

OEA/Ser.L/V/II.156
Doc. 5
17 October 2015
Original: Spanish

REPORT No. 53/15

PETITION 706-04

REPORT ON ADMISSIBILITY

MARIO GALETOVIC SAPUNAR ET AL
CHILE

Approved by the Commission at its session No. 2046 held on October 17, 2015
156 Regular Period of Sessions.

Cite as: IACHR, Report No. 53/15, Petition P-706-04. Admissibility. Mario Galetovic Sapunar et al. Chile. October 17, 2015.



REPORT No. XX/15¹
PETITION 706-04
ADMISSIBILITY
MARIO GALETOVIC SAPUNAR ET AL.
CHILE
OCTOBER 17, 2015

I. SUMMARY

1. On July 21, 2004, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received a petition from Mario Galetovic Sapunar (hereinafter “the petitioner”), alleging the international responsibility of the State of Chile (hereinafter “the State” or “Chile”) for the violation of Articles 13 (freedom of expression), 21 (right to property) and 25 (judicial protection) of the American Convention on Human Rights (hereinafter the “American Convention” or the “Convention”) to his detriment and to the detriment of Daniel Ruiz Oyarzo, Carlos González Jaksic, Oscar Santiago Mayorga Paredes, Hugo René Formantel Díaz, and Nestor Edmundo Navarro Alvarado (hereinafter “the alleged victims”).

2. This petition is related to the January 21, 2004 decision in which the Chilean Supreme Court denied the alleged victims—based on the time-barring of the civil action by the statute of limitations—access to financial reparations to compensate them for the actions taken against them following the coup of September 11, 1973. According to the petitioner, the civil action he filed in 1995 sought to reverse the effects of the decrees issued by the *de facto* government ordering the dissolution and closure of the petitioner’s radio station *La Voz del Sur*, as well as the confiscation of the radio station’s assets and facilities, “in order to silence political dissidence.” The petitioner alleged that the Court’s decision violated his right of access to effective justice, and “not only deprived him of his right to property” but also prevented his “opinion from once again being communicated” through fair reparations once democracy was restored in his country.

3. For its part, the State maintained that this petition should be declared inadmissible because it concerns events that occurred prior to the date on which the State deposited its Ratification Instrument, and that began prior to March 11, 1990. According to the State, this case would fall within one of the limitations imposed by the Government of Chile upon recognizing jurisdiction; that is, it would be time-restricted. It also asserts that “in acknowledging the competence and jurisdiction of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, the Government of Chile declares that, when these bodies apply the provisions of Article 21.2 of the Convention, they may not make statements concerning the reasons of public utility or social interest taken into account in depriving a person of his property.”

4. After examining the positions of the parties in light of the admissibility requirements established in Articles 46 and 47 of the Convention, as well as Articles 30 and 36 of the IACHR’s Rules of Procedure, and without prejudging the merits of the case, the IACHR decided to declare the petition admissible with respect to the alleged violation of Articles 8 (right to a fair trial), 13 (freedom of expression), 21 (right to property) and 25 (judicial protection) of the American Convention, in light of the general obligations enshrined in Articles 1.1 and 2 thereof. Finally, the Commission decided to give notice to the parties, publish this report, and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE INTER-AMERICAN COMMISSION

5. The petition was received by the IACHR on July 21, 2004. On December 22, 2004, the IACHR forwarded the pertinent parts of the petition to the State, requesting the submission of its reply within two months. On February 16, 2005, the State submitted its reply to this petition, the pertinent parts of which were forwarded to the petitioner on March 15, 2005.

¹ Commissioner Felipe González, a Chilean citizen, did not take part in the deliberations or in the decision related to this petition, in accordance with Article 17.2.a of the Commission’s Rules of Procedure.

6. On April 22, 2005 the petitioner submitted its observations to the State's report, the pertinent parts of which were forwarded to the State on June 22, 2005. Additionally, on July 18, 2005, the petitioner submitted additional information. On May 18, 2009, the Commission requested updated information from the parties. On March 15, 2011, the Commission again asked the petitioner for information. On September 22, 2013, the petitioner reported a change in representation for the petition in question, indicating that Attorney Macarena Sáez Torres had assumed the position of representative. In addition, on January 29, 2014, the petitioner submitted additional information.

