

REPORT No. 115/12
ADMISSIBILITY
PETITION 552-05
GIOVANNA JANETT VIDAL VARGAS¹
CHILE
November 8, 2012

I. SUMMARY

1. On May 17, 2005, the Inter-American Commission on Human Rights (the "Inter-American Commission" or the "IACHR") received a complaint submitted by the Humanas Corporation – Regional Center for Human Rights and Gender Justice (hereinafter "the petitioner"), alleging the State of Chile's international responsibility for denial of justice due to violations allegedly committed in the context of a criminal proceeding against a military officer for the crime of rape, to the detriment of Giovanna Janett Vidal Vargas. The petitioner alleges the lack of due diligence on the part of Chilean authorities in investigating and punishing the crime reported, and maintains that the judicial decisions that absolved the alleged rapist of criminal responsibility were based on discriminatory prejudices against the alleged victim, exposing aspects of her private life in order to delegitimize the veracity of her complaint.

2. The petitioner maintains that the State is responsible for violating the right to humane treatment, the right to a fair trial, and the right to equal protection, enshrined in Articles 5.1, 8.1, and 24 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), consistent with the obligation to respect rights as established in Article 1.1 of the same instrument, as well as Articles 3, 4, and 7(b) of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (hereinafter the "Convention of Belém do Pará"). For its part, the State alleges that the complaint is inadmissible because it was submitted outside the period of six months, and because it does not present facts that would tend to establish a violation of rights enshrined in the American Convention. In this respect, the State maintains that the matter was resolved by domestic authorities adhering to the rules of due process, consistent with the provisions of domestic law and international treaties on the protection of human rights. Thus, the State argues that the IACHR cannot act as a fourth instance to review domestic decisions that were turned out to be unfavorable to the alleged victim.

3. Without prejudging the merits of the case and after analyzing the parties' positions and compliance with the requirements established in Articles 46 and 47 of the American Convention, the Commission decided to declare the case admissible for purposes of examining the alleged violation of Articles 5, 8.1, 11.2, 24, and 25.1 of the American Convention, in accordance with Article 1.1 thereof and Article 7 of the Convention of Belém do Pará, to the detriment of Mrs. Giovanna Janett Vidal Vargas. It also decided to notify the parties of this decision and to order its publication in the Annual Report to the OAS General Assembly.

II. PROCEEDING BEFORE THE COMMISSION

4. The Commission received the petition by mail and recorded it under No. P-552-05. After performing a preliminary analysis, on December 8, 2005, the IACHR forwarded to the State the relevant part of the petition so that it could submit its observations. On February 3, 2006, the State asked for an extension for submitting its response, which was granted. The State submitted its response on March 30, 2006, which was forwarded to the petitioner for its observations. On August 16, 2006, the petitioner asked for an extension for submitting its response, which was granted. The petitioner submitted its response on August 29, 2006, which was forwarded to the State for its observations. In a communication dated November 29, 2006, the State asked for an extension for submitting its response, which was granted. On

¹ As provided in Article 17.2 of the Commission's Rules of Procedure, Commissioner Felipe González, a Chilean national, did not participate in the debate or the decision on this petition.

August 30, 2007, the Commission reiterated its request to the State for observations. On January 7, 2008, the petitioner submitted additional information, which was forwarded to the State for its information.

III. POSITION OF THE PARTIES

A. The petitioner

5. The petitioner alleges that during the early morning hours of August 24, 2003, Giovanna Vidal was the victim of an alleged rape committed by a military officer, inside a residence in the military garrison in the city of Puerto Aysén, Chile, where the alleged attacker lived. The petitioner states that Mrs. Vidal knew the alleged attacker and the night before these events had agreed to accompany him to his house after they left a nightclub, and once they were inside the house, he suggested insistently that they have sex but she refused. Despite that, the alleged attacker began to threaten Mrs. Vidal, telling her “take off your clothes [...] I’m already bored. Hurry up or I’ll kill you; I’m a military man and here they do what I say.” He also held her down and began to struggle with her to remove her clothes. The petitioner states that faced with these threats, Mrs. Vidal removed some items of clothing but he continued to struggle with her, and although she kept on resisting, he penetrated her vaginally without her consent. The petitioner states that Giovanna Vidal managed to run out of the place, nude, and went to a neighbor’s house to seek help.

