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REPORT No. 220/19
PETITION P-1002-08
REPORT ON ADMISSIBILITY

CARLOS HUMBERTO CONTRERAS MALUJE AND FAMILY
CHILE

Approved electronically by the Commission on October 24, 2019.

Cite as: IACHR, Report No. 220/19, Petition 1002-08. Admissibility. Carlos Humberto Contreras Maluje and Family. Chile. October 24, 2019.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Nelson Caucoto Pereira, Pablo Fuenzalida Valenzuela and Franz Möller Morris
Alleged victim:	Carlos Humberto Contreras Maluje and family
Respondent State:	Chile ¹
Rights invoked:	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 25 (judicial protection) of the American Convention on Human Rights ² in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	August 26, 2008
Notification of the petition to the State:	February 5, 2014
State's first response:	December 20, 2017
Additional observations from the petitioner:	April 26, 2018
Notification of the possible archiving of the petition:	November 1, 2017
Petitioner's response to the notification regarding the possible archiving of the petition:	November 10, 2017

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Convention (deposit of instrument of ratification made on August 21, 1990), Inter-American Convention to Prevent and Punish Torture ⁴ (deposit of instrument of ratification made on September 30, 1988) and Inter-American Convention on Forced Disappearance of Persons ⁵ (deposit of instrument of ratification made on January 26, 2010)

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
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¹ In accordance with the provisions of Article 17.2.a of the Commission's Rules of Procedure, Commissioner Antonia Urrejola Noguera, of Chilean nationality, did not participate in either the discussions or the decision in the present case.

² Hereinafter "the Convention" or "the American Convention".

³ The observations submitted by each party were duly transmitted to the opposing party.

⁴ Hereinafter "IACPPT".

⁵ Hereinafter "IACFDP".

Rights declared admissible	Articles I (life, liberty and personal security), XVII (recognition of juridical personality and civil rights), XVIII (fair trial) and XXV (protection from arbitrary arrest) of the American Declaration; Articles 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention, in conjunction with its Articles 1.1 and 2; Articles 1, 6 and 8 of the IACPPT; and Article I of the IACFDP
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, January 4, 2013
Timeliness of the petition:	Yes, August 26, 2008

V. FACTS ALLEGED

1. The petitioners allege the forced disappearance of Mr. Carlos Humberto Contreras Maluje (hereinafter “the alleged victim”) perpetrated by state agents on November 3, 1976. They allege a lack of investigation into the events and a failure to punish those responsible. They also allege that the claim for civil reparation requested by the family members was denied on the grounds of the application of the statute of limitations, and without consideration of the inapplicability of said statute of limitations to the serious violations at the core of the claims.

2. They indicate that on November 2, 1976, the alleged victim was detained by the Joint Command and taken to the detention center called “La Firma”, where he was subjected to torture in order to provide information on other communist militants. They indicate that the next day Mr. Contreras Maluje managed to escape from his captors, and in doing so was hit by a minibus. After the impact, which left him seriously injured, he lay in the street screaming that he was trying to escape from the agents of the National Intelligence Directorate (hereinafter “DINA”). Based on certain witness statements, it is alleged that a police officer who was at the scene witnessed the events and attempted to intervene. However, four armed individuals got out of a Fiat car, belonging to the Air Force Intelligence Directorate (hereinafter “DIFA”), indicating that they were in charge. They say that despite seeing him injured, they beat Mr. Contreras and forced him into the vehicle, taking him away and that his whereabouts are still unknown.

3. They indicate that the alleged victim’s next of kin filed an *amparo* motion on November 15, 1976, which was granted by the Court of Appeals of Santiago. On January 31, 1977, the Court ordered the Ministry of the Interior to release Mr. Contreras Maluje. However, they indicate that on February 4, 1977, the Ministry reported that the judicial authorities should consider as proved that the alleged victim was not detained by any service or body controlled by the Executive Branch, and that consequently it was impossible to comply with the *amparo* decision. They point out that for this reason the case was submitted for review to the Supreme Court of Justice. However, the Court only opened an administrative file, and avoided ruling on the breach of the decision and the situation of the alleged victim.

4. They refer to the fact that the alleged victim’s parents filed a complaint with the Santiago Aviation Court against DINA and DIFA personnel for the crimes of illegal detention and kidnapping in November 1976, and that Mr. Contreras Maluje’s wife filed a complaint for kidnapping with the Fifth Criminal Court of Santiago. They allege that both proceedings were transferred to the military jurisdiction, and that on July 5, 1978, the Military Court of Justice ordered the temporary dismissal of the case, on the grounds that the perpetration of the reported crimes was not sufficiently proven.

