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**REPORT No. 161/20**  
**PETITION 1193-09**  
REPORT ON INADMISSIBILITY

VÍCTOR MANUEL DIAZ PÉREZ AND DOMINGO PATRICIO CORNEJO SILVA  
CHILE

Approved electronically by the Commission on June 9, 2020.

**Cite as:** IACHR, Report No. 161/20, Petition 1193-09. Inadmissibility. Víctor Manuel Díaz Pérez and Domingo Patricio Cornejo Silva. Chile. June 9, 2020.

**I. INFORMATION ABOUT THE PETITION**

Petitioner	Nelson Guillermo Caucoto Pereira and Gonzalo Menares Magna
Alleged victim	Víctor Manuel Díaz Pérez and Domingo Patricio Cornejo Silva
Respondent State	Chile <sup>1</sup>
Rights invoked	No specific provisions cited

**II. PROCEEDINGS BEFORE THE IACHR<sup>2</sup>**

Filing of the petition	September 20, 2009
Additional information received during initial review	September 30, 2011, October 11, 2013
Notification of the petition	July 20, 2016
State's first response	February 13, 2017

**III. COMPETENCE**

<i>Ratione personae:</i>	Yes
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<i>Ratione materiae:</i>	Yes, American Convention (deposit of instrument on August 21, 1990)

**IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL RES JUDICATA, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

Duplication of procedures and international <i>res judicata</i>	No
Rights declared admissible	None
Exhaustion or exception to the exhaustion of remedies	Yes, under the terms of Section VI
Timeliness of the petition	Yes, under the terms of Section VI

**V. SUMMARY OF ALLEGED FACTS**

1. This petition is brought on behalf of Víctor Manuel Díaz Pérez and Domingo Patricio Cornejo Silva<sup>3</sup> on the ground that they were denied due process and more particularly, the presumption of innocence. This claim arises out of criminal proceedings brought against them for the offence of robbery with violence against a Mr. David Mena Tapia ("Mr. Mena"). These criminal proceedings resulted in convictions against both alleged victims and the imposition of a prison term of 10 years and a day (for both alleged victims).

2. According to the petition: (a) on September 18, 2008 at approximately 6:30 AM, the alleged victims were in the community of Nancagua celebrating a national holiday; (b) around 30-40 minutes later, the alleged victims were accosted by Carabineros (policemen) who conducted a search before placing them in a police car and taking them to a police station. According to the record, the alleged victims were arrested on suspicion of having committed the offence of robbery with violence on Mr. Mena on a nearby street. In this regard, the record indicates that Mr. Mena had been attacked by two men at around who took certain items including a pack of cigarettes (with the brand name "Viceroy", a lighter, and some money amounting to less than \$10,000 pesos. The assailants struck Mr. Mena, resulting in injuries (such as a contusion to his head, sprain of his right index finger, and bruises to other parts of his body). Shortly after the attack, Mr. Mena encountered policemen and gave them a description of the assailants based mainly on their clothing (one wearing a red hoodie and the other wearing a black hoodie) as well as other distinguishing features. He was then taken by the police in car to search for the assailants, whom he subsequently identified (on a nearby street) as the alleged victims. Subsequently, Mr. Mena was taken to a police station where, during an identification parade, he again identified the alleged victims as the assailants. According to the record, the

<sup>1</sup> Pursuant to the provisions of Article 17.2.a of the Commission's Rules of Procedure, Commissioner Antonia Urrejola, a Chilean national, did not participate in the discussion or decision of the present case.

<sup>2</sup> The observations submitted by each party were duly transmitted to the opposing party.

<sup>3</sup> Hereafter referred to collectively as "the alleged victims" and individually as "Mr. Díaz" and "Mr. Cornejo", respectively.

police recovered from Mr. Cornejo the items that had been allegedly robbed from Mr. Mena. Subsequently, the police took Mr. Mena to hospital to be treated for his injuries.

3. According to the record, in February 2009 the alleged victims were placed on trial before *El Tribunal de Juicio Oral en lo Penal de Santa Cruz* for the offence of robbery with violence. During the trial, Mr. Mena retracted his testimony regarding the identification of the alleged victims. From the record, it appears that Mr. Mena's retraction was based on a fear of reprisals. Mr. Mena also acknowledged that he had been under the influence of alcohol at the time of the attack. For the petitioner, the retraction by Mr. Mena was sufficient to create reasonable doubt about the identity of the assailants, and that accordingly, the subsequent conviction of the alleged victims represented a violation of their right to the presumption of innocence. Based on the record, the trial court held that despite Mr. Mena's retraction, there was substantial evidence otherwise to implicate the alleged victims. In this regard, the trial court emphasized: (a) that Mr. Mena had twice identified the alleged victims – once on the street and again in an identification parade; (b) that in his initial report to the police, he was able to identify the assailants not only by their clothing but by distinguishing features, such as one assailant being of slim build, taller, and having a defective eye); while the other assailant was bigger, with a haircut in the style of a rapper; (c) the police testified that these descriptions matched the alleged victims; (d) items that Mr. Mena had reported being stolen during the attack were found in the possession of one of the alleged victims; and (e) there was medical evidence corroborating the injuries suffered by Mr. Mena.

