

OEA/Ser.L/V/II.  
Doc. 49  
12 March 2020  
Original: Spanish

**REPORT No. 39/20**  
**PETITION 1368-12**  
REPORT ON ADMISSIBILITY

RELATIVES OF FRANCISCO ARNALDO ZÚÑIGA AGUILERA  
CHILE

Approved electronically by the Commission on March 12, 2020.

**Cite as:** IACHR, Report No. 39/20. Petition 1368-12. Admissibility. Relatives of Francisco Arnaldo Zúñiga Aguilera. Chile. March 12, 2020.

**I. INFORMATION ABOUT THE PETITION**

Petitioner	Nelson Caucoto Pereira <sup>1</sup>
Alleged victim	Relatives of Francisco Arnaldo Zúñiga Aguilera <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 1.1. (obligation to respect rights) and 2 (domestic legal effects)

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

Filing of the petition	July 18, 2012
Notification of the petition to State	August 9, 2017
State's first response	November 29, 2017
Additional observations presented by the petitioners	January 30, 2018
Archive warning	April 24, 2017
Response to the archive warning	April 25, 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 on Human Rights (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 relation to articles 1.1. (obligation to respect rights) and 2 (domestic legal effects)
Exhaustion or exception to the exhaustion of remedies	Yes, January 18, 2012
Timeliness of the petition	Yes, July 18, 2012

**V. SUMMARY OF ALLEGED FACTS**

1. The petitioner denounces the lack of reparation to the relatives of the alleged victim, Francisco Arnaldo Zúñiga Aguilera, for the damages caused by his extrajudicial detention and subsequent forced disappearance. He alleges violations of the right to fair trial and the right to judicial protection in the context of civil proceedings, amounting to denial of justice.

2. The petitioner states<sup>6</sup> that the alleged victim was illegally detained by police officers on October 12, 1973. He alleges that upon learning of the absence of her husband, the spouse of the alleged victim immediately began his search. At her husband's workplace, she was told that a Carabineer of the Third police

<sup>1</sup> Through a written statement received on September 26, 2017, petitioner Franz Moler Morris renounced to act as a petitioner in the instant petition.

<sup>2</sup> Dusan Anthony Zúñiga González and Francis Varinia Zúñiga González, siblings of the alleged victim; Silvia González Almendras, wife of the alleged victim.

<sup>3</sup> In accordance with article 17.2.a of the Commission's Rules of Procedure, Commissioner Antonia Urrejola Noguera, a Chilean national, did not take part in the discussion or decision of the instant matter.

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

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

<sup>6</sup> The petitioner based his statements and facts presented in the petition in the Rettig report.

station had commented that the alleged victim had been arrested and was being held in the police headquarters, with an injury in one leg and his body covered in bruises. Therefore, Mrs. Gonzalez went to the Third Police station, where agents denied holding the alleged victim in said compound, the same thing happening when other relatives went to the premises to inquire about him. The alleged victim has been missing since October 12, 1973.

3. On August 10, 1990, the spouse of the alleged victim reported the facts before the Third Criminal Court of Santiago. The petitioner alleges that, at the end of 1992, the judge was considering dismissing the case. However, the case was appended to case 4449AF of the Twelfth Criminal Court of Santiago for the crime of illegal burial in Patio 29 of the General Cemetery, in favor of unidentified persons, killed between September and December 1973. In September of 1991, the Judge of Preliminary Inquiry ordered the excavation of 108 graves, exposing a total of 125 bodies, which were entrusted to the Legal Medical Institute. The petitioner alleges that, at the end of 1992, he was still awaiting the report of the expert identifying the bodies.

4. Likewise, on October 22, 2004, the next of kin of the alleged victim initiated a proceeding before the 16th Civil Court of Santiago, which rejected their claims by means of a judgment of April 27, 2006, accepting the statute of limitations exception alleged by the Prosecutor. On January 10, 2007, an appeal was filed before the Court of Appeals of Santiago, which confirmed the judgment of first instance on June 11, 2009. On September 7, 2009, the appeal process began