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**REPORT No. 406/20**  
**PETITION 1592-09**  
REPORT ON ADMISSIBILITY

JOSÉ IGNACIO CASTRO MALDONADO AND FAMILY  
CHILE

Approved electronically by the Commission on December 10, 2020.

**Cite as:** IACHR, Report No. 406/20. Petition 1592-09. Admissibility. José Ignacio Castro Maldonado and Family. Chile. December 10, 2020.



**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Nelson Caucoto Pereira <sup>1</sup>
<b>Alleged victim:</b>	José Ignacio Castro Maldonado and family <sup>2</sup>
<b>State denounced:</b>	Chile <sup>3</sup>
<b>Rights invoked:</b>	Articles 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights <sup>4</sup> , in relation to its articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)

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

<b>Reception of petition:</b>	December 10, 2009
<b>Notification of the petition to the State:</b>	August 14, 2014
<b>State's first response:</b>	August 27, 2014
<b>Additional observations from the petitioning party:</b>	August 19, 2019
<b>Warning about possible archive:</b>	November 7, 2017
<b>Petitioner's response to warning about possible archive:</b>	November 27, 2017

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention (ratification instrument deposited on August 21, 1990)

**IV. ANALYSIS OF DUPLICATION OF PROCEDURES AND INTERNATIONAL RES JUDICATA, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

<b>Duplication of procedures and International res judicata:</b>	No
<b>Rights declared admissible</b>	Articles 8 (fair trial) and 25 (judicial protection) of the Convention, in relation to its articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, June 11, 2009
<b>Timeliness of the petition:</b>	Yes

<sup>1</sup> The petition was also presented by Franz Moller Morris, but through communication dated September 25, 2017, he resigned as representative.

<sup>2</sup> Jaime Gonzalo Castro Córdova (son), María Luz Castro Córdova (daughter), Silvia Alicia Castro Córdova (daughter), Georgina Inés Castro Córdova (daughter), Elisabeth del Carmen Castro López (daughter), José Enrique Castro Córdova (son), and María Cristina Castro Córdova (daughter).

<sup>3</sup> Pursuant to Article 17.2.a of the Commission's Rules of Procedure, Commissioner Antonia Urrejola Noguera, a Chilean national, did not participate in the debate or decision on this matter.

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

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

## V. SUMMARY OF ALLEGED FACTS

1. The petitioner denounces the lack of material reparation to the relatives of José Ignacio Castro Maldonado (hereinafter also “alleged victim”) for the damages caused by his extrajudicial detention and subsequent forced disappearance, as well as the violation of the right to a fair trial and to the right to judicial protection. The petitioner specifies that he does not request that the Inter-American Commission rule on the arrest and subsequent disappearance of the alleged victim, but on the denial of justice by the civil courts.

2. The petitioner argues<sup>6</sup> that the alleged victim, an agricultural worker, leader of the New Path Settlement [*Asentamiento Nuevo Sendero*] and a socialist activist, was arrested on October 16, 1973 by a military contingent from the San Bernardo Infantry School at his home and in the presence of his family. This operation was allegedly carried out by the military under the orders of the Army Lieutenant, André Magaña, who had detained twenty-two people at their homes<sup>7</sup>. The military personnel wore field suits, were heavily armed and, in some cases, their faces were smudged or covered with balaclavas. The petitioner alleges that the detainees were listed on a list carried by the captors and that they were all sympathizers of the deposed government, most of them settlers who participated in the agrarian reform process. In the operation, the homes were silently searched and in the dark, the detainees were taken from their homes, forbidding family members from leaving the house. The petitioner indicates that the retention of all the detainees in any detention facility is unknown and to date, there are no witnesses in this regard. However, the petitioner mentions that judicial records show that the detainees were taken that morning in the direction of the Codegua hills, close to Melipilla, where their execution was carried out. The petitioner alleges that his remains have not been found.

3. The petitioner indicates that the wife of the alleged victim carried out steps to locate him in different police stations and places of confinement, without obtaining proof of his arrest or registration of death at the Legal Medical Institute. On March 24, 1974, a massive amparo appeal was filed in favor of 131 people before the Santiago Court of Appeals, including the alleged victim. On November 28, 1974, the amparo was rejected, and the ruling was confirmed on appeal on January 31, 1975, by the Plenary of the Supreme Court, agreeing to appoint a minister on an extraordinary visit to focus on the corresponding investigation. Consequently, a process was ordered in the First Criminal Court of Santiago and on September 29, 1975, the Investigating Minister temporarily dismissed the case because “*the existence of a criminal act was not fully justified*”. On May 10, 1976, the Santiago Court of Appeals approved the resolution of temporary dismissal.

