile and protects equality before the law, among other guarantees, establishing that no privileged groups or persons exist in Chile. The State considers that, had he filed the motion in a timely manner, the alleged victim would have been able to obtain a decision on the merits from the courts.

19. Consequently, the State asked the Commission to declare the petition to be inadmissible because it was filed with the Commission outside the time frame established by the Convention, because the domestic procedural track had not been properly exhausted, and because the facts that are alleged do not constitute violations of any rights established in the American Convention.

#### **IV. ANALYSIS OF ADMISSIBILITY**

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

20. The petitioners can legitimately file a petition with the Commission pursuant to the provisions of Article 44 of the American Convention. The petition names as alleged victim an individual for whom the State has assumed a commitment to respect and guarantee the rights recognized in the American Convention. As far as the State is concerned, the Commission notes that Chile has been a State Party to the Convention since August 21, 1990, when it deposited its instrument of ratification. Thus, the Commission has competence *ratione personae* to consider the petition.

21. The Commission has competence *ratione loci* to consider the petition, since the petition alleges that rights protected by the American Convention were violated in the territory of a State Party to the Convention. The IACHR has competence *ratione temporis* since the obligation to respect and guarantee the rights protected in the American Convention was in force for the State at the time the supposed violations alleged in the petition are said to have taken place. Finally, the Commission has competence *ratione materiae* because the petition refers to human rights violations protected by the American Convention.

##### **B. Other admissibility requirements for the petition**

###### **1. Exhaustion of domestic remedies**

22. Article 46(1)(a) of the American Convention establishes that for a petition filed with the Inter-American Commission to be admissible, pursuant to Article 44 of the Convention, the remedies available under domestic law must have been pursued and exhausted, in accordance with generally recognized principles of international law. The purpose of this requirement is to ensure that the State in question has the chance to resolve disputes within its own legal framework.

23. In the present case, the petitioners claim that domestic remedies were duly exhausted, mainly through the filing of a motion for protection before the Appeals Court, which they indicate is the appropriate recourse available under Chilean law to safeguard fundamental rights. Subsequently, appeals for review were filed with the same Court and with the Supreme Court of the Nation.

24. The Commission notes that Article 20 of the Political Constitution of the Republic of Chile, in relation to the same Constitution's Article 19.2 and 19.9, establishes that violations of the rights established in Article 19 can in fact be countered by bringing a motion for protection to the respective Court of Appeals.<sup>3</sup> For its part, the State affirmed that the motion for protection or *amparo* is established in the Constitution of the Republic of Chile and protects, among other guarantees, equality before the law. The Commission thus notes that, in fact, the motion for *amparo* or protection was the appropriate motion for Mr. Pimentel to have lodged with the Chilean jurisdictional authorities in order to safeguard his right to receive medical attention regardless of his nationality.

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<sup>3</sup> **Article 19.2.** "Equality before the law. In Chile there are no privileged persons or groups. In Chile there are no slaves, and those who should set foot on her territory become free. Neither the law nor any authority may establish arbitrary differences." **Article 19.9.** "The right to protection of health. The State protects the free and egalitarian access to actions for the promotion, protection and recovery of the health and rehabilitation of the individual...."

**Article 20.** "He who should, due to arbitrary or illegal actions or omissions, suffer privation, disturbance or threat in the legitimate exercise of the rights and guarantees established in Article 19... may on his own, or through a third party, resort to the respective Court of Appeals, which shall immediately take the steps that it should deem necessary to re-establish the rule of law and ensure due protection to the person affected...."

25. The motions filed by the petitioners with the judicial system stated that on July 22 and July 30, 2004, personnel from a public hospital denied Mr. Pimentel access to medical treatment based on his nationality and that since then he has been unable to find the necessary treatment to remedy his medical problems. The judiciary took into account the allegation filed only in terms of the alleged denial of care of July 22, 2004, and did not analyze or investigate the allegations with respect to a continuing denial of access to medical attention. The Commission thus observes that, once the motion for protection was denied on grounds of being untimely, without any analysis of the merits of the situation, Mr. Pimentel was left without any further judicial remedy that would allow him to assert his right for protection of his health in a condition of equality. Under these circumstances, the Commission believes that Mr. Pimentel exhausted the domestic remedies available to him.

26. The Commission concludes that Mr. Pimentel exhausted domestic remedies provided for under Chilean law for the specific case, and the fact that, according to the petitioners' allegations, the judicial remedy did not provide the protection he was due will be analyzed by the Commission, *prima facie*, in the section on characterization, with respect to the alleged violation of judicial guarantees.