4. With regard to issue of Mr. Mena being under the influence of alcohol, the court accepted the evidence of the police that this did not substantially impair Mr. Mena's capacity to identify his assailants – emphasizing that Mr. Mena was able to do this with some specificity. In its judgment, the trial court noted that the victim had apparently told the police initially, that he was not carrying his wallet, and therefore no money. However, the court noted that the police were emphatic that the victim had told them that he was carrying money (almost \$10,000 pesos; and that further that the policemen had recovered the sum of \$9. 160 pesos from one of the alleged victims. On this issue, the trial court declared that it accepted the testimony of the police. According to the record, the trial court, on February 14, 2009 convicted the alleged victims of the offence of robbery with violence and sentenced them both to a term of imprisonment of 10 years and one day. The petitioner indicates that a subsequent appeal to the *Segunda Sala de la Corte de Apelaciones* was dismissed on March 20, 2009.

5. The State rejects the petition as inadmissible principally on the ground that the petition has not stated any facts/allegations capable of giving rise to any violation of the Convention; and further, that any adjudication of the petition by the IACHR would violate its fourth instance formula. The State contends that the alleged victims were accorded due process by the domestic courts, pointing out that there was ample evidence to support the conviction of the alleged victims for the offence of robbery with violence. Ultimately, the State argues that that the alleged victims have simply expressed disagreement or discomfort with the outcome of the domestic criminal proceedings – which does not constitute a colorable violation of the American Convention. The State further emphasizes that the IACHR has no authority to review domestic judicial decisions where there has been no violation of the right to due process or any other right under the American Convention.

## **VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

6. Based on the documents provided, the last decision taken in this matter was on March 20, 2009 when the *Segunda Sala de la Corte de Apelaciones* dismissed the appeal brought on behalf of the alleged victims. The State does not argue that internal remedies were not exhausted. On the contrary, it notes that the alleged victims had access to justice although with results that were unfavorable to them. Based on available information, the Commission has determined that the requirement to exhaust all domestic remedies provided for under Article 46 (1) (a) of the American Convention has been fulfilled. Further, given that the petition was received on September 20, 2009, the petition is considered timely – pursuant to Article 32 (1) of the Commission's Rules of Procedure.

## **VII. COLORABLE CLAIM**

7. This petition is essentially based on the alleged violation of the right of the alleged victims to the presumption of innocence, within the broader context of the right to due process. In this regard, the

petition emphasizes the alleged victims were convicted of robbery with violence despite a retraction made by Mr. Mena. However the State has indicated that the situation was duly examined by the domestic judicial authorities who concluded that there was other evidence that was sufficient to ground the convictions against the alleged victims. A review of the judgment of first instance reveals that the among the items of evidence relied on by the trial court was (a) the identification of the alleged victims by Mr. Mena; and (b) the discovery of items in the possession of one of the alleged victims that were identified by Mr. Mena as having been taken from him in the robbery.

8. The Commission recalls that it is not entitled to review judgments issued by domestic courts acting within their jurisdiction and in accordance with due process of law and the judicial safeguards. Having regard for the record, the Commission sees no prima facie violation of the right to due process by the domestic judicial authorities to the detriment of the alleged victims, contrary to the guarantees of the American Convention. In light of the foregoing, the IACHR considers that the alleged victims come before the Commission as a fourth instance tribunal because they do not agree with the decisions of the national courts. In the present case, having analyzed the position of the parties and the facts that arise from the petition's case file, the Commission concludes that it lacks elements allowing it to prima facie identify that human rights protected by the American Convention on Human Rights have been violated in the terms established in said instrument. Consequently, the IACHR concludes that the petition does not satisfy the requirement set forth in Article 47.b of the American Convention.

### **VIII. DECISION**

1. To declare this petition inadmissible, under Article 47. b of the American Convention; and
2. To notify the parties of this decision; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 9<sup>th</sup> day of the month of June, 2020. (Signed): Joel Hernández, President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.