6. The petitioner states that these facts were reported to the Prosecutor’s Office of Puerto Aysén on the same day as they allegedly occurred, and an order was issued to begin the respective investigation. The petitioner claims that the case was brought to trial a year after the events reported and ended with a decision in the Single Chamber of the Criminal Court of Coyhaique on August 29, 2004, absolving Mrs. Vidal’s alleged attacker of responsibility. The petitioner states that the alleged victim’s defense filed an appeal to overturn this decision. The appeal was rejected in a decision by the Appeals Court of Coyhaique on October 26, 2004.

7. The petitioner states that during the investigation stage and in the context of the criminal trial, the alleged victim was represented by the Center for Comprehensive Care of Victims of Violent Crimes (hereinafter “CAIVDV”), a government agency reporting to the Judicial Assistance Corporation, which submitted a criminal complaint to the Prosecutor’s Office of Puerto Aysén and subsequently filed a specific charge with the Trial Court. The focus of the petitioner’s allegations before the IACHR is the lack of proper access to justice in terms of the guarantees of due legal process and equality before the law, to the detriment of the alleged victim. It maintains that in the context of the investigation conducted by the Chilean authorities and the criminal proceeding against the alleged attacker, a series of defects and irregularities were committed that helped to ensure that the sexually violent acts would go unpunished. It argues that the actions of the State are particularly serious considering the State’s enhanced obligation to duly prosecute and punish violence against women, in accordance with the provisions of the Convention of Belem do Pará.

8. Regarding the investigative phase, the petitioner indicates that on the same day as the events reported, Mrs. Vidal was taken by police officers – who came to the neighboring house where she was after the alleged attack – to the Hospital of Puerto Aysén where she was given a gynecological examination by the doctor on shift at that hospital. The petitioner indicates that during the criminal trial conducted later, the physician was summoned as an expert witness for the Prosecutor’s Office and in his statement said that he had detected “slight lesions and signs of sexual abuse” in the alleged victim. In addition, he specified that the gynecological examination had indicated that “there were no tears [...] no anal lesions and she had no hymen because she wasn’t a virgin,” and that it was difficult to perform the examination because the alleged victim “didn’t stop crying” and showed “emotional shock.”

9. The petitioner maintains that the actions of the Prosecutor’s Office in this case were not consistent with the standards of due diligence required in cases of sexual violence against women. In this regard, the petitioner points out first that the investigative measures and the indictment drawn up by the Prosecutor’s Office and the CAIVDV focused on arguing that the alleged sexual attack had been committed with the use of force and not whether or not [the victim] consented to the sexual act. The

petitioner maintains that they failed to diligently gather material evidence at the scene of the crime, taking into account the evidence indicated in the alleged victim's statement, for example, that she had thrown a bottle at her alleged attacker to defend herself, but the bottle was not collected because they did not consider it necessary evidence in the investigation.

10. In addition, the petitioner states that according to the provisions of the Chilean Penal Code, the crime of rape may be committed with the use of force or with intimidation. However, it argues that in the context of the criminal investigation, they threw out as one of the principal elements of the crime the intimidation to which the alleged victim had been subjected and her lack of consent to the sexual act, aspects on which Mrs. Vidal had insisted at various times during her testimony in the proceeding. In this respect, the petitioner maintains that the gathering of evidence and investigation were deficiently carried out and were not suitable for guaranteeing the alleged victim effective access to justice, since this lack of due diligence helped to make it impossible to establish in the criminal trial that there had been a sexual assault against the victim, based on the alleged lack of evidence of force as an element used in committing the rape.

