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**REPORT No. 41/20**

**PETITION 4-10**

REPORT ON ADMISSIBILITY

RELATIVES OF MODESTA CAROLINA DEL CARMEN WIFF SEPÚLVEDA  
CHILE

Approved electronically by the Commission on March 13, 2020.

**Cite as:** IACHR, Report No. 41/20, Petition 4-10. Admissibility. Relatives of Modesta Carolina del Carmen Wiff Sepúlveda. Chile. March 13, 2020.

**I. INFORMATION ABOUT THE PETITION**

Petitioner	Nelson Caucoto <sup>1</sup>
Alleged victims	Relatives of Modesta Carolina del Carmen Wiff Sepúlveda <sup>2</sup>
Respondent State	Chile <sup>3</sup>
Rights invoked	Articles 8 (fair trial), 25 (judicial protection) of the American Convention on Human Rights <sup>4</sup> in connection with its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)

**II. PROCEEDINGS BEFORE THE IACHR<sup>5</sup>**

Date of filing	January 3, 2010
Notification of the petition	April 19, 2016
State's first response	June 28, 2016
Additional observations from the petitioner	September 11, 2017
Additional observations from the State	June 21, 2018

**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 of ratification 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	Articles 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights in connection with its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
Exhaustion or exception to the exhaustion of remedies	Exception set forth in Article 46.2.b of the Convention applies
Timeliness of the petition	Yes, under the terms of section VI

**V. SUMMARY OF ALLEGED FACTS**

1. The petitioning party claims that the family members of Modesta Carolina del Carmen Wiff Sepúlveda (or, hereinafter, "the alleged victim") has not been granted reparations for her extrajudicial detention and subsequent enforced disappearance, and the violation of judicial guarantees and the right to judicial protection in the civil proceedings, which constitute a denial of justice. The petitioner states that it does not request that the Commission rule on the detention and subsequent disappearance of the alleged victim, but on the denial of justice by the civil courts.

2. The petitioning party submits<sup>6</sup> that the alleged victim, a member of the Socialist Party, was arrested on June 25, 1975, along with Carlos Lorca, a member of the Socialist Party Central Committee, by eight officers of the Directorate of National Intelligence (DINA). The petitioner alleges that a couple, including the alleged victim, were put in a car, a red FIAT 125, that left to Vicuña Mackenna. It alleges that that day in

<sup>1</sup> The petition was initially filed also by Franz Moller Morris; however, by a letter dated September 26, 2017, he notified his withdrawal from representation.

<sup>2</sup> Paula Carolina Mercedes del Campo Wiff, the alleged victim's daughter.

<sup>3</sup> Pursuant to Article 17.2.a of the IACHR Rules, Commissioner Antonia Urrejola Noguera, a Chilean national, did not participate in the discussion or the voting on this matter.

<sup>4</sup> Hereinafter, the "American Convention" or "Convention."

<sup>5</sup> The observations submitted by each party were duly transmitted to the opposing party.

<sup>6</sup> The petitioning party quotes the Rettig Report.

the afternoon, five officers came to the alleged victim's domicile. They searched the place, seized her passport and an old recorder, and questioned her nine-year-old daughter, her sister, and another woman who was there. Several witnesses confirmed the alleged victim's confinement at Villa Grimaldi. It claims that according to the Retting Commission Report, the alleged victim's detention and disappearance was part of a DINA-led operation against the Socialist Party leaders, members of the Political Commission, their contacts, and correspondence. The alleged victim is still considered a disappeared detainee, and her destination remains unknown.

3. On June 26, 1975, the alleged victim's family members filed an *amparo* action to the Court of Appeals of Santiago. They attached the affidavits of witnesses of the alleged victim's detention and mentioned a place in La Puntilla, El Quisco, as a possible site of confinement. However, the authorities denied her detention<sup>7</sup> and, as a result, the *amparo* action was dismissed, and on August 12, 1975, the proceedings were sent to the Fourth Criminal Court of Santiago. Again, the Minister of the Interior replied that the alleged victim was not detained by order of that Secretariat, adding that the DINA had no records concerning the alleged victim. On February 28, 1976, the investigation was closed, and on April 30 that year, a temporary stay of proceedings was ruled. The Court of Appeals of Santiago upheld this decision on July 28, 1976.

4. The petitioner alleges that *amparo* actions were filed from abroad,<sup>8</sup> such as one filed by the International Union of Catholic Jurists, the French League for Women's Rights, and other French citizens, in favor of 43 disappeared detainees, including the alleged victim. Nevertheless, the action was dismissed on May 6, 1977. The Supreme Court upheld this decision on May 11, 1977.

5. As for the civil proceedings, the petitioner indicates that a civil trial was filed on November 2, 2000, before the 28th Civil Court of Santiago. This court ruled on April 8, 2002, denying the claimants' request for compensation to redress the injury caused. On October 10, 2002, they appealed to the Court of Appeals of Santiago, but this rejected the appeal on July 19, 2007. This decision was appealed before the Supreme Court on September 6, 2007. On June 10, 2009, the court decided to admit the Attorney General's argument that the alleged victim's claims were based on acts barred by the statute of limitations. The petitioner submits that the Supreme Court invited the parties to enter a settlement agreement but that the Chilean Attorney General rejected the proposal. On July 2, 2009, the civil trial court issued a final resolution on the case.

