

OEA/Ser.L/V/II
Doc. 426
10 December 2020
Original: Spanish

REPORT No. 408/20
PETITION 965-10
REPORT ON ADMISSIBILITY

DAVID ARMANDO ANDRADE BARRIENTOS AND FAMILY
CHILE

Approved electronically by the Commission on December 10, 2020.

Cite as: IACHR, Report No. 408/20. Petition 965-10. Admissibility. David Armando Andrade Barrientos and Family. Chile. December 10, 2020.



I. INFORMATION ABOUT THE PETITION

Petitioner:	David Armando Andrade Barrientos
Alleged victim:	David Armando Andrade Barrientos and family ¹
State denounced:	Chile ²
Rights invoked:	Articles 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights ³

II. PROCEDURE BEFORE THE IACHR⁴

Reception of petition:	June 28, 2010
Notification of the petition to the State:	May 4, 2016
State's first response:	August 23, 2016
Additional observations from the petitioning party:	September 5, 2017

III. COMPETENCE

Competence Ratione personae:	Yes
Competence Ratione loci:	Yes
Competence Ratione temporis:	Yes
Competence Ratione materiae:	Yes, American Convention (ratification instrument deposited on August 21, 1990)

IV. ANALYSIS OF 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	Articles 8 (fair trial) and 25 (judicial protection) of the Convention, in relation to its articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, January 14, 2010
Timeliness of the petition:	Yes

V. ALLEGED FACTS

1. The petitioner claims the international responsibility of the Chilean State for the violation of the right to appeal enshrined in Article 8.2.h of the American Convention, to the detriment of himself and his relatives, as next-of-kin of the late Reinaldo Andrade Barrientos, and in relation to the criminal proceedings that unfolded after his death.

2. The petitioner indicates that Reinaldo Andrade Barrientos was a 51-year-old adult with a mental disability, resident in the town of Castro, who was kidnapped on November 15, 2004, and whose body was found days later in the waters of the Gamboa river, in the island of Chiloé. The criminal investigation carried out as a result of his death led to the indictment of five individuals for the crimes of kidnapping, murder, and sexual abuse. The defendants were convicted of the crime of kidnapping by the Castro Oral Trial Court in a

¹ Until now, petitioners have identified before the IACHR: David Armando Andrade Barrientos, brother of Reinaldo Andrade; and Héctor Alejandro Andrade Ramírez, nephew of Reinaldo Andrade.

² Pursuant to Article 17.2.a of the Commission's Rules of Procedure, Commissioner Antonia Urrejola Noguera, a Chilean national, did not participate in the debate or decision on this matter.

³ Hereinafter "the American Convention" or "the Convention".

⁴ The observations presented by each party were duly transmitted to the opposing party.

non-appealable decision of September 28, 2009, in which they were also acquitted of the crimes of homicide and sexual abuse. However, based on the materials produced by the criminal investigation and recorded in case file RIT-34-2009, the relatives of Reinaldo Andrade consider that in addition to the kidnapping, their brother and son was indeed also the victim of sexual abuse and murder during his retention, committed by the kidnappers. This lack of criminal conviction of the perpetrators of homicide and sexual abuse of a person with a mental disability is described by the victim's next of kin as a situation of injustice and impunity that has caused them psychological and emotional pain and harm.

3. The petitioner indicates that the conviction for kidnapping, which by legal mandate may not be appealed, was the subject of a request for annulment, filed by him as a private plaintiff on October 6, 2009 before the Court of Appeals of Puerto Montt, as well as by the Attorney General's Office and the defense. Said Court of Appeals denied the request, confirming the judgment in a decision of October 30, 2009. Facing this refusal, he filed a complaint appeal (*recurso de queja*), which was declared inadmissible on December 29, 2009 by the Supreme Court of Chile in a ruling with two dissenting votes. The complainants subsequently filed a motion to modify the ruling (*recurso de reposición*), which was denied by the Supreme Court.

4. The petitioner explains that the decision of the Supreme Court that denied the complaint appeal was based on the provisions of article 387 of the Criminal Procedure Code, according to which the resolution that denies a request for annulment is not subject to any further appeals. The dissenting Justices of the Supreme Court stated in their individual opinions that, although the mandate of article 387 of the Criminal Procedure Code is clear, so is article 63.1.b of the Organic Code of Courts, which provides that the Courts of Appeals shall decide requests for annulment hearing the case as single-instance courts, and that this lack of second instance is precisely one of the causes established in article 545 of the Organic Code of Courts for the complaint appeal to proceed. In other words, in the opinion of the dissenting Justices, preference should have been given to the application of these last two provisions, in compliance with Article 8.2.h of the American Convention which establishes the right to appeal judgments in criminal matters to a higher court. This decision of the Supreme Court was notified during the judicial hearing on December 29, 2009. Subsequently, in view of the request for reconsideration filed by Mr. Andrade against this decision, the Supreme Court adopted a brief decision declaring that it "*dismissed the reconsideration request presented*", with dissenting votes from the same two Judges, based on the same grounds that supported their dissent in the denial of the complaint appeal. This decision was notified by a court sheriff on January 14, 2010.

5. The petitioner argues that the conviction judgments handed down by the oral trial courts, being non-appealable in nature, can only be challenged based on the restricted and specific legal grounds of the motion to annul, which prevents them from being subjected to a comprehensive examination on the merits by the higher court. Likewise, petitioner argues that the impossibility of appealing the decision adopted by the Court of Appeals on the motion to annul, violated his right to appeal under Article 8.2.h of the American Convention; and that this absence of a second instance for decisions on nullity motions constitutes a defect of Chilean procedural legislation that in itself is contrary to the American Convention.