11. As an example of the above, the petitioner emphasizes that in the context of the trial, although expert psychological testimony was submitted supporting the alleged victim's version regarding the alleged intimidation, the Trial Court of Coyhaique threw out that assumption because it was not supported in the indictments submitted by the Prosecutor's Office and the CAIVDV. In this respect, the decision of that Court defined a qualified standard in the evidentiary procedure during the proceeding, in the sense of considering that if physical force had occurred – as the only element possibly used in committing the crime charged – such force “should have been objectively shown, either by bodily lesions or damage to clothing, whether his or hers, due to offensive or defensive action.” On the element of intimidation, the Court offered the following considerations:

[...] Should one want to see forced intercourse based on intimidation in this case, it should be pointed out in this regard that such fact not only escapes the precise and single framework of both indictments – which did not refer to it – but furthermore is not sufficiently demonstrated in the case because it constitutes a fact disputed by the accused about which there is no proof that would lead the Court to a conviction beyond all reasonable doubt. It is worth remembering that when the discotheque closed at about 5:30 a.m. – the girl chose not to return immediately to her home – where the man she planned to marry in September was waiting for her along with her small son – in order to go off with the “respectful and passive” young man with whom she had been dancing, and who had also declared to her some time ago, to a house – she knew to be isolated – to listen to music and drink with him, until the taxi came for them two hours later. It didn't seem at all strange to her, not even that they would start drinking while sitting at the foot of the double bed. And when he asked her to accept his sexual advances, she tried to leave, picking up her coat and purse but – as she stated during the defense's cross-examination – she didn't leave because she tried to calm him down, which she said she managed to do somewhat and although he was upset, she remained talking to him, all of which statements create doubts that are also reasonable regarding the forethought and subsequent transcendence of real psychological pressure to subject the victim, in this precise way, to the full sexual desire of the defendant.²

12. The petitioner argues that considerations of this kind made by the Trial Court in its decision are also evidence that in the framework of the trial the actions of the justice system focused on judging the conduct and personality of the alleged victim, as well as the veracity of her testimony regarding the reported facts and not on proving the unlawful act. For example, it is notable that the fact that Mrs. Vidal imbibed alcohol on the day of the events, while not disputed by her, was repeatedly the subject of the Court's consideration – in the various determinations made in its decision.

13. According to the petitioner, the decision also took into account aspects relating to Mrs. Vidal's private life, for example, that she had a partner and had agreed to go alone to the house of a man who was not her partner. In addition, her testimony was evaluated by the Court taking into account the

² A copy of the complete text of the Trial Court's decision of August 29, 2004 was submitted as an annex to the initial petition received on May 17, 2005.

statements of witnesses presented by the accused's defense who, based on terms referred to in the decision, made statements regarding Mrs. Vidal's "wanton life," referring to her sex life prior to the reported events. That testimony consisted of the statements made by various military officers, about whom the Court stated that "they seemed to be sincere."

14. In this regard, the petitioner alleges the use of discriminatory prejudices and stereotypes regarding a women's private and sexual life, evaluated as relevant circumstances for establishing the commission of the crime of rape. The petitioner maintains that the elements described on the whole represent an alleged lack of impartiality on the part of the judicial authorities to the detriment of Mrs. Vidal, ignoring the specific situation of vulnerability in which she found herself as the victim of alleged sexual violence .

15. According to the petitioner, this alleged lack of impartiality was also evidenced by the criteria the Court used to evaluate the version provided by the alleged attacker and Mrs. Vidal regarding the reported facts. The petitioner specifically calls attention to the recognition of responsibility for the events that the accused have made during initial phase of the investigation, which he later retracted alleging that he had been pressured to accept his culpability. The petitioner alleges that in its decision the Trial Court considered this allegation by the accused to be credible, without offering any reasonable explanation for reaching that conclusion. Nonetheless, regarding Mrs. Vidal's testimony, the Court used different arguments to dismiss the veracity of the facts as reported by the alleged victim.

16. In this regard, the petitioner argues that the decision questioned the credibility of Mrs. Vidal, considering that there were certain inaccuracies in the account she gave during the trial and in the psychological evaluations to which she was subjected, without taking into account the time elapsed between these statements and that the statement made at trial meant publicly exposing a sexually charged traumatic episode in her life about which there is a social stigma that is prejudicial against her. The petitioner emphasizes the terms used in the decision to refer to the "insincerity and twisted statements" of the alleged victim, her "hyperbolic and manipulated account [...] regarding the capricious handling of the situation," and the "incoherence" of her account.

17. The petitioner argues that another argument used by the Court to dismiss the alleged sexual assault – with the use of force – was the failure to demonstrate the existence of bodily injuries that could be used to establish the alleged victim's resistance to the sexual attack or that she had been violently subjected to such attack. In addition, the Court established that the psychological effects of the alleged rape not been properly demonstrated at trial.