7. With respect to the State, the May 18, 2009 request for information was reiterated on November 11, 2011, November 27, 2013, May 21, 2014, and June 6, 2014.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

8. According to the petition, Mr. Mario Galetovic Sapunar was an administrator and partner in the radio station "La Voz del Sur," together with Messrs. Daniel Ruiz Oyarzo, Carlos González Jaksic, Oscar Santiago Mayorga Paredes, Hugo René Formantel Díaz, and Nestor Edmundo Navarro Alvarado. He states that the alleged victims owned the radio station through the business corporation "Ruiz y Compañía Ltda." The station operated in Punta Arenas, Magallanes, "the southernmost city in Chile."

9. The petitioner alleged that on September 11, 1973 forces that reported to the Ministry of Defense of the Republic of Chile took control of the radio station's facilities. The petitioner stated that this situation remained in effect for some months, until Order 473, issued by the Ministry of the Interior in 1974, declared "the corporation's property status under study," and barred it from entering into legal transactions or contracts pertaining to its assets. Similarly, the petitioner stated that the order required them to provide an explanation, within 10 days, of the assets in their possession, "under the warning that they were considered to belong to dissolved political parties." The petitioner stated that, given the circumstances in Chile, many of the individuals summonsed to appear were reportedly deprived of their liberty, disappeared, dead, in hiding, or in exile, and therefore the requirement was "unlawful" and "impossible to meet." Additionally, the petitioner asserted that the corporation was declared dissolved by virtue of Order 1163 issued by the Ministry of the Interior in 1974, which ordered that all of its assets be turned over to the Chilean State, and that the tax authorities had therefore become the successor to the corporation's assets.

10. The petitioner maintained that once democracy was restored in Chile a national debate arose for the return of confiscated assets. Nevertheless, in view of the apparent delays in that debate, the alleged victims decided to file a civil action in September 1995 seeking the nullification of Orders No. 473 and No. 1163, both of 1974, and consequently the restitution and return of their assets. He stated that the action was heard and decided by the Seventh Civil Court of Santiago. At that trial, according to the petitioner's account, the Chilean tax authorities asserted as their main defense the lawfulness of the Military Government's actions and the application of the statute of limitations in the State's favor. They alleged that this case "took quite a long time," and that it was adjudicated in November 1997 in the plaintiffs' favor, against the Chilean State. According to the case file, the State challenged that decision, but the Santiago Court of Appeals affirmed the trial court's decision.

11. The petition stated that the tax authorities filed a petition for cassation in 2003 before the Chilean Supreme Court, challenging the above-cited decision. According to the allegations, during this period of time the Congress of the Republic passed Law 19.568 on the return of assets, ordering the return of—but not compensation for—assets to the affected parties, organizations, and individuals. In addition, it required those who availed themselves of the return of assets to withdraw any pending legal actions, and provided a one year final deadline for applying to the Ministry of National Assets. The petitioner observed that the Law was enacted after the Chilean Supreme Court held "invariably" that actions seeking the nullity of public laws are not subject to statutes of limitation and therefore the State of Chile had to return the assets and compensate the affected private parties.

12. The petitioner stated that on January 21, 2004, the Supreme Court ruled on the abovementioned petition for cassation filed by the tax authorities, accepting the State's argument in part. The Court held that although the challenged orders are legally null and void, the property-related consequences of that nullity were subject to statutes of limitation. The petitioner indicated that the Supreme Court's judgment contained no reference to the acknowledgement that the State of Chile had made with respect to Law 19.568.

13. According to the petitioner, the Chilean State has violated both the domestic law of the Republic of Chile and the human rights enshrined in the American Convention. He specified that while the military regime was in power, the State deprived the alleged victims of their assets without compensation and without adhering to the laws in effect at the time. The petitioner further alleged that during the democracy, although the Supreme Court upheld the nullity of the orders that dissolved the radio station and confiscated its assets, "it denied the alleged victims the legal consequences of that decision; that is, it denied the petitioners their right to fair reparation or compensation." The petitioner alleged that not only had they been deprived of their property but they had also been "deprived of the radio station in order to silence political dissidence, and because it is not being returned now, we are prevented from once again communicating our opinion."

