

OEA/Ser.L/V/II.

Doc. 240

9 September 2019

Original: Spanish

**REPORT No. 213/19**

**PETITION 1492-09**

REPORT ON ADMISSIBILITY

RICARDO MANUEL WEIBER NAVERRETE Y FAMILIA  
CHILE

Approved by the Commission at its session No. XXXX held on XX XX, 201X  
1XX<sup>th</sup> Regular Period of Sessions

**Cite as:** IACHR, Report No. 213/19, Petition 1492-09. Admissibility. Ricardo Manuel Weiber Naverrete and family. Chile. September 9 2019.

**I. INFORMATION ABOUT THE PETITION**

Petitioner	Nelson Caucoto Pereira <sup>1</sup>
Alleged victim	Ricardo Manuel Weiber Naverrete and family <sup>2</sup>
Respondent State	Chile <sup>3</sup>
Rights invoked	Articles 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights <sup>4</sup> in relation to articles 1 (obligation to respect rights) and 2 (domestic legal effects)

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

Filing of the petition	November 13, 2009
Notification of the petition	September 17, 2014
State's first response	August 16, 2017
Additional observations from the petitioner	November 21, 2017

**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 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 relation to articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
Exhaustion or exception to the exhaustion of remedies	Yes, on May 13, 2009
Timeliness of the petition	Yes, on May 13, 2009

**V. SUMMARY OF ALLEGED FACTS**

1. The petitioner denounces the lack of reparation in favor of the relatives of Ricardo Manuel Weiber Naverrete (or, hereinafter, "alleged victim") for the damages caused by his extrajudicial detention and subsequent forced disappearance, as well as for the violation of judicial guarantees and the right to judicial protection during civil proceedings, amounting to a denial of justice.

2. He alleges that on October 26, 1975, the alleged victim and his brother were removed from their homes by a group of heavily armed agents of the Air Force Intelligence Directorate (hereinafter "DIFA"), and taken to the Colina Air Base, before being released on November 6 of the same year and taken to their respective homes. The petitioner indicates that the alleged victim presented visible marks of torture. The next day, the alleged victim would have been arrested again by members of the Joint Command in front of his spouse, an aunt and her three children, remaining disappeared until this day. The petitioner maintains that, by official letter dated December 18, 1975, DIFA reported that the alleged victim had been arrested on November 25, 1975, for his participation in the preparation of writings meant to infiltrate communists into

<sup>1</sup> The petition was also presented by Franz Moller Morris but through a communication dated September 26, 2017, he indicated that he desisted of his role as petitioner.

<sup>2</sup> Catalina del Carmen Avendaño Leal, widow of the alleged victim, Cristian Yuri Weibel Avendaño and Susana Águeda Weibel Avendaño, sons of the alleged victim.

<sup>3</sup> Based on article 17.2.a of the Rules of procedure of the Commission, Commissioner Antonia Urrejola Noguera, a Chilean national, did not participate in the debate or decision of this matter.

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

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

the Chilean Air Force and that he had been released after 12 hours. He also indicates that the report of the National Truth and Reconciliation Commission indicates that the alleged victim had been detained by members of the Joint Command on November 7, 1975, at the Colina Air Base, and then reported as dead in the military fields of Peldehue. The petitioner does not provide more information in this regard, nor does it mention whether the body was ever located.

3. The petitioner alleges that, before the second detention of the alleged victim,<sup>6</sup> the alleged victim's spouse filed an appeal for amparo – action for protection of constitutional rights – on November 10, 1975, before the Court of Appeals of Santiago, which was rejected on the basis of a report from the Minister of the Interior that expressed that the alleged victim had not been arrested by order of that Ministry. Before such decision, an appeal was filed, which was rejected by the Supreme Court on January 26, 1976.

4. On January 16, 1976, the spouse of the alleged victim filed, before the Third Criminal Court, a complaint for the crimes of illegal arrest and improper incommunicado detention of the alleged victim. Said Court declared itself incompetent to hear and resolve the facts reported, ordering the referral of the records to the Military Justice. Subsequently, the case was brought before the First Military Prosecutor. However, it was temporarily stayed as the crime of illegal arrest was not proven and the perpetrators were not identified. On August 18, 1976, the staying order was confirmed by the Military Judge. Also, on April 29, 1976, the spouse filed a complaint for the crime of kidnapping perpetrated against the alleged victim before the 11th Court of Santiago, against those who, in light of the investigations that had been carried out, appeared as responsible. The petitioner affirms being unaware of the outcome of said appeal. Additionally, he mentions that on September 25, 1991, the spouse filed another complaint with the Third Criminal Court of Santiago against the agents, bosses and structures of the so-called Joint Command for the crimes of unlawful association, kidnapping, homicide and illegal burial committed against the alleged victim.<sup>7</sup> No information is provided as to the outcome of that resource.