6. The State indicates that it has no observations to submit on the civil aspect of the petition, without prejudice to the observations that, in due course, it may submit regarding the merits.

7. Concerning the prosecution of criminal responsibility, the State informs that a case entitled *Comité Central Partido Socialista* has been filed to that aim and is currently underway. It believes that, therefore, the Commission is not competent to hear this case, as far as the purported criminal offense is concerned, given the lack of exhaustion of domestic remedies. As for the claims concerning the rights to life, humane treatment, and personal liberty, the State recalls its reservations to the American Convention on Human Rights. Chile's recognition of competence does not apply to events happening before March 11, 1990. The State indicates that the facts in this petition belong to that period because the cause of the purported violation of rights stems from the alleged victim's detention on June 25, 1975. Therefore, it believes that the Commission lacks the competence to hear such claims.

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

8. The IACHR notes that the petitioner asserts that this petition exclusively concerns the lack of civil reparation for the disappearance of Carmen Wiff Sepúlveda since the alleged victims' civil complaint was dismissed on the grounds of the statute of limitations. In the light of the consistent jurisprudence of the Chilean courts applying the civil prescription to claims for compensation for human rights violations that took place during the military dictatorship<sup>9</sup>, the Commission recalls that, in accordance with its jurisprudence

<sup>7</sup> The Army General and Minister of the Interior reported, thrice, that the alleged victim was not detained by order of that Secretariat. Additionally, the DINA said queries in that regard should be addressed to the Ministry of the Interior.

<sup>8</sup> The petitioner indicates that another *amparo* appeal was submitted from abroad with the support from French citizens, including the French Primate Cardinal and Archbishop from Paris, and former Senator, François Mitterrand.

<sup>9</sup> See IACHR, Report No. 59/16. Petition 89-07. Admissibility. Juan Alberto Contreras González, Jorge Edilio Contreras González and family. Chile. December 6, 2016; IACHR, Report No. 84/17. Petition 188-11. Admissibility. Marcos Luis Abraca Zamorano and others. Chile. July 7, 2017; IACHR, Report No. 5/19, Petition 1560-08. Admissibility. Juan Paredes Barrientos and family. Chile. January 31, 2019.

and that of other organs of human rights, inefficient resources must not be exhausted. According to the IACHR, remedies are ineffective for the purposes of admissibility of the petition when it is demonstrated that none of the avenues to demand redress before domestic justice appear to have prospects of success. To this end, the Commission must be in a position to consider elements allowing it to effectively evaluate the probable outcome of the petitioners' actions. Mere doubts about the prospects of appearing before the courts are not enough to exempt the petitioners from the exhaustion of domestic remedies. In order to decide whether a case is admissible or not and without prejudice to the merits of the case, if such remedies are considered ineffective because they do not have a reasonable prospect of success, the exception to the exhaustion of domestic remedies referred to in Article 31.2(b) of the IACHR's Rules of Procedure will apply<sup>10</sup>.

9. Likewise, in view of the context and the characteristics of the present case, the Commission considers that the petition was presented within a reasonable period of time, and that the admissibility requirement regarding the submission deadline must be satisfied.

## VII. COLORABLE CLAIM

10. In relation to the competence *ratione temporis* and *ratione materiae*, the Commission will analyze the facts of the present case in the light of the obligations established in the American Convention with respect to those events that occurred after its entry into force or whose execution continued after the entry in force of said instruments for the State of Chile.

11. The Commission notes that this petition includes allegations regarding the lack of compensation given the judicial application of the statute of limitations on civil. As regards the civil actions for reparations in matters such as the instant one, both the Commission and the Inter-American Court of Human Rights have found that the application of the statute of limitations is an obstacle to effective access to justice for victims seeking reparations<sup>11</sup>. Bearing this in mind, the IACHR considers that the allegations of the petitioners are not manifestly groundless and require an analysis on the merits, since the alleged facts, if proven, could characterize violations of Articles 8 (fair trial) and 25 (judicial protection) of the American Convention, in accordance with its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects).

## VIII. DECISION

1. To declare this petition admissible regarding Articles 8, and 25 of the American Convention in accordance with its Articles 1.1 and 2; and

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 13<sup>th</sup> day of the month of March, 2020. (Signed): Joel Hernández (dissenting opinion), President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.

<sup>10</sup> IACHR, Report No. 18/12, Petition 161-06. Admissibility. Juvenile Offenders Sentenced to Life Imprisonment without Parole. United States. March 20, 2012, par. 47

<sup>11</sup> IACHR, Report No. 52/16, Case 12.521. Merits. Maria Laura Órdenes Guerra et al. Chile. November 30, 2016; IACHR, Report No. 5/19. Petition 1560-08. Admissibility. Juan Paredes Barrientos and Family. Chile. January 31, 2019; I/A Court H.R., Case of Órdenes Guerra et al. v. Chile. Merits, Reparations and Costs. Judgment of November 29, 2018.