4. On March 21, 1975, a complaint of Presumed Misfortune of 23 people arrested in October 1973, whose whereabouts were unknown, including the alleged victim, was filed with the Maipo-Buin Court of First Instance. During this process, the National Executive Secretary for Detainees stated that they had no background information on the detainees and the Legal Medical Institute replied that they did not have a record of the detainees in the corpse income index book. In November 1975, the Court decided to close the file and to definitively dismiss the case. On January 20, 1976 the Rancagua Court of Appeals confirmed the dismissal, but of a temporary nature. Subsequently, a reopening request was filed, which was granted on March 23, 1977, based on the fact that ten of these 23 people, including the alleged victim, were part of a list of 63 people of whom the Chilean government at the 30th period of sessions of the UN in 1975, stated that they were not “disappeared detainees,” but that they were dead persons whose bodies were recorded in the income index books of the Legal Medical Institute. This list of 63 people was included in the “Report on the Current Situation of Human Rights in Chile”. On April 3, 1979, a Judge from the Rancagua Court of Appeals was appointed to continue hearing the case, who ordered expert opinions aimed at clarifying this contradiction. In August 1979, this Judge was declared incompetent to continue investigating the case, because the *President Aguirre Cerda* Court of Appeals had recently been created, and the Court of Buin-Maipo was under its jurisdiction. At the time of his incompetence, the Judge established the falsity of the name roll used by the Chilean government in his “Report on the Current Situation of Human Rights.” On October 17, 1980, the files were definitively forwarded to the Military Prosecutor’s Office due to a jurisdiction inhibition, since the complaints contained in the case attributed authorship to personnel of the Armed Forces. On May 24, 1982, the case was temporarily dismissed.

<sup>6</sup> The petitioner based his account and the events denounced in this petition on the Rettig report.

<sup>7</sup> The petitioner mentions the following names: Andrés Pereira Salsberg; René del Rosario Maureira Gajardo; Patricio Loreto Duque Orellana; Raúl Antonio, Silvestre René; Jorge Hernán Muñoz Peñaloza; Basilio Antonio Valenzuela Álvarez; German Fredes García; Carlos Enrique Gaete Lopez; Carlos Alberto Nieto Duarte; Laureano Quiroz Pezoa; Rosalindo Delfín Hernán Muñoz; Ramón Luis Silva Carreño; Pedro Antonio Cabezas Villegas; Roberto Servando Galaz; Enrique and Samuel Altamiro Lazo Quinteros; Luis Rodolfo; Samuel Lazo Maldonado; José Domingo Adasme Núñez; and Luis Alberto Gaete Balmaceda.

In March 1984, the Court-Martial revoked the dismissal and ordered proceedings to advance the investigation; During 1985, 26 Officers and non-commissioned officers from the Infantry School all denied their participation in the operations in and around Paine. On November 22, 1985, the Military Prosecutor requested the application of the Amnesty Law, and the Military Judge dismissed the case totally and definitively because the criminal responsibility of the persons allegedly accused was extinguished. In February 1992, the Court-Martial revoked said resolution and instructed that the case be returned to the preliminary phase, ordering the diligence of the exhumation of the 6 graves in Patio 29. In September 1991, within the framework of case 4449-AF of the 22nd Criminal Court of Santiago, 108 graves were exhumed in Patio 29 and the petitioner indicates that the bones removed are found in the Legal Medical Institute undergoing the identification process. At the date of publication of the Rettig Report, in 1992, the alleged victim had not been identified.

5. On March 2, 2000, the civil case was initiated before the 30th Civil Court of Santiago, whose sentence was passed on May 29, 2002, denying the claim of the relatives of the alleged victim to compensation for the damage, due to the prescription of the alleged civil actions. In a judgment of July 19, 2007, the Court of Appeals of Santiago confirmed the first instance sentence, highlighting that "*although it is true, in previous cases on the same matter, civil action derived from the events of those that are called de against humanity, they have chosen to vary the criteria, by virtue of the provisions of article 2497 of the Civil Code...*". Against this ruling, the plaintiff filed an appeal in cassation before the Supreme Court, and on May 26, 2009, said appeal was rejected by the Court, considering that the claims of the victims were based on actions already prescribed under the rules of Chilean civil law. On June 11, 2009, an order of "compliance" was issued by the Civil Court of first instance, giving the Supreme Court ruling the character of firm and enforceable. The petitioner alleges that the petition deals with the State's violation of its obligation to make reparation due to the damages caused by the extrajudicial detention and subsequent forced disappearance of the alleged victim, excluding the criminal case from the scope of this petition. Therefore, it argues that the order dated June 11, 2009 exhausted the internal process.

