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**REPORT No. 70/15**  
**PETITION 125-07**  
REPORT ON INADMISSIBILITY

GUSTAVO HAROLDO HORTA MUÑOZ  
CHILE

Approved by the Commission at its session No. 2053 held on October 28, 2015  
156<sup>th</sup> Regular Period of Session.0

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**I. SUMMARY**

1. On February 2, 2007, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition lodged by Mr. Gustavo Haroldo Horta Muñoz on his own behalf (hereinafter “the petitioner” or the “alleged victim”) against the Republic of Chile (hereinafter “Chile” or “the State”). The facts alleged by the petitioner have to do essentially with the denial of compensation for wrongful conviction, given that the petitioner was convicted for manslaughter in first and second instance courts, a conviction that was then reversed by the Supreme Court of Chile. Inasmuch as the judgment was annulled, Mr. Horta submitted an application for the declaration of judicial error required before monetary compensation can be paid, but the Supreme Court rejected the application.

2. The petitioner claims the possible violation of Articles 10 and 8.2 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”). For its part, the State argues that the claims are inadmissible because, in relation to Article 10, they would constitute a “fourth instance” and, in relation to Article 8.2, no violations of the right to a fair trial or to the principle of the presumption of innocence have been proven.

3. The Commission concludes in the present report that the petition is inadmissible pursuant to Article 47.b of the American Convention because it does not state facts that tend to establish violations of rights protected by said international instrument. The Commission also decides to notify the parties of this decision, to publish it, and to include it in its Annual Report to the General Assembly of the OAS.

**II. PROCESSING BY THE IACHR**

4. The IACHR received the petition on February 2, 2007, and transmitted the relevant parts thereof to the State on June 23, 2011, giving it a period of two months to submit its observations, in accordance with Article 30.3 of the Rules of Procedure of the IACHR then in force. The State’s reply was received on August 8, 2011, and was forwarded to the petitioners by a note dated August 23, 2011.

5. On September 12, 2011, the petitioners presented their observations on the State’s reply, which were transmitted to the State on October 6, 2011, along with a request for the State to present its observations thereon. However, although the Commission reiterated this request to the State in notes dated March 14, 2012; August 12, 2014; and April 29, 2015, no reply was received from Chile.

6. The petitioners presented additional observations on January 23, 2013, and January 9, 2015. These communications were duly forwarded to the State.

**III. POSITION OF THE PARTIES**

**A. Position of the petitioner**

7. The petitioner alleges that, on July 22, 1999, a trial court of the Thirty-second Criminal Court of Santiago convicted him of manslaughter for the workplace death of a former employee of his and sentenced him to 300 days in prison, the temporary suspension of his eligibility for public positions or public office, and the payment of court costs. For its part, the civil party required the petitioner to pay 4,000,000 Chilean pesos. That sentence was upheld by the Court of Appeals of Santiago on January 20, 2004.

8. Subsequently, the petitioner filed a merits appeal with the Supreme Court of Chile, which, on June 29, 2006, resulted in the reversal of the conviction and in a replacement judgment in which Mr. Horta was absolved from manslaughter.

9. The petitioner then sought to apply for a declaration of judicial error, which must be issued before monetary compensation can be paid for wrongful conviction, but his request was denied by the Second Chamber of the Supreme Court during a brief, summary proceeding on January 24, 2007. The petitioner contends that the reason for this denial is that this Supreme Court is reluctant to acknowledge that other peers and members of the judiciary might have committed a miscarriage of justice, along with the fact that the domestic legislation is stricter than international standards, makes it impossible to exercise this right. In addition, he says that the regulation for processing this appeal is merely a general provision agreed to by a higher court (*auto acordado*) and not a law,<sup>1</sup> and that the State, in the friendly settlement procedure in another petition 11.715<sup>2</sup>, had agreed to undertake “the necessary studies to reform the existing norms” of its domestic legislation on the matter.

10. The petitioner states that he was convicted by the courts of first and second instance even though there were two police expert reports from the Homicide Brigade and the Crime Laboratory that showed that, in their view, the former employee’s death was due to his own imprudence.

11. In summary, as concerns the alleged violation of Article 10 of the American Convention, the petitioner affirms that the requirements established in the Political Constitution of Chile are stricter than those set out in said article of the Convention inasmuch as requiring the Supreme Court to declare the conviction “unjustifiably erroneous or arbitrary” before monetary compensation can be awarded goes beyond the broad terms that, in his view, are established in Article 10 of the American Convention.

12. In the other hand, with regard to the supposed violations of Article 8.2 of the American Convention, the petitioner contends that since the criminal case against him was titled “against Gustavo Haroldo Horta Muñoz, for manslaughter,” his reputation has been affected, and his right to presumption of innocence violated. In this regards, he states that the mere fact of been subject to a criminal investigation and trial for these charges amounts to a serious damage to his professional reputation and to his career as an engineer. The petitioner points out that during the time his case lasted he was impeded of traveling outside of the country; and compelled to attend to an administrative of *Gendarmeria de Chile* (police) to sign regularly as a precautionary measure to ensure his appearance at trial.