18. In this regard, the petitioner explains that expert psychological testimony was ordered and indicated the emotional damage caused by the alleged rape, but that this evidence was rejected by the Court because it felt it should be accredited by a psychiatrist. That determination was made based on an academic article on neuropsychiatry regarding the disorder of post-traumatic stress cited in the referenced decision, with the Court reaching its own conclusions on the subject, but without providing additional arguments for this. In this respect, the petitioner maintains that this is common practice in cases of sexual violence in Chile, in which judges who are "not steeped in the discipline of psychology, misinterpret the conclusions of experts and use them as the foundation for conclusions opposite to what the experts tried to assert."

19. The petitioner argues that this circumstance also reveals the lack of due diligence in the actions of the judicial and investigative bodies, in terms of compiling the evidence needed to demonstrate that the crime occurred. It alleges that the absence of this expert psychiatric testimony was also used to belittle the credibility of Mrs. Vidal's statements and limited the ability to confirm the alleged emotional effects she suffered following the alleged rape. In addition, the petitioner emphasizes that although expert psychological testimony could be used to evaluate the existence of threats made in committing the crime – which was considered by the Court – the Court again established that the allegation contradicted the foundation of the indictments submitted, i.e., the use of force and not intimidation.

20. In summary, the petitioner maintains that the actions of the authorities in the referenced criminal proceeding constituted a diminishment of the duty of the State not to discriminate and to guarantee access to justice for the alleged victim under equal conditions. It maintains that the State had a duty to provide special protection given its international obligations to eradicate violence against women, particularly acts of sexual violence like those denounced in this petition, specifically in accordance with the provisions of Articles 3, 4, and 7.b) of the Convention of Belém do Pará. The petitioner also alleges that as a result of the alleged attack endured and of having to confront her situation publicly – in the context of the judicial proceeding – the alleged victim suffered serious emotional damage affecting her normal social and family development.

21. Regarding the exhaustion of domestic remedies, the petitioner alleges that they were exhausted with the decision of the Appeals Court of Coyhaique on October 26, 2004, rejecting the appeal that sought to overturn the decision of the Trial Court. Regarding the deadline for submission, the petitioner alleges that the petition brief was presented to the IACHR on April 25, 2005, so that it falls within the period of six months established in Article 46.1.b) of the American Convention.

B. The State

22. In response to the complaint submitted, the State maintains that the petition does not meet the admissibility requirements of the American Convention, primarily with reference to the deadline for submission established in Article 46.1.(b) of that instrument. In this regard, it argues that the petition was submitted to the Commission on May 17, 2005, as recorded on the date of its receipt. It does not dispute that the domestic remedies were exhausted through the decision of the Appeals Court of Coyhaique of October 26, 2004, as alleged by the petitioner. However, it argues that based on that date it is obvious that the petition was [submitted] “absolutely outside the period of six months.”

23. In addition, the State maintains that the petition does not present facts that would establish violations of rights enshrined in the American Convention or in the Convention of Belém do Pará, and that the petition is manifestly groundless, so that it should be declared inadmissible based on the provisions of Article 47(b) and (c) of the American Convention. In this regard, the State alleges that during the criminal proceeding on the alleged occurrence of the crime of rape to the detriment of Mrs. Vidal, the Chilean authorities acted in accordance with the rules of due process, and the rights of everyone participating in the proceeding were guaranteed, in accordance with the provisions of international treaties and the domestic legal system.

24. In this respect, the State emphasizes that the interests of the alleged victim were represented in the judicial proceeding both by the actions of the Public Prosecutor’s Office and by the CAIVDV in its capacity as an individual accuser. It also points out that once the competent authority became aware of the events that allegedly occurred on October 24, 2003, an order was issued to adopt the measures necessary to protect the interests of the alleged victim and she was provided the medical care required in cases involving reported rapes.