14. Additionally, in a communication dated April 15, 2005, the petitioner stated that although the remote factual background may have taken place between 1973 and 1974, the issue is that a State body declared that those violating acts are null and void. In spite of the decision of the Chilean Supreme Court to this effect, the alleged victims have reportedly not been given back the radio broadcast station of which they were deprived. Similarly, he asserted that it is impossible to argue that the facts originate in the time period excluded from the jurisdiction of the Commission, as the alleged violations of the Chilean State—specifically the judgment that denied the right to compensation and restitution—were committed by State bodies through acts that took place after 1990.

15. Finally, it bears mentioning that, in a communication dated January 30, 2014, the petitioner reported that from the time he filed the petition to the present, Messrs. Carlos González Jaksic, Daniel Ruiz Oyarzo, Hugo René Formantel Díaz, and Nestor Edmundo Navarro Alvarado have died. He additionally reported that Mr. Mario Galetovic Sapunar is 83 years old.

B. Position of the State

16. According to the State, this complaint is based on acts that took place during the military regime that held power in Chile from September 1973 to March 1990. Accordingly, Chile maintained that this petition would be inadmissible under Article 47.c. of the American Convention, as the statement of the facts provided by the petitioner demonstrates its complete "inappropriateness" insofar as it deals with events that began prior to March 11, 1990, date of the ratification of the American Convention by the State.

17. The State observed that once the democratic government was installed in Chile, Parliament ratified the American Convention on Human Rights. It stated that the ratification instrument was deposited with the Organization of American States with certain declarations and reservations, such as "this recognition of the competence and jurisdiction of the Commission applies to events subsequent to the date of deposit of this instrument of ratification or, in any case, to events which began subsequent to March 11, 1990." It also stated that "in acknowledging the competence and jurisdiction of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, the Government of Chile declares that, when these bodies apply the provisions of Article 21.2 of the Convention, they may not make statements concerning the reasons of public utility or social interest taken into account in depriving a person of his property."

18. According to the Chilean State, this case would fall within one of the limitations imposed by the Government of Chile upon recognizing jurisdiction; that is, it would be time-restricted, since the basis of the alleged right to reparation originates with acts that occurred prior to the ratification of the Convention. On this point, it stated that the jurisdiction of the supervisory bodies was recognized from the deposit of the

ratification instrument forward, with the express exclusion of situations that began on a date prior to March 11, 1990.

19. With respect to that reservation, the State asserted that the democratic governments believed it was necessary in order for them to make enormous efforts to resolve the human rights violations of the recent past in the domestic sphere. It listed initiatives taken by the State, such as the Truth and Reconciliation Commission, among others. It remarked that the reservation does not aim to ignore the mechanisms of the international community, and stated that its inclusion does not mean that events prior to 1990 were inapplicable to the State as an uninterrupted entity.

20. The State maintained that the abovementioned restriction *ex ratione temporis* can in no way be considered contrary to the object and purpose of the American Convention. It stated that it is based on a common sense rule; that is, that the State submits to supervision only from the time of its ratification, or—rather—only from the time it can reasonably answer for the acts committed under its rule. The State argued that it has sovereignty to decide the conditions under which it will submit to such international oversight, which is why this matter concerns the responsible exercise of sovereignty.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

21. Under Article 44 of the American Convention and Article 23 of the Rules of Procedure of the IACHR, the petitioner has *locus standi* to file petitions before the Inter-American Commission. With respect to the State, Chile is a party to the American Convention, and therefore is internationally accountable for violations of that instrument. The alleged victims are individuals with respect to whom the State agreed to guarantee the rights enshrined in the American Convention. Accordingly, the Commission has jurisdiction *ratione personae* to examine the petition.

22. The IACHR also has jurisdiction *ratione materiae* because the petition alleges the violation of human rights protected by the American Convention. The Commission notes that the Chilean State asserts that, according to Chile's reservations to the Convention, in the application of Article 21.2 of the Convention, statements may not be made concerning the reasons of public utility or social interest taken into account in depriving a person of his property. On this point, the Commission establishes that this dispute does not center on the aforementioned reasons.