13. Based on the foregoing, the petitioner argues that the State violated the rights recognized in Articles 10 and 8.2 of the American Convention to his detriment, by denying him the right to compensation for the miscarriage of justice and by violating his right to a fair trial, in relation to the principle of the presumption of innocence, respectively.

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

14. The State points out that the ruling of the Supreme Court of Chile of January 24, 2007, indicates, in its recital 9, that the reason for the conviction’s reversal was a “different weighing” of the evidence.

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<sup>1</sup> The constitutional reference to how compensation for wrongful conviction is handled in Chile reads as follows: “Once a definitive stay of proceedings or a not-guilty verdict has been issued, anyone who has been tried or convicted in a proceeding by a judgment that the Supreme Court deems to be unjustifiably erroneous or arbitrary shall be entitled to compensation by the State for the material and non-material damages he/she has suffered. This compensation shall be decided on by the courts in a brief, summary proceeding in which the evidence shall be conscientiously examined.” However, the procedural aspects of how the action is handled are governed in an agreement adopted by the Supreme Court itself, approved by the majority of its members.

<sup>2</sup> The petitioner quotes the Report No. 32/02, Friendly Settlement, Petition 11.715, Juan Manuel Contreras San Martín, Víctor Eduardo Osses Conejeros, and José Alfredo Soto Ruz. Chile. March 12, 2015, paragraph 13.

15. It indicates that the petitioner's request to the IACHR constitutes a new judicial instance "seeking a favorable decision in a case that was dismissed at the domestic level in a proceeding whose conformity with international standards has not been challenged," which violates the principle of complementarity. It adds that this principle, together with the requirement of the prior exhaustion of domestic remedies, constitutes the subsidiary nature of the organs for the protection of basic rights within the inter-American human rights system.

16. The State notes that the IACHR has reiterated that it is competent to consider a judgment solely when it has been rendered outside the due process of law or when it appears to violate any other right guaranteed by the Convention, and not when the analysis is limited to stating that the decision was erroneous or unjust, since it would then be acting as a court. In turn, and taking into account the precedents of the own IACHR, the State points out that the Commission cannot "serve as an appellate court to examine alleged errors of internal law or fact that may have been committed by the domestic courts acting within their jurisdiction."

17. In relation to the supposed violation of Article 8.2 of the American Convention, for having titled the case "against Gustavo Haroldo Horta Muñoz, for manslaughter," the State is of the view that this is groundless since all criminal cases in Chile bear the name of the accused and the criminal act with which they are charged. This does not prejudice the merits of the case.

18. In conclusion, the State maintains that the petitioner's complaint to the IACHR constitutes a request for "a fourth instance" and that the petition is therefore inadmissible.

#### **IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY**

##### **A. Competence**

19. The petitioner is authorized, in principle, by Article 44 of the American Convention to lodge petitions with the Commission. The petition identifies as the alleged victim a physical person with respect to whom the State of Chile undertook to respect and guarantee the rights enshrined in the American Convention. As regards the State, the Commission notes that Chile has been a state party to the American Convention since August 21, 1990, the date on which it deposited its instrument of ratification. Therefore, the Commission is competent *ratione personae* to examine the petition. In addition, the Commission is competent *ratione loci* to hear the petition, insofar as it alleges violations of rights protected by the American Convention said to have occurred in the territory of Chile, a state party to that treaty.

20. The Commission is competent *ratione temporis* inasmuch as the obligation to respect and guarantee the rights protected by the American Convention was already in force for the State on the date the facts alleged in the petition are said to have occurred. Finally, the Commission is competent *ratione materiae* because the petition alleges possible violations of human rights protected by the American Convention.

##### **B. Admissibility requirements**

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

21. Article 46.1.a of the American Convention establishes the prior exhaustion of available domestic remedies in keeping with generally recognized principles of international law as a requirement for admitting claims alleging violation of the American Convention. The purpose of this requirement is to enable national authorities to take cognizance of the alleged violation of a protected right and, if appropriate, to resolve it before it is taken up by an international body.

22. According to the information provided by the parties, there is no disagreement about the exhaustion of domestic remedies. The trial court's decision was allegedly issued on July 2, 1999, by the Thirty-second Criminal Court of Santiago; this decision was appealed and the appeal was ruled on by the Court of Appeals of Santiago on January 20, 2004. That decision was then appealed, with the Supreme Court of Chile finding for the petitioner on June 29, 2006. Subsequently, the petitioner asked the Supreme Court of

Chile, pursuant to Article 19.7.i of the Constitution, for monetary compensation. The Supreme Court, in sole instance, by a judgment issued on January 24, 2007, and in keeping with a brief, summary compensation procedure, rejected the petitioner's claim. The State, for its part, does not invoke the exception to the exhaustion of domestic remedies.