25. It also alleges that the criminal trial was designed to establish the occurrence of the crime of rape, allegedly committed with the use of force or through intimidation, considering that both assumptions are included in the crime as defined in Article 361(1) of the Chilean Criminal Code, which crime was attributed to the person indicated as allegedly responsible and indicated in the accusations filed both by the Public Prosecutor’s Office and the CAIVDV. Nonetheless, it emphasizes that the statements made by the alleged victim could indicate that the crime was allegedly committed primarily with the use of force, so that the investigative and evidentiary emphasis focused on establishing that assumption.

26. The State also maintains that the alleged exclusion of intimidation as a component method of the crime had no effect on the result of the trial, in that this aspect can only be confirmed through the testimony of the alleged victim because there were no other witnesses to the alleged crime. In this regard, it argues that the considerations made by the Trial Court regarding the veracity of the

reported facts were based on all the evidence gathered and on the legal foundations of the factual determinations made and the legal consequences assigned.

27. Similarly, the State alleges that the actions of the Public Prosecutor's Office in the investigation of the facts were consistent with due diligence standards. It maintains that the alleged omissions in the gathering of material evidence, specifically that the bottle that the alleged victim claimed to have used to defend herself against her attacker was not collected as evidence, were justified because they were not useful to clarifying the facts under investigation. It maintains that during the trial, the Prosecutor's Office presented the evidence it deemed relevant for confirming the occurrence of the events reported, including the expert psychological evaluations performed on the alleged victim, considering that they were sufficient to confirm the alleged emotional damage caused to Mrs. Vidal.

28. The State emphasizes the CAIVDV's involvement during the criminal proceeding. It maintains that Mrs. Vidal had access at all times to complete psychological care, legal counsel, and proper legal representation, as is evident from the various measures taken to protect her interests in the context of the judicial proceeding, including: i) filing of an individual accusation and a civil action on her behalf; ii) inquiries made regarding the existence of the accused's real assets in preparation for compensatory civil actions, although the results were negative; iii) consideration given to the alternative outcome of conditional suspension of the proceeding in view of the fact that the alleged victim had a psychological condition, which was exacerbated by her participation in the trial; and iv) an appeal filed against the acquittal on August 29, 2004. In addition, the State points out that when the decision of the Appeals Court of Coyhaique rejecting the appeal became known, a visit was made to Mrs. Vidal's home to explain the result of that judicial action, followed by monitoring of Mrs. Vidal's situation until May of 2005.

29. In addition, the State alleges that the judicial authorities that issued the Trial Court's decision also respected the guarantees of due process, including the guarantee of impartiality. In this regard, it alleges that the acquittal of the accused was justified considering the theories of the case discussed during the trial, both by the Public Prosecutor's Office and the individual complainant and the accused's defense. In this sense, it alleges that each and every item of evidence presented in the trial was considered and evaluated as required by the legal system.

30. In summary, the State maintains that the rights of the alleged victim were guaranteed and that her case was heard under conditions of equality by competent and impartial authorities, diligently responding to the complaint she filed. It alleges that the IACHR cannot act as an appeals court to reverse decisions that turned about to be unfavorable to the alleged victim, but that were issued in accordance with the Chilean State's international obligations and Chilean law.

31. Based on these considerations and the failure to meet the admissibility requirement in terms of the deadline for submission, the State asks the Commission to declare the petition inadmissible.

IV. ANALYSIS OF ADMISSIBILITY

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

32. The petitioner is authorized, in principle, by Article 44 of the American Convention to submit petitions to the Commission. The petition indicates as the alleged victim an individual, with respect to whom the Chilean State agreed to respect and guarantee the rights enshrined in the American Convention. With respect to the State, the Commission points out that Chile has been a party to the American Convention since August 21, 1990, the date when it deposited the respective ratifying instrument, and has also been a party to the Convention of Belém do Pará since November 15, 1996. Therefore, the Commission is competent *ratione personae* to examine the petition.

33. The Commission is competent *ratione loci* to hear the petition, in that it alleges violations of rights protected in the American Convention and the Convention of Belém do Pará that occurred in Chilean territory, a State Party to that treaty [sic].

