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REPORT No. 156/20
PETITION 1387-09

REPORT ON INADMISSIBILITY

HEBERT HASENGRUBER

PARAGUAY

Approved electronically by the Commission on May 12, 2020.

Cite as: IACHR. Report No. 156/20. Petition 1387-09. Inadmissibility. Herbert Hasengruber.
Paraguay. June 9, 2020

I. INFORMATION ABOUT THE PETITION

Petitioner	Herbert Hasengruber
Alleged victim	Herbert Hasengruber
Respondent state	Paraguay
Rights invoked	Refers the case to the Commission without articles of the American Convention on Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition	November 4, 2009
Additional information received during the preliminary analysis	April 16, 2013
Notification of the petition to the State:	November 17, 2015
State's first response:	May 31, 2016
Additional observations presented by the petitioner	June 8, 2017
Additional observations presented by the State	January 9, 2018

III. COMPETENCE

<i>Competence Ratione personae:</i>	Yes
<i>Competence Ratione loci:</i>	Yes
<i>Competence Ratione temporis</i>	Yes
<i>Competence Ratione materiae</i>	Yes, American Convention (deposit of instrument on August 24, 1989)

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

Duplication of procedures and International res judicata:	No
Rights declared admissible:	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, July 1, 2014
Timeliness of the petition:	Yes, November 4, 2009

V. SUMMARY OF ALLEGED FACTS

1. Herbert Hasengruber, an Austrian national, (hereinafter "the alleged victim" or "the petitioner") denounces alleged violations of his human rights on the grounds that he was sentenced to imprisonment for the crime of wrongful death in a criminal proceeding where due process was not respected and which outcome was the result of a negotiation between state authorities and the father of the victim of the crime for which he was convicted.

2. The petitioner reports that on November 6, 2004, he was involved in a traffic accident that resulted in the death of a 6-year-old girl. He indicates that, on December 13, 2005, he was charged and prosecuted for the crime of manslaughter by the Judiciary of the Circumscription of Guaira and Caazapá which convicted him to 2 years and 6 months of imprisonment. This sentence was later confirmed by the corresponding Court of Appeals on July 26, 2006. The decision was again confirmed in a cassation appeal by the Criminal Chamber of the Supreme Court of Justice on September 5, 2008.

3. The petitioner considers that the process that led to his conviction was irregular because, during the oral trial, an expert report was incorporated as the main evidence of his guilt in the death of the girl despite it was not orally presented by the coroner, as was required by the procedural rules.³ In addition, he

¹ Hereinafter "the American Convention".

² The observations submitted by each party were duly transmitted to the opposing party.

³ He quotes Article 371 of the Procedural Criminal Code that affirms "none of the evidence has to be introduced to the trial in written documents unless they were received under the rule of jurisdictional advancement of evidence or when the witness or expert cannot participate in the trial. Any evidence submitted to trial illegally through a written document will be annulled".

maintains that the real person responsible for the death of the girl was her father. This is because, instead of waiting for the Fire Department, the father proceeded to take the girl abruptly in his arms and ran to a private vehicle and transferred her by his own means to a hospital. He argues that the coroner's report did not clearly explain or detailed exactly what the cause of death of the victim was which could have been improper transportation. He maintains that the prosecution and the criminal complaint did not present other evidence on the cause of death to the coroner to prevent discussions in the oral trial. He adds that "as time went by it became clear that the cause of death was a process negotiated between the victim's father, the prosecution, the judges and my lawyer." He indicates that the victim's father told him that he only wanted US \$ 5000.00 or US \$ 6000.00 as compensation, which he considers to be a sign that the procedure was only for the purpose of taking money from him. He also highlights, as an indication that there was some sort of negotiation between the parties, that the father did not request compensation after the trial and the lawyer did not request payment of his fees. He also emphasizes that there was never an expert report to assess the speed at which he was driving, this being 70 km in a rural area, and that the girl's death was caused by her neglect to cross the street.

4. The State, for its part, indicates that the investigation of the facts was carried out in strict observance of the constitutional and legal provisions, and that the deprivation of liberty of the petitioner was the consequence of a firm conviction dictated by law by the competent courts who duly motivated their decisions at all stages. It notes that, after the petitioner's appeal was unsuccessful, he filed an extraordinary appeal for review before the Supreme Court of Justice, which was declared inadmissible on July 1, 2014. It highlights that eyewitnesses to the event and a trace of braking of approximately 76 linear meters corroborate the high speed in which the petitioner was circulating at the time of the accident. The State considers that the petitioner is trying to raise before the Commission probative issues that were already assessed at the time according to the rules of sound criticism, by a Court of Judgment and that his objective is that the domestic tribunal's decision be annulled based on unfounded accusations, which does not match the role of the Commission.

VI. EXHAUSTION OF LOCAL REMEDIES AND TIMELINESS OF THE PETITION

5. The Commission observes that the petitioner maintains that he has "exhausted all the judicial and constitutional instances of the juridical system of the Paraguayan State". Likewise, it takes note that the State has not alleged the non-exhaustion of domestic remedies nor referred to additional non-exhausted domestic remedies that could be adequate for the petitioner's complains to be addressed at the domestic level.

6. Attending to these considerations, the Commission concludes that the final domestic decision regarding the petitioner's complaint was that issued on July 1, 2014 declaring inadmissible the extraordinary revision remedy he had filed with the Supreme Court of Justice. In consequence and taking onto consideration that the petition was filed on November 4, 2009 the Commission concludes that the instant petition meets the requirements of Article 46.1(a) and (b) of the American Convention.

VII. COLORABLE CLAIM

7. The Commission observes that the instant petition includes allegations regarding the petitioner having been criminally convicted, without sufficient evidence, in a trial in which evidence was used that did not comply with the procedural rules set forth by domestic law and in which its outcome was affected by acts of corruption.

8. Given the nature of the allegations, the Commission deems pertinent to recall that it has already determined that it does not fall onto it to rule on the finding of guilt or innocence of a defendant in a criminal trial. However, it is competent to analyze whether the guarantees of due process protected by the Convention have been undermined⁴.

9. In the instant case the Commission observes that the petitioner's allegations are principally aimed at questioning the decision of the domestic courts regarding his guilt and presenting the reasons why he considers that the evidence that was used in support of his conviction was insufficient. In addition, the petitioner has made claims regarding possible violations of domestic procedural laws and has made allegations, without providing additional elements to support them, regarding a negotiation that supposedly took place in order to ensure his conviction. While taking note of this allegations, the Commissions considers that in the instant case the information presented by the petitioner and the case file do not provide sufficient elements for it to consider, prima facie, the possibility that the rights enshrined in the American Convention and the other

⁴ IACHR, Report No. 65/12, Petition 1671-02. Admissibility. Alejandro Peñafiel Salgado. Ecuador. 29 de marzo de 2012, para. 38.

treaties that confer competence to it might have been violated. Because of this reasons, the Commission concludes that the instant petition is inadmissible in accordance with the provisions of Article 47(b) and (c) of the American Convention.

VIII. DECISION

1. To find the instant petition inadmissible in accordance with the provisions of Article 47(b) and (c) of the American Convention.

2. To notify the parties of the decision; and to publish this decision and to 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 12th day of the month of May, 2020. (Signed): Joel Hernández, President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.