6. For its part, the State indicates that, regarding the reported violations of the alleged victim's rights to life, personal integrity, and personal liberty, it is worth recalling the Chilean State's reservations to the American Convention, in which it was stated that the acknowledgments of jurisdiction refer to events subsequent to the date of ratification of the Convention, while the aforementioned facts alleged occurred prior to the ratification of the American Convention by Chile on March 11, 1990. The State maintains additionally, the petition is inadmissible due to the lack of exhaustion of domestic remedies, since regarding the alleged violations of Articles 8 and 25 of the Convention, although the petitioners make an account of the criminal case until the year 1991, without having obtained positive results, currently there is a procedure in the national framework investigating the disappearance of Mr. Castro Maldonado instructed by the Minister of Jurisdiction of the Court of Appeals of San Miguel, under file No. 04-02-F, Paine. For this reason, the State argues that domestic remedies have not been exhausted and the Commission lacks jurisdiction to hear the matter. Likewise, regarding the alleged lack of reparation, it mentions that it has no formal observations to make at this stage.

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

7. The IACHR observes that the petitioner specifically denounces the lack of access to civil reparation for the alleged victims derived from the extrajudicial detention and subsequent forced disappearance of Mr. Castro Maldonado, whose civil claim was rejected based on the statute of limitations. The Commission observes that, in the contentious administrative jurisdiction, the case was initiated on March 2, 2000 before the 30th Civil Court of Santiago, and that on June 11, 2010, the judge of first instance issued an order of compliance, regarding the decision of the Supreme Court of May 26, 2009 rejecting the petitioners' claims. Based on this, the Commission concludes that domestic remedies have been exhausted and that the present petition meets the requirement established in Article 46.1.a of the Convention.

8. Likewise, the petition was filed before the IACHR on December 10, 2009, thus complying with the six-month filing deadline requirement established in Articles 46.1.b of the Convention and 32.1 of the IACHR Rules of Procedure.

## VII. COLORABLE CLAIM

9. The Commission observes that the relatives of the alleged victim had access to the remedies provided under Chilean law and that the matter was analyzed and resolved at the domestic level, even by the Supreme Court, the highest judicial instance. However, the petition includes allegations regarding the lack of compensation to the next of kin of the alleged victim for his extrajudicial detention and forced disappearance, due to the judicial application of the statute of limitations in civil matters. Regarding the civil actions for reparation for crimes against humanity, as in the present petition, both the Commission and the Inter-American Court have said that the application of the statute of limitations constitutes an obstacle to effective access to justice to guarantee the right of victims to be repaired, and therefore should not be applied in such circumstances<sup>8</sup>. Therefore, the Inter-American Commission considers that corresponds to exercise its complementary competence in this matter and to analyze in the merits stage whether the domestic system offered the petitioner the adequate channels to seek due reparation and guarantee the right to judicial protection. Taking into account the foregoing, the IACHR considers that the petitioner's allegations are not manifestly unfounded and require a substantive study, since the alleged facts, if corroborated as true, could characterize violations of 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), in accordance with other similar cases already decided by the IACHR<sup>9</sup>.

## VIII. DECISION

1. To declare this petition admissible in relation to Articles 8 and 25 of the American Convention, in relation to its articles 1.1 and 2; and
2. To notify the parties of this decision; to proceed with the analysis on the merits of the matter; 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 10<sup>th</sup> day of the month of December, 2020. (Signed): Joel Hernández, President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.

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<sup>8</sup>In an earlier decision on Chile, the IACHR stated the following:

In accordance with the established facts and the dates on which the primary violations for which the alleged victims of this case seek reparation occurred or began to occur, all from September 1973, the Commission considers that they are part of the crimes against humanity committed during the military dictatorship. The State did not dispute this classification of the facts. In this sense, the Commission considers that the application of the statute of limitations to the civil actions for reparation filed in this case, constituted an obstacle to effective access to justice to give effect to the right of victims to be repaired.

IACHR, Report No. 52/16, Case 12.521. Merit. Maria Laura Ordenes Guerra and others. Chile. November 30, 2016, para. 134; see also IACHR, Report No. 5/19, Petition 1560-08. Admissibility. Juan Paredes Barrientos and Family. Chile. January 31, 2019; I/A Court HR, Case of War Orders and others vs. Chile, Judgment of November 29, 2018, (Merits, Reparations, and Costs), para. 89.

<sup>9</sup>IACHR, Report No. 152/17. Admissibility. Hugo Tomás Martínez Guillén and Others. Chile. November 30, 2017; and IACHR, Report No. 5/19, Petition 1560-08. Admissibility. Juan Paredes Barrientos and Family. Chile. January 31, 2019.