34. The Commission is competent *ratione temporis* in that the obligation to respect and guarantee the rights protected in the American Convention and the Convention of Belém do Pará was already in effect for the State on the date the events alleged in the petition occurred. The Commission is competent *ratione materiae*, because the petition reports violations of human rights protected by the American Convention and the Convention of Belém do Pará.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

35. Article 46.1.a) of the American Convention requires the previous exhaustion of the remedies available in the domestic jurisdiction in accordance with generally recognized principles of international law as a requirement for the admission of complaints regarding the alleged violation of the American Convention. Article 46.2 of the Convention provides that the requirement of prior exhaustion of domestic remedies is not applicable when (i) the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (ii) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (iii) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

36. For purposes of the admissibility of this case and according to the available information, the Commission notes that in this petition the criminal proceeding was a suitable remedy and that there is no dispute on this point between the parties. In this regard, the Commission deems it relevant to point out that the facts related to the alleged rape to the detriment of Giovanna Vidal are reflected in domestic legislation as crimes that are prosecutable *ex officio*.³ In this regard, the precedents established by the Commission establish that whenever a crime that should be prosecuted *ex officio* is committed, the State has the obligation to promote and advance the criminal proceeding and that, in such cases, this is the suitable venue for clarifying the facts, prosecuting those responsible, and establishing the respective criminal penalties, as well as facilitating other methods of monetary compensation.⁴

37. In this regard, the IACHR notes that, according to the information provided by the parties, the Prosecutor's Office of Puerto Aysén conducted an investigation after learning of the events that allegedly occurred on August 24, 2003. On October 17, 2003, a hearing was held to formalize the investigation against the person indicated by Mrs. Vidal as the person allegedly responsible for the crime of rape, punished under the Chilean Penal Code in effect at the time. On November 27, 2003, the CAIVDV filed a criminal complaint with the Prosecutor's Office of Puerto Aysén against the accused for the same crime of rape.

38. The investigation concluded on April 14, 2004 and on April 15, 2004, the Public Prosecutor's Office of Puerto Aysén submitted the formal indictment against the accused for the crime of rape. For its part, the CAIVDV submitted an individual accusation and civil action against the accused, representing Mrs. Vidal. The criminal trial was conducted August 19, 20, 21, and 24, 2004, and on August 29, 2004, the Criminal Trial Court of Coyhaique handed down an acquittal in favor of the accused. That decision was challenged by the CAIVDV through an appeal filed with the Appeals Court of Coyhaique. On October 26, 2004, the Appeals Court rejected that appeal, and the decision on appeal was affirmed.

³ Chilean legislation classifies the crime of rape under Article 361 of the Penal Code, establishing: "The rape of a woman will be punished by ordinary imprisonment for a maximum term to rigorous imprisonment for a medium term. Rape is committed by lying with a woman in any one of the following cases: 1. When force or intimidation is used [...]".

⁴ IACHR, Report No. 52/97, Case 11.218, Arges Sequeira Mangas, 1998 Annual Report of the IACHR, paragraphs 96 and 97. See also IACHR, Report No. 55/97, Juan Carlos Abella, paragraph 392. Report 57/00 La Granja, Ituango, 2000 Annual Report of the IACHR, paragraph 40.

39. The Commission notes that the State did not indicate that the petitioner had other suitable and effective remedies available for challenging the decision of the Appeals Court of Coyhaique. Thus, given the characteristics of this petition and the information available, the Commission concludes that the complaint under review meets the requirement of prior exhaustion of domestic remedies provided in Article 46.1.a) of the American Convention.

2. Deadline for submitting the petition

40. The American Convention establishes that in order for a petition to be admissible by the Commission it must be submitted within a period of six months from the day the alleged injured party is notified of the final decision.

41. In the complaint under review, the parties are in disagreement regarding compliance with this requirement. The petitioner argues that the petition was submitted to the IACHR on April 25, 2005 and the decision of the Court of Appeals of Coyhaique, ruling on the appeal, was reported on October 26, 2004. Thus, the petitioner feels that, since this was the last remedy to be exhausted in the domestic jurisdiction, the petition was submitted within the required timeframe. For its part, the State alleges that the petition was made known to the Commission on May 17, 2005 – beyond the six month deadline – and that this is the date when the petition was received by the IACHR Executive Secretariat.

42. The Commission notes that the petition brief dates from April 25, 2005 and was recorded as received at IACHR headquarters – by mail – on May 17, 2005. In accordance with IACHR practice in this area,⁵ assuming the days that passed while the petition was in the mail, the Commission considers that the petition was submitted on a timely basis, thus satisfying the requirement established in Article 46.1.b) of the American Convention.