5. Additionally, the petitioner indicates that a Magistrate of the Court of Appeals, as Minister in Extraordinary Visit, was appointed to hear and resolve all those proceedings initiated to investigate the disappearances. The latter would have had knowledge of the case of the alleged victim through this proceeding. However, the petitioner alleges that the Minister would have limited himself to requesting the court orders from the country's Criminal Courts and to interviewing the young children of the alleged victim. On October 8, 1979, the investigation would have been closed. The petitioner also describes an investigation process carried out in the 1970s and 1980s regarding the detention and disappearance of senior leaders of Leftist Political Parties<sup>8</sup> in which the actions of the Joint Command would have been investigated. At that point of the investigation, data would have been established regarding other cases, some of them including the disappearance of persons in similar circumstances as of the case of the alleged victim. The status of the process is not clear from the file.

6. Regarding the administrative process, the petitioner indicates that on June 6, 2000, the spouse of the alleged victim filed a claim for compensation against the State, which was rejected on March 14, 2002. That decision was appealed and, on May 31, 2007, the Court of Appeals of Santiago determined a compensation in favor of the family of the alleged victim. However, on April 20, 2009, the Supreme Court granted the appeal filed by the State and annulled the second instance ruling, applying the statute of limitations to the action for compensation. The petitioner indicates that this resolution acquired the status of “firm and enforceable” on May 13, 2009, through the compliance order rendered by the Civil Court of first instance.

---

<sup>6</sup> Additionally, he affirms that once the detention was verified, the spouse of the alleged victim presented an amparo before the Appeals Court of Santiago that was desisted on November 7 when Mr. Weibel Naverrete was released.

<sup>7</sup> The petitioner indicates that the appeal is based on the fact that the National Truth and Reconciliation Commission remitted the records that were in his possession, which led the spouse of the alleged victim to the conviction that she had been the victim of agents of the State.

<sup>8</sup> The petitioner indicates that on the occasion of the arrest and disappearance of 13 senior leaders of Leftist Political Parties in November and December 1976, and after the respective amparo filed was rejected, relatives of the victims requested the Hon. Supreme Court the appointment of a Minister, in order to investigate such an irregular situation. The Santiago Court of Appeals was ordered to make such designation.

7. For its part, the State indicates that as regards the allegation of lack of civil reparation, it has no objections to raise regarding the fulfillment of the formal requirements, without prejudice to the observations on the merits that it may make on the pertinent occasion. Regarding factual allegations that would have taken place in November 1975, consisting of the violation of the rights to life, personal integrity and personal freedom of the alleged victim, the State recalls its reservations to the American Convention, by virtue of which it was recorded that the recognition of competence conferred by the State refers to events subsequent to the date of deposit of the instrument of ratification, or, in any case, to events whose operative event took place after March 11, 1990. Therefore, the Commission would not have jurisdiction to rule on them due to an *ex ratione temporis* restriction.

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

8. The IACHR notes that the petitioner affirms that the petition is limited to denouncing the lack of access to civil reparation for the alleged victims arising from the disappearance of Mr. Naverrete, whose civil lawsuit was rejected based on the grounds of the statute of limitations. The Commission observes that in the administrative contentious jurisdiction, domestic remedies were exhausted by the decision of the judge of first instance on May 13, 2009, regarding the decision of the Supreme Court of March 20, 2009. Based on this, the Commission concludes that this petition meets the requirement established in Article 46.1.a of the Convention. Likewise, the petition was presented to the IACHR on November 13, 2009, complying with the requirement established in articles 46.1.b of the Convention and 32.1 of the Rules of Procedure.

#### **VII. COLORABLE CLAIM**

9. In view of the factual and legal elements alleged by the parties and the nature of the matter brought to its attention, the Commission considers that, if proven, the purported lack of compensation for the facts as a result of the application of the statute of limitations could constitute potential violations of the rights enshrined in articles 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to its articles 1.1 (obligation to respect rights) and 2 (domestic legal effects).

#### **VIII. DECISION**

1. To find the instant petition admissible in relation to Articles 8 and 25 of the American Convention, in accordance with articles 1.1 and 2 thereof; and

2. To notify the parties of the decision; to continue with the analysis on the merits and to publish this decision and to 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 9<sup>th</sup> day of the month of September, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández, First Vice President (dissenting opinion); Margarete May Macaulay, Francisco José Eguiguren, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.