



## Vinicio Poblete Vilches v. Chile

Report No. 13/09, Petition 339-02, March 19, 2009

**Country:** Chile

**Region:** Americas

**Year:** 2009

**Court:** Inter-American Commission on Human Rights Inter-American Commission on Human Rights

**Health Topics:** Health care and health services, Hospitals, Medical malpractice

**Human Rights:** Right to bodily integrity, Right to due process/fair trial, Right to life

### Facts

The case concerns the death of Mr. Vinicio Antonio Poblete Vilches that took place in a public hospital in the city of Santiago. The petitioners (Mr. Vilches's wife and sons) claimed that the physicians treating Mr. Vilches were responsible for his death.

In January 2001, Mr. Vilches was brought to a public hospital in Santiago due to some breathing problems. The family claimed that there he received degrading treatment (he went hungry, was kept in a drugged and unconscious state, was naked, and had his hands and legs tied). The physicians did not allow the family to view the medical record and restricted visits.

Some days after the recovery, the victim underwent surgery, without his next of kin having been informed and without any authorization, even though Mr. Vilches suffered from two different types of diabetes, and the family had informed the hospital that he could not undergo surgery. Seven days after the operation, he was discharged from the hospital, despite his serious health condition. A few days later, he was brought back to the hospital where he died.

The family received several different diagnoses regarding the death of Mr. Vilches. The cause of his death was never clarified by an official autopsy.

The family, lacking the economic means to hire a lawyer, sought support to lodge a criminal complaint for homicide before the justice authorities with the counsel of attorneys from the free legal services of the Bolivarian University and from the Human Rights Office of the Legal Aid Corporation (a public service offered by the Chilean State). The family filed two criminal complaints and requested a series of investigative procedures.

The case suffered serious delays and ineffectiveness of the investigative procedures. As a consequence, the case was still in the stage of preliminary investigation in 2009, when it was brought in front of the Inter-American Commission on Human Rights, despite the fact that several years had elapsed since the complaint was filed.

The family claimed that judicial authorities were covering up for the physicians who had attended to the victim, and that they were therefore victims of denial of justice.

### Decision and Reasoning

The Commission only analysed the admissibility of the petition from a procedural point of view (whether the remedies under domestic rules have been pursued and exhausted) and a substantial point of view (whether the petition was groundless).

First, the Commission held that the petition was admissible, even if the case was still open in front of Chilean national authorities. Article 46 of the American Convention of Human Rights establishes, for the admission of a case in front of the Commission, that the remedies under domestic rules have been pursued and exhausted (to allow national authorities to resolve a case before it is examined by an international body). In this case, the Commission applied the exception provided by paragraph 2 of article 46, which establishes that petitioners are exempted from the obligation of exhausting domestic remedies in a situation where they cannot be exhausted because they are not available as a matter of law or as a matter of fact. The Commission found that there were unwarranted delays in the legal proceeding that were not justified by the

State. The family had filed criminal complaints and also requested a series of investigative procedures, but the judicial system had failed to ensure due investigation of the complaint. Therefore, the Commission could not require the family to keep on promoting the continuation of procedures that they had already requested and which were not delivered in a reasonable time frame..

Second, the Commission held that the petition was not "manifestly groundless" or "obviously out of order" regarding the violation of the petitioner's rights to life, human treatment, equal protection, and judicial protection and guarantees.

The Commission reserved further analysis on the alleged violations for the merits stage.

### **Decision Excerpts**

"The Commission, based on the information and arguments submitted regarding the excessive time lapsed in the criminal investigation process of the facts object of this petition, notes that more than seven years have gone by from the moment the complaint was lodged and the proceedings continue to be in the stage of preliminary investigation, without a final judgment having been rendered. Insofar as the alleged responsibility of the medical personnel that cared for the alleged victim has not been either established or disproved, it is the opinion of the Commission that the allegations of the petitioners tend to establish the violation of article 25 of the Convention, regarding the right to prompt recourse to judicial protection, and to the judicial guarantees provided for by article 8 of the American Convention." Para. 63.

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