3. Duplication of proceedings and international res judicata

43. The case file does not indicate that the subject of the petition is pending in any other international proceeding, or that it reproduces a petition already examined by this or any other international body. Therefore, it is appropriate to deem that the requirements established in Article 46.1.c) of the American Convention have been met.

4. Characterization of the alleged facts

44. In this admissibility stage, the Commission feels that it is not appropriate to determine whether or not the alleged violations occurred. For admissibility purposes, the IACHR must decide whether the facts presented tend to establish possible violations of the American Convention, as stipulated in Article 47.b) of the American Convention. The criterion for assessing these points is different from that required to decide on the merits of a complaint. The Inter-American Commission must perform a *prima facie* evaluation to examine whether the complaint supports the apparent or potential violation of a right guaranteed in the American Convention.⁶ This is a summary analysis and does not entail prejudgment or any advance opinion regarding the merits of the dispute. The distinction between the analysis corresponding to the statement on admissibility and that required to determine a violation is reflected in the IACHR's Rules of Procedure, which clearly establish the distinction between the admissibility and merits phases.⁷

⁵ See: IACHR, Report No. 69/08, Petition 681-00, Guillermo Patricio Lynn, Argentina, Admissibility, 16 October 2008, paras. 44-46; Report No. 93/03, Petition 337-07, Samanta Nunes da Silva, Brazil, Admissibility, 7 September 2009, paras. 43- 44; Report No. 79/08; Petition 95-01, Marcos Alejandro Martín, Argentina, Admissibility, 17 October 2008, paras. 38-39.

⁶ See IACHR, Report No. 128/01, Case 12.367, Herrera and Vargas ("La Nación"), Costa Rica, 3 December 2001, para. 50.

⁷ See IACHR, Report No. 31/03, Case 12.195, Mario Alberto Jara Oñate et al., Chile, 7 March 2003.

45. In the instant petition, the petitioner maintains that various rights protected by the American Convention and the Convention of Belem do Pará were violated due to the State's lack of due diligence in investigating and punishing the alleged rape of the victim Giovanna Vidal. The petitioner specifically alleges violations of the right to humane treatment, the right to a fair trial, and the right to equal protection, enshrined in the American Convention; and a woman's right to live free from violence and to the recognition, enjoyment, exercise, and protection of her rights and the State's failure to comply with its duty to apply due diligence to prevent, investigate, and impose penalties for violence against women, in accordance with the provisions of Articles 3, 4, and 7.b) of the Convention of Belem do Pará. For its part, the State alleges that the petition does not present facts establishing violations of human rights.

46. The State also maintains that the petition is inadmissible specifically in that it seeks to have the Commission act as a court of fourth instance to review decisions that, while they were not favorable to the interests of the alleged victim, were issued by domestic courts within the framework of their jurisdiction and in accordance with the rules of due process.

47. With respect to this allegation, the Commission reiterates what it has established in its case law, affirming that while it cannot act as an appeals court for reviewing alleged errors of fact or law that may have been committed by domestic courts,⁸ the Commission is competent, within the limits of its mandate to guarantee the observance of rights enshrined in the American Convention, to declare a petition admissible and to find on the merits when the petition refers to actions by agents of the State – including matters relating to the issuance of a domestic court decision – that have been carried out on the margins of due process or in violation of any other right guaranteed by the Convention.⁹

48. In this regard, the Commission notes that the petitioner has not asked the IACHR to rule on the issue of whether Chilean courts applied Chilean procedural law correctly or on the evaluation of the evidence, an issue reserved in principle to the domestic courts. The petitioner seeks a ruling on whether the State of Chile, through its State agents, violated the rights enshrined in the American Convention on Human Rights and the Convention of Belém do Pará, with respect to the special duty to protect that the State of Chile agreed to guarantee in relation to the right of women to live free of violence.

49. Neither the American Convention nor the Rules of Procedure of the Commission require the petitioner to identify the specific rights alleged to have been violated by the State in the matter submitted to the IACHR, although petitioners may do so. It is up to the Commission, based on the system's case law, to determine in its admissibility reports which provisions of the relevant inter-American instruments is applicable and it may establish their violation if the alleged facts are proven with sufficient evidence.