23. With respect to jurisdiction *ratione temporis*, the Commission observes that Chile has been a State Party to the American Convention since August 21, 1990, date on which it deposited its ratification instrument. On this point, the Chilean State asserts that it would not be responsible, under the framework of the American Convention, for violations originating in 1973 and 1974. Nevertheless, the petitioner underscored that his allegations refer to civil case No. 3201, which he filed on September 7, 1995, and the January 21, 2004 judgment of the Supreme Court of Chile, which concluded that civil case; on those dates, the Convention was already in force for the Chilean State.

24. Indeed, according to the case file, the totality of the court proceedings complained of in this petition were conducted after the date on which Chile ratified the American Convention. Therefore, the obligation to respect and guarantee the rights enshrined in the American Convention was already in effect for the Chilean State at the time. The civil case was brought by the petitioner in 1995 and ended with the January 21, 2004 decision of the Chilean Supreme Court, which denied the alleged victims—based on the time-barring of the civil action by the statute of limitations—access to financial reparations to compensate them for the actions taken against them following the coup of September 11, 1973. Therefore, and as has been stated on other occasions,² although the alleged violations of the right of access to justice, the right to property, and the

² IACHR. Report No. 61/05. Petition 698/03. Admissibility. Lucía Morales Compagno and Children. Chile. October 12, 2005, para. 23; IACHR. Report No. 60/05. Petition 511/03. Admissibility. María Órdenes Guerra. Chile. October 12, 2005. para. 24; IACHR. [continues ...]

right to freedom of expression would not have been able to occur without the dissolution and confiscation of the assets of the radio station *La Voz del Sur*, in the Commission's opinion, the court proceedings initiated by the petitioner in 1995 are independent and autonomous from the situation that triggered them.

25. Therefore, the Commission finds that it has jurisdiction *ratione temporis* under the American Convention because the obligation to respect and guarantee the rights protected therein were already in force for the State on the date of the events alleged in the petition.

26. Finally, the Commission has jurisdiction *ratione loci* to examine the petition because it alleges the violation of rights protected in American Convention that reportedly took place in Chile.

B. Admissibility requirements

1. Exhaustion of domestic remedies

27. Article 46.1.a of the American Convention requires the prior exhaustion of remedies available under domestic jurisdiction, according to recognized principles of international law, as a requirement for the admission of petitions alleging violations of the American Convention.

28. It has been established that in September 1995 the petitioner filed on behalf of himself and of the *Radio La Voz del Sur Ltd* and its partners –a civil action [*Acción de Nulidad de Derecho Público*] seeking the nullification of the Decrees No. 473 and No. 1163 both from 1974, as well as compensation of damages and lost profits caused by the dissolution, closure and confiscation of the assets of the radio station of their propriety, *La Voz del Sur*. According to the case file, the petitioner sued the Treasury before domestic courts, arguing that the Decrees "cannot be considered valid if they are contrary to constitutional guarantees of the right of individual private property and the right to 'no-confiscation without due process', and to the fair trial before the courts." In its cassation judgment of January 21th, 2004, the Supreme Court of Chile ruled that although the contested Decrees are null and void, the right to access to reparations as a result of that annulment had prescribed.

29. The petitioner claimed that with this decision of the Chilean highest court, the alleged victims exhausted the legal remedies available under domestic legislation. The Commission notes that the State did not deny or dispute the petitioner's assertions. Therefore, the Commission finds that the petition meets the requirement established in Article 46.1.a) of the American Convention.

2. Timeliness of the petition

30. Article 46(1)(b) of the Convention establishes that, in order for the petition to be declared admissible, it must be filed within six months of the date on which the interested party was served notice of the final decision that exhausted the domestic remedies.

31. In this case, the Chilean Supreme Court's decision on the petition for cassation was issued on January 21, 2004, and the petition was filed on July 21, 2004. Accordingly, the Commission finds that the admissibility requirement concerning the timeliness of the petition has been met.