5. The petitioners indicate that after a request by the National Commission for Reparation and Reconciliation, the case was reopened on July 12, 1996. On November 30, 2005, the Third Criminal Court of Santiago convicted seven individuals for the offense of murder and sentenced them to three years in prison. However, it established that the statute of limitations applied to the civil action, and rejected compensation

for damages. The Santiago Appeals Chamber and the Supreme Court of Justice upheld this decision on July 31, 2006, and on November 13, 2007, respectively.

6. Additionally, they point out that the alleged victim's next of kin filed an action for reparation with the Eleventh Civil Court of Santiago, which accepted the claims sought and established liability to pay compensation in a judgment issued on October 14, 2010. This decision was upheld by the Eighth Chamber of the Court of Appeals of Santiago on June 20, 2012. The petitioners argue that upon review of the appeal filed by the Treasury, the Supreme Court of Justice decided to annul the indemnification judgment on January 4, 2013, on the ground that the civil action was time-barred.

7. For its part, the State argues that the Commission lacks competence to assess the events occurring before the date of deposit of the instrument of ratification of the Convention. It states that the petitioners failed to exhaust all the procedural instances provided by Chilean law. The State argues that the civil claim for damages was available, due to the fact that although they had claimed for reparations together with the criminal action that was rejected, they were not barred from pursuing the civil avenue afterwards.

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

8. The IACHR observes that the parties agree that domestic remedies have been exhausted with respect to the criminal proceedings. In relation to the alleged lack of access to civil reparations for the alleged victims resulting from Mr. Contreras Maluje's disappearance, the petitioners argue that they filed a civil claim for compensation with the Eleventh Civil Court of Santiago, which issued a judgment in their favor on October 14, 2010, and was upheld by the Eighth Chamber of the Court of Appeals of Santiago on June 20, 2012. Finally, on January 4, 2013, the Supreme Court, on the appeal filed by the Treasury, annulled the compensation decision on the ground that the civil action was time-barred, thereby exhausting domestic remedies. For its part, the State alleges a failure to exhaust domestic remedies, since a civil claim for damages was available but, it argues, was not presented independently from the criminal proceedings.

9. Based on the above and considering the relationship between the judicial proceedings, the Commission considers that the alleged victims exhausted the domestic remedies available in criminal and civil matters, and concludes that the present petition meets the requirements established in Article 46.1.a of the Convention and Article 31.1 of the Rules of Procedure. In addition, considering the Supreme Court's judgment of January 4, 2013, and that the present petition was received on August 26, 2008, the exhaustion of domestic remedies occurred while the case was under consideration at the admissibility state. In accordance with the standards established by the Commission, the analysis of the requirements set out in Article 46.1.b of the Convention must be made in the light of the situation in force at the time the admissibility or inadmissibility of the claim is being assessed. Therefore, the Commission considers that the requirement set out in Article 46.1.b of the Convention is fulfilled.

VII. ANALYSIS OF COLORABLE CLAIM

10. In relation to its jurisdiction *ratione temporis* and *ratione materiae*, the Commission will analyze the facts of the present case in light of the obligations established in the American Convention, in the Inter-American Convention on Forced Disappearance of Persons and in the Inter-American Convention to Prevent and Punish Torture with respect to those events occurring after their entry into force, or whose execution continued after the entry into force of said instruments for the State of Chile. The Commission will analyze the facts, which occurred prior to the entry into force of the American Convention for that State, in the light of the obligations arising under the American Declaration.

11. In this regard, in view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, and of the context in which the complaints are framed, the IACHR considers that, if proven, the alleged acts of detention, torture, forced disappearance and lack of effective judicial protection, could characterize possible violations of the rights protected in Articles I (right to life, liberty, and personal security), XVII (right to recognition of juridical personality and civil rights), XVIII (right

to a fair trial) and XXV (right to protection arbitrary arrest) of the American Declaration. With regard to the alleged ongoing nature and lack of clarification of these offenses, as well as the allegations regarding the lack of compensation for the events that occurred – by the courts’ application of the statute of limitations to the civil aspects - the Commission considers that the allegations could characterize possible violations of Articles 3 (right to juridical personality), 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects), as well as Articles 1, 6 and 8 of the IACPPT; and Article I of the IACFDP.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles I, XVII, XVIII and XXV of the American Declaration, Articles 3, 4, 5, 7, 8 and 25 in conjunction with Articles 1.1 and 2 of the American Convention; Articles 1, 6, and 8 of the IACPPT; and Article I of the IACFDP

2. To notify the parties of this decision; to continue with the analysis on the merits; 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 24th day of the month of October, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández, First Vice President; Margarette May Macaulay, Francisco José Eguiguren, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.