## **2. Deadline for filing the petition**

27. In keeping with Article 46(1)(b) of the Convention, in order for a petition to be admitted, it must be lodged within the stipulated time period, that is, within six calendar months from the date on which the party alleging violation of his rights was notified of the final judgment at the domestic level.

28. In the present case, the State alleged that the petition was lodged outside the time period established by the Convention, given that the Supreme Court's decision that would have exhausted domestic remedies was dated September 21, 2004, and the date the petition was lodged was September 12, 2005. In this regard, it must be clarified that while the petition was forwarded to the Chilean State in September 2005, it was received at the IACHR Secretariat on March 18, 2005, and according to the postmark, it had been mailed by the petitioners on March 2.

29. Based on the foregoing, the Commission notes that the petition was lodged within the six-month period stipulated in Article 46(1)(b) of the American Convention.

## **3. Duplication of proceedings and res judicata**

30. Article 46(1)(c) establishes that for a petition to be admissible, the subject of the petition may not be "pending in another international proceeding for settlement," and Article 47(d) of the Convention stipulates that the Commission shall not admit a petition if it is "substantially the same as one previously studied by the Commission or by another international organization." In the case at hand, the parties have not alleged, nor does it appear in the record, that either of these conditions of inadmissibility is present.

## **4. Characterization of the facts alleged**

31. Article 47(b) of the American Convention requires that a petition be declared inadmissible if it does not state facts that tend to establish a violation of the rights guaranteed by the Convention. In the present case, it is not up to the Commission at this stage of the proceedings to decide whether or not the alleged violations of the American Convention took place. The IACHR has conducted a *prima facie* evaluation and determined that the petition raises allegations which, if proven, may tend to characterize possible violations of the rights guaranteed by the Convention.

32. According to the information and arguments presented by the petitioners, the complaint is based on the two denials of medical attention to Mr. Juan Luis Pimentel Román by the director of a hospital in the Chilean health-care system based on Mr. Pimentel's Peruvian nationality, as well as on the alleged erroneous rejection by the jurisdictional authorities of the motion for protection that Mr. Pimentel filed in order to prevent the alleged and continuing violation.

33. The claims submitted by the petitioners are not simply related to one or two alleged refusals of medical attention by the Director of the hospital, but with was is claimed as a continuing denial of treatment, based on the alleged victim's nationality and followed by an alleged denial of access to judicial protection. In this regard, the Commission believes that there are sufficient elements to consider that, if the facts are proven, they may tend to characterize violations of the rights established in Articles 8 and 25 of the Convention; thus, it is appropriate to define the scope of these rights and their application in the concrete circumstances of this case, during the merits stage.

34. Further, in applying the principle of *iura novit curia*, the IACHR observes that the actions or omissions by the director of the hospital could have affected Mr. Pimentel's health and therefore his physical integrity and could characterize a violation of Article 5 of the American Convention. Furthermore, the facts described by the petitioners could characterize an alleged violation of Article 24 of the American Convention due to the alleged discrimination to which Mr. Pimentel, as a foreigner, was apparently subjected, having been denied the medical attention he needed by the public health service, on account of his being a Peruvian national.

35. Consequently, in the case at hand the Commission concludes that the petitioners have presented complaints which, if they meet other requirements and are proven to be true, could characterize a violation of the rights that enjoy protection under the American Convention—more specifically, the rights established in Articles 8 (fair trial) and 25 (judicial protection) in relation to Article 1(1) (the obligation to respect and guarantee rights) and 2 (duty to adopt provisions in domestic law). In addition, based on the application of the principle of *iura novit curia*, the Commission concludes that the petition is admissible based on the alleged violations of Articles 5 (right to humane treatment) 24 (equality before the law) of the Convention, in conjunction with Articles 1(1) and 2 of the same instrument.

## V. CONCLUSIONS

36. The Commission concludes that it is competent to hear the case at hand and that the petition is admissible pursuant to Articles 46 and 47 of the American Convention.

37. Based on the arguments in fact and law presented above, and without prejudging the merits of the case,

### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

#### DECIDES:

1. To declare this case admissible with respect to the alleged violations of the rights recognized in Articles 5, 8, 24, and 25 in relation to Articles 1(1) and 2 of the American Convention.
2. To notify the parties of this decision.
3. To proceed to review the merits of the case.
4. To make this report public and publish it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 12th day of the month of July, 2010. (Signed): Paulo Sérgio Pinheiro, First Vice-President; Dinah Shelton, Second Vice-President; Luz Patricia Mejía Guerrero, María Silvia Guillén, Rodrigo Escobar Gil, and José de Jesús Orozco Henríquez, members of the Commission.