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REPORT No. 35/18
PETITION 31-07
REPORT ON ADMISSIBILITY

JUAN CARLOS MENANTEAU ACEITUNO AND YASMÍN ERIKSEN
FERNÁNDEZ ACUÑA
CHILE

Approved by the Commission at its session No. 2125 held on May 4, 2018.
168th Special Period of Sessions.

Cite as: IACHR, Report No. 35/18, Petition 31-07. Admissibility. Juan Carlos Menanteau Aceituno and Yasmín Eriksen Fernández Acuña. Chile. May 4, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Nelson Guillermo Caucoto Pereira
Alleged victim:	Juan Carlos Menanteau Aceituno and Yasmín Eriksen Fernández Acuña
Respondent State:	Chile ¹
Rights invoked:	Articles 8 (judicial guarantees) and 25 (judicial protection) of the American Convention on Human Rights, ² in relation to its Articles 1.1 (obligation to respect rights) and 2 (duty to adopt provisions of domestic law)

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	January 11, 2007
Notification of the petition to the State:	October 17, 2011
State's first response:	July 5, 2013
Notification of the possible archiving of the petition:	May 23, 2017
Petitioner's response to the notification regarding the possible archiving of the petition:	December 18, 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 Declaration of the Rights and Duties of Man ⁴ (ratification of the Charter of the OAS on June 5, 1953); and American Convention (deposit of instrument made 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 I (life, liberty, security and integrity) and XVIII (justice) of the American Declaration and Articles 5 (integrity), 8 (judicial guarantees) and 25 (judicial protection) of the American Convention in relation to its Articles 1.1 (obligation to respect rights) and 2 (duty to adopt provisions of domestic law)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, July 21, 2006

¹ In accordance with Article 17.2.a of the Commission's Rules, Commissioner Antonia Urrejola, of Chilean nationality, did not participate either in the debate nor the decision of the present matter.

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

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

⁴ Hereinafter "the Declaration" or "the American Declaration"

Timeliness of the petition:

Yes, January 11, 2007

V. FACTS ALLEGED

1. The petitioner claims that the national courts have rejected the reparation actions filed by Yazmín Eriksen Fernández Acuña (hereinafter, the "alleged victim") for the execution of her husband, Juan Carlos Menanteau Aceituno, by state agents on December 1, 1975, during the military dictatorship. The petitioner alleges that her rights were declared to have been time barred without considering the imprescriptible nature of the serious violations founding her claim. He adds that the violation of the right to adequate compensation has become part of a systematic refusal by the national courts to comply with their international obligations, and providing adequate reparations to the close relatives of the victims of serious violations of fundamental rights committed during the dictatorship. He argues that the State, as the defendant, through the State Defense Council (hereinafter CDE), motioned for the dismissal of the civil actions.

2. In this regard, the petitioner maintains that the National Truth and Reconciliation Commission became increasingly convinced that Juan Carlos Menanteau Aceituno, after having survived an initial illegal detention between November 1974 and September 1975, was kidnapped again from his parents' home by agents of the National Intelligence Directorate (DINA) on November 19, 1975. On December 10, 1975, his dismembered body was discovered in the vicinity of Buin, in the Metropolitan Region, with signs of torture and bullet wounds. It was identified by his relatives at the Legal Medical Institute, establishing December 1, 1975, as the date of his death. He states, therefore, that the Rettig Report published by the Chile's National Commission on Truth and Reconciliation in 1991, formally and expressly recognized Juan Carlos Menanteau Aceituno as a victim "executed by agents of the State, who violated his human rights."

3. The petitioner indicates that on September 12, 1999, on behalf of the alleged victim in her capacity as surviving spouse, he filed a civil claim for damages before the 28th Civil Court of Santiago. He indicates that on September 6, 2000, the claim was dismissed due to the statute of limitations of the civil action without considering the seriousness of the alleged events. The petitioner states that he appealed to the Court of Appeals of Santiago, which, on July 21, 2006 upheld the dismissal based on the same arguments, maintaining that avoidance of the statute of limitations requires explicit legal provisions absent in the present case, adding that the alleged victim had had sufficient time to file a civil claim but omitted to do so, and she was solely responsible for the fact that it had become time barred.

4. The petitioner alleges that the domestic remedies are exhausted. Otherwise they would be forced to seek a further remedy before the Supreme Court. This would not be viable for as long as there is no change in the current criteria of that Court or its composition, since the Supreme Court has repeatedly upheld the statute of limitations for reparations, leaving no possibility of success for any case submitted to its jurisdiction. Based on the foregoing, he argues that the failure to file a *cassation* appeal before the Supreme Court is justified in accordance with the exceptions set forth in Article 31.2 of the IACHR's Rules of Procedure.

5. For its part, the State maintains that the petition is inadmissible. It argues that domestic remedies have not been exhausted, since the petitioner has not made use of the procedural tools provided by domestic law to remedy the alleged violation of rights. It indicates that the petitioner himself acknowledges having refused to pursue a judicial remedy due to the mere possibility of obtaining an adverse result, without having filed an annulment appeal before the Supreme Court. It lists cases in which the highest court favorably decided civil actions for reparations in cases of serious human rights violations, affirming that the argument used by the petitioner not to exhaust domestic remedies is ill founded.

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

6. The petitioner states that on September 12, 1999, he filed a civil suit for compensation and damages before the 28th Civil Court of Santiago, which was dismissed on September 6, 2000, a decision that was upheld by the Court of Appeals of Santiago on July 21, 2006, when domestic remedies would have been

exhausted. For its part, the State alleges lack of exhaustion of domestic remedies since an annulment appeal was not filed before the Supreme Court.

7. The Commission considers that the alleged victims exhausted the ordinary remedies provided for in civil matters, that is, the ordinary appeal. The case law of the System has established that although in some cases extraordinary appeals may prove adequate confront human rights violations, as a general rule, the only remedies to be exhausted are those whose functions within the legal system are appropriate to provide protection aimed at redressing a violation of a certain legal right. Therefore, in principle, it is a question of ordinary remedies rather than extraordinary ones.⁵ Bearing in mind that the judgment of the Court of Appeals of Santiago is dated July 21, 2006, and that this petition was received on January 11, 2007, the Commission considers that the requirement established in Article 46.1.b of the Convention has been complied with.

VII. ANALYSIS OF COLORABLE CLAIM

8. In view of the factual and legal elements presented by the parties and the nature of the matter brought to its attention, and the context in which the complaints are framed, the IACHR considers that, if proven, the alleged facts related to the lack of compensation for the events that occurred, in judicial application of the statute of limitations in civil matters, they could characterize possible violations of the rights protected in Articles 5, 8 and 25 of the American Convention, in accordance with Articles 1.1 and 2 of said treaty, as well as of Articles I and XVIII of the American Declaration with respect to the alleged facts that would have occurred prior to the entry into force of the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 8, and 25 of the American Convention in connection with Articles 1.1 and 2 of the same instrument, and Articles I and XVIII of the American Declaration; 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.

Done and signed in the city of Santo Domingo, Dominican Republic, on the 4th day of the month of May, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, and Flávia Piovesan, Commissioners.

⁵ IACHR, Report No. 59/16. Petition 89-07. Admissibility. Juan Alberto Contreras González, Jorge Edilio Contreras González and Familia. Chile. December 6, 2016, para. 5.