23. Consequently, the Commission concludes that in the instant case that domestic remedies have been pursued and exhausted in accordance with Article 46.1.a of the American Convention.

## 2. Timeliness of the petition

24. Article 46.1.b of the American Convention establishes that for a petition to be admissible by the Commission, it must be lodged within a period of six months from the date on which the alleged victim was notified of the final judgment.

25. In the petition under consideration, the final decision of the Supreme Court of Chile was issued on January 24, 2007, and the petition was submitted to the IACHR on February 2, 2007. The Commission therefore recognizes that the instant petition meets the deadline for presentation established in Article 46.1.b of the American Convention.

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

26. It does not appear from the record that the subject matter of the petition is pending in any other international proceeding for settlement or that it reproduces a petition already examined by this or any other international organization. Therefore, it may be taken that the requirements established in Articles 46.1.c and 47.d of the Convention have been met.

## 4. Colorable claim

27. For purposes of admissibility, the Commission must decide whether the alleged facts tend to establish a violation of rights, as stipulated in Article 47.b of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order," as described in Article 47.c. The criterion for analyzing admissibility is different from that used for the analysis of the merits, given that the Commission only performs a *prima facie* analysis to determine whether the petitioners establish an apparent or possible violation of a right guaranteed by the American Convention. It is a summary analysis that does not imply prejudging or issuing a preliminary opinion on the merits.

28. Neither the American Convention nor the IACHR Rules of Procedure require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Commission, although petitioners may do so. It is for the Commission, based on the system's jurisprudence, to determine in its admissibility reports which provision of the relevant inter-American instruments is applicable and could be found to have been violated if the alleged facts are proven by sufficient evidence.

29. The petitioner claims that the State of Chile did not award him compensation for his wrongful conviction after the Supreme Court overthrew the guilty verdict handed down by the Thirty-second Criminal Court and upheld by the Court of Appeals of Santiago, in the criminal trial against him for manslaughter which went on for 11 years in various Chilean courts. He also mentions that, in the course of the trial, a stigma hung over him because he was charged with manslaughter in a criminal trial, which resulted in a violation of the principle of the presumption of his innocence.

30. For its part, the State indicates that the case was handled with full respect for the rules of due process and that the Supreme Court's ruling, which overturned the lower courts' decision, was due to a different weighing of the evidence; for that reason, it is not incumbent on the IACHR to take up the matter since that would constitute a "fourth instance" situation and would be inconsistent with the subsidiary nature of the organs of the inter-American human rights system for the protection of basic rights.

31. In light of the foregoing, the Commission deems, in first place, that the mere fact that a person is subject to a criminal trial, without other alleged violations to the right to a fair trial, does not constitute *prima facie* a violation of the principle of the presumption of innocence enshrined in Article 8.2 of the American Convention. In this regard, the Commission sees that as the State argues, it is not unusual or irregular that a criminal case is classified or labeled with the description of the crime that is investigated and the name of the suspect. Moreover, the information availed to the Commission does not show other elements of a possible damage caused to the petitioner in this regard.

32. In general, the denial of justice or the lack of access to justice under articles 8 and 25 of the American Convention might give rise, as any other human rights violation, to the right to receive compensation. The right to compensation set forth in article 10 of the American Convention is a specific and autonomous provision. This article lays down that: “[e]very person has the right to be compensated in accordance with the law in the event he has been sentenced by a final judgement through a miscarriage of justice”. In principle, the reference to a “final judgement”, refers to a situation in which supervening circumstances to a final conviction sentence have shown that the said sentence was the result of a miscarriage of justice. This concept is also enshrined in the language of article 14(6) of the International Covenant on Civil and Political Rights which set forth, with some qualifications, that “[w]hen a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law...”. The instant case refers to a conviction sentence delivered in first instance, which was confirmed in second instance, and finally reversed by a cassation remedy which ruled the acquittal of the petitioner. In this regard, according to the information presented by the parties, the revision of the criminal case against the petitioner was based on the facts and evidence examined in the previous instances; moreover, the petitioner has not presented elements of information that fit into the concept of judicial miscarriage.

33. In light of the foregoing, the IACHR concludes that in the instant case the facts do not tend to constitute a violation of the rights guaranteed by the American Convention or by any other instrument applicable by the Inter-American Commission; therefore, the petition should be ruled inadmissible, in keeping with Article 47.b of the American Convention and the fourth instance formula.

## **V. CONCLUSIONS**

34. Based on the foregoing arguments of fact and law, the Inter-American Commission considers that the petition is inadmissible pursuant to Article 47 of the American Convention and, therefore,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

#### **DECIDES:**

1. To find this petition inadmissible;
2. To notify the parties of this decision;
3. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 28<sup>th</sup> day of the month of October, 2015. (Signed): Rose-Marie Belle Antoine, President; James L. Cavallaro, First Vice President; Second Vice President; Rosa María Ortiz, Tracy Robinson and Paulo Vannuchi, Commissioners.