50. The Commission deems *prima facie* that the allegations present issues related to the right to equal protection under Article 24, in connection with Articles 8 and 25 and Article 7 of the Convention of Belém do Pará, which correspond to an analysis in the merits phase. The petitioner maintains that the Chilean judicial system committed irregularities and mistakes in due process in a case of sexual violence, compromising the State's international responsibility because it failed to meet its duty to act with due diligence, as required to duly prosecute and punish acts of violence against women. The petitioner alleges that the actions of the judicial and investigative authorities in the context of the criminal proceeding carried out due to the crime of rape were determined by stereotypical notions regarding the conduct and sexual life of the alleged victim, which negatively affected the investigation of the case, the gathering and evaluation of evidence, and the analysis of the alleged attacker's responsibility.

51. The petitioner maintains that this conduct constituted a form of discrimination and violated the alleged victim's right to effective access to justice under conditions of equality. In addition, the

⁸ See IACHR, Report No. 52/02, Case 11.753, Merits, Ramón Martínez Villareal, United States, 10 October 2002, para. 53; IACHR, Report No. 39/96, Santiago Marzoni v. Argentina, Annual Report of the IACHR 1996, paras. 48 – 51.

⁹ See IACHR, Report No. 52/02, Case 11.753, Merits, Ramón Martínez Villareal, United States, 10 October 2002, para. 53; IACHR, Report No. 39/96, Case 11.673, Santiago Marzoni v. Argentina, Annual Report of the IACHR 1996, paras. 48 – 51

petitioner maintains that the decision absolving the alleged perpetrator of the alleged rape of responsibility was based on various sociocultural patterns and discriminatory prejudices generally used to stigmatize women victims of sexual violence. In this respect, it alleges that the Trial Court's ruling included degrading expressions referring to the conduct of the alleged victim and her personality, which would indicate a lack of impartiality in the criteria used as the basis for its decision.

52. With respect to Articles 3 and 4 of the Convention of Belém do Pará, the Commission notes that these articles do not constitute legal bases for admitting the petition. Nonetheless, the IACHR will consider them, to the extent they are relevant, in its interpretation of Article 7 of the Convention of Belém do Pará in the merits phase. The Commission clarifies that the purpose of its review in the merits phase is not to review issues of the interpretation or application of domestic law but to analyze whether Giovanna Vidal had due access to justice under conditions of equality and free from all forms of discrimination.

53. The Commission believes that the allegations may also constitute violations of the rights protected by Articles 5.1 and 11.2 of the American Convention. The petitioner argues that in the context of the criminal proceeding for the alleged rape, matters were aired regarding Mrs. Vidal's private life that were not relevant to proving the crime, including references to her sexual and family life, the purpose being to question her credibility and condition as the victim of rape, exacerbating the emotional impact the alleged victim suffered following the alleged attack.

54. Considering the factual and legal evidence presented by the petitioner and the nature of the matter submitted for hearing by the Commission, the IACHR considers that the complaint under review relates to facts that, if proven, could tend to establish violations of the rights protected in Articles 5.1, 11.2, 8.1, 24, and 25 of the American Convention, all in connection with Article 1.1 of that instrument, and Article 7 of the Convention of Belem do Pará to the detriment of Giovanna Vidal.

V. CONCLUSIONS

55. The Inter-American Commission concludes that it is competent to hear the merits of this case and that the petition is admissible in accordance with Articles 46 and 47 of the American Convention. Based on the factual and legal arguments presented in this report, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition admissible with respect to alleged violations of the rights recognized by Articles 5, 8.1, 11.2, 24, and 25.1 of the American Convention, in connection with Article 1.1 of that instrument, and Article 7 of the Convention of Belém do Pará, interpreted in the light of Articles 3 and 4 of that Convention, to the detriment of Giovanna Janett Vidal Vargas;

2. To notify the Chilean State and the petitioner of this decision;

3. To continue with analysis of the merits of the case, and

4. To publish this decision and include it in its Annual report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 13th day of the month of November, 2012.
(Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Rosa María Ortiz and Rose-Marie Antoine, Commissioners.