6. The petitioner also requests that the IACHR require the Supreme Court of Chile to admit the complaint appeal, to exercise the powers of annulment granted it by the Organic Code of Courts, to void the trial and the judgment issued by the Castro Oral Trial Court, and to provide compensation to the petitioner and his relatives for the deep moral damage caused by its decisions, which, in his opinion, foster impunity, since the perpetrators were acquitted of the crimes of sexual abuse and homicide.

7. The State, in its reply, expressly affirms that "*Mr. Andrade had at his disposal all the procedural tools existing in our legal system and effectively used each one of them in order for the judgment he contested to be revised*", for which reason the State does not question the exhaustion of domestic remedies.

8. Likewise, the State argues that the petitioner has resorted to the IACHR as a "fourth instance", since, in its opinion, the facts set forth in the petition do not constitute violations of the human rights established in the American Convention, but rather, the petitioner's claim is based on his disagreement with the merits of judicial decisions validly adopted by the Chilean judges. In this regard, the State points out: "*We are not facing a case of infringement of due process, but rather a disagreement with the result of the judgment, the review of which was requested through different judicial channels.*" For this reason, the State considers that the complaint is unfounded in the terms of Article 47.b of the Convention, and requests that the petition be declared inadmissible.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

9. First, the Commission notes that the State has indicated that the petitioner used all the judicial remedies available to him under Chilean law to contest the judicial decisions he considers to be detrimental to his rights. The IACHR agrees with this position, bearing in mind that, as it has decided in previous reports⁵, in cases where violations of procedural guarantees and other human rights in the course of judicial proceedings are alleged, the appropriate remedies to exhaust are by general rule those means provided by the national procedural legislation that allow for contesting, in the course of the questioned procedure itself, the actions taken and the decisions adopted during its development, specifically the ordinary judicial remedies at hand, or the extraordinary ones, if these were brought forward by the alleged victims of the violations of procedural guarantees in order to assert their rights. It has been proven in this case that, against the final criminal judgment, which allowed for no appeal -as confirmed by the State-, the petitioner filed a request for annulment, which was denied by the Court of Appeals of Puerto Montt; and that against this decision, he filed a complaint appeal, which was declared inadmissible by the Supreme Court. Against this last decision he filed a request for reconsideration that was also denied. Therefore, the Commission concludes that domestic judicial remedies were exhausted in the terms of Article 46.1.a of the American Convention.

10. The decision of the Supreme Court declaring the complaint appeal inadmissible was notified on December 29, 2009, and its denial of the request for reconsideration, on January 14, 2010. Since the petition was received by the Inter-American Commission on 28 June 2010, it is clear that petitioner complied with the six-month presentation deadline established in Article 46.1.b of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

11. Firstly, and taking into account the State's allegation that the petitioner is resorting to the IACHR as a "court of fourth instance," the Commission reiterates its uniform and consistent position in the sense that it is indeed competent to declare a petition admissible and decide on its merits in cases related to domestic judicial proceedings that may violate the rights protected by the American Convention. Along these lines, it is clear that in the present case, the petitioner raises specific allegations regarding the legal impossibility he faced of having access to a real appellate review of a criminal judgment that he considers violates his rights as the victim's family member. The petitioner legally frames this fact within the alleged violation of Articles 8.2.(h) and 25 of the American Convention.

12. This is not, therefore, in the opinion of the Commission, a mere disagreement with the content of the judicial decisions adopted by the Court of Appeals of Puerto Montt and the Supreme Court, but rather a substantial allegation about a possible violation of his right to have the unfavorable judicial ruling reviewed in its entirety by a higher court, given that the procedural avenues that he activated to achieve such a review, which were the only ones available under Chilean procedural law, did not allow for it.

13. Based on a *prima facie* assessment of the denounced facts, the Commission considers that, at the merits stage of these proceedings, it must be determined, for example, (a) whether the parties to criminal proceedings other than the defendant, that is, the victims and their representatives, must have the possibility of appealing rulings, in terms equivalent to the right established in article 8.2.h of the Convention for the accused in criminal proceedings, as part of the broader content and scope of their right of access to justice; (ii) whether said guarantee of appeal applies to judicial resolutions that decide requests for annulment of criminal convictions that are in themselves, by legal mandate, unappealable; and (iii) whether the request for annulment filed before an Appeals Court constitutes in itself a second instance for unappealable judicial convictions. On the other hand, it must be determined whether the decision of the Supreme Court that denied the complaint appeal, and its decision not to process the request for reconsideration, were compatible with the duty of adequate motivation of judicial rulings which stems from Articles 8 and 25 of the American Convention. All the more so when the rights at stake are those of the victims of crime.

⁵ See, among others: IACHR, Report No. 92/14, Petition P-1196-03. Admissibility. Daniel Omar Camusso and son. Argentina. November 4, 2014, paras. 68 et seq; IACHR, Admissibility Report No. 104/13, Petition 643-00. Admissibility. Hebe Sánchez de Améndola and daughters. Argentina. November 5, 2013, paras. 24 et seq; and IACHR, Report No. 85/12, Petition 381-03. Admissibility. S. et al, Ecuador. November 8, 2012, paras. 23 et seq.

14. In light of these considerations and after examining the factual and legal elements presented by the parties, the Commission considers that the petitioner's allegations are not manifestly unfounded and, if corroborated, could characterize violations of Articles 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof.

VIII. DECISION

1. To declare this petition admissible in relation to Articles 8 and 25 of the American Convention, in connection with Articles 1.1 and 2 thereof; and

2. To notify the parties of this decision; to continue with the analysis on the merits of the matter; 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 10th day of the month of December, 2020. (Signed): Joel Hernández, President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.