3. Duplication of international proceedings

[... continuation]

Report No. 62/05. Petition 862/03. Admissibility. Alina Maria Barraza Codoceo et al. Chile. October 12, 2005. para. 21; IACHR. Report No. 59/05. Petition 381/04. Admissibility. Magdalena Mercedes Navarrete, Alberto Reyes Navarrete, Víctor Eduardo Reyes Navarrete, Patricio Hernán Reyes Navarrete, Pamela Adriana Vivanco, Katia Ximena del Carmen Espejo Gómez, Elena Alejandrina Vargas Gómez, Iliá María Pradenas Páez, Mario Melo Acuña, and Carlos Gustavo Melo Pradenas. Chile. October 12, 2005. para. 23.

32. The case file does not contain any information to indicate that the subject of the petition is pending in another international proceeding, or that it duplicates a petition previously decided by the IACHR or another international body. Hence, the requirements set forth in Articles 46.1.c and 47.d of the Convention have been met.

4. Colorable claim

33. The Inter-American Commission must decide whether the alleged facts amount to a violation of the rights enshrined in the American Convention pursuant to the requirements of Article 47.b, or whether the petition is “manifestly groundless” or “obviously out of order,” as described in Article 47.c. At this stage of the proceedings, the Commission must perform a *prima facie* evaluation, not to establish the alleged violations of the American Convention, but to examine whether the petition alleges acts that could potentially constitute violations of the rights guaranteed in the American Convention. This determination does not entail the prejudgment of the merits of the case.³

34. Neither the American Convention nor the IACHR’s Rules of Procedure require petitioners to identify the specific rights alleged to have been violated by the State in the matter submitted to the Commission, although they may do so if they wish. It falls to the Commission, on the basis of the system’s jurisprudence, to determine in its reports on admissibility which provisions of the pertinent inter-American instruments are applicable, and the violation thereof may be established if the facts alleged are demonstrated with sufficient evidence.

35. The Commission notes that the petition raises questions about the scope and guarantees of the right to reparations regarding human rights violations. The allegations presented are related to the decision adopted on January 21, 2004 in which the Chilean Supreme Court which denied the alleged victims—based on the time-barring of the civil action by the statute of limitations—access to financial reparations to compensate them for the actions taken against them following the coup of September 11, 1973. According to the petitioner, the civil action he filed in 1995 sought to reverse the effects of the decrees issued by the *de facto* government ordering the dissolution and closure of the petitioner’s radio station *La Voz del Sur*, as well as the confiscation of the radio station’s assets and facilities. The petitioner alleged that the Court’s decision violated his right of access to effective justice, and “not only deprived him of his right to property” but also prevented his “opinion from once again being communicated” through fair reparations once democracy was restored in his country.

36. In view of the legal and factual elements presented by the parties and the nature of the matter brought before it, the IACHR finds that the petitioner’s assertions regarding the alleged State responsibility for the acts complained of in the petition could potentially describe violations of the rights contained in Articles 8, 13, 21, and 25 of the American Convention on Human rights. The Commission will examine the possible violation of these provisions in light of the general obligations enshrined in Articles 1.1 and 2 thereof.

37. In conclusion, the IACHR finds that this petition is neither “manifestly groundless” nor “obviously out of order,” and therefore declares that the petitioner has met *prima facie* the requirements established in Articles 47.b. and 47.c of the American Convention with respect to potential violations of Articles 8 (right to a fair trial), 13 (freedom of expression), 21 (right to property) and 25 (judicial protection) of the American Convention, in relation to the general obligations enshrined in Articles 1.1 and 2 thereof.

V. CONCLUSIONS

38. The Inter-American Commission concludes that it is competent to examine the merits of this case and that the petition is admissible pursuant to Articles 46 and 47 of the American Convention. Based on the foregoing legal and factual considerations, and without prejudging the merits of the case,

³ IACHR. Report No. 21/04. Petition 12.190. Admissibility. José Luis Tapia González et al. Chile. February 24, 2004, para. 33.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

39. To find this petition admissible with respect to the rights protected in Articles 8, 13, 21, and 25 of the American Convention, in relation to Articles 1.1 and 2 thereof.

40. To provide notice of this decision to the parties, continue with the analysis of the merits of the case; and

41. To publish this decision and to include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 17th day of the month of October, 2015. (Signed): Rose-Marie Belle Antoine, President; James L. Cavallaro, First Vice President; José de Jesús Orozco Henríquez, Second Vice President, Rosa María Ortiz and Tracy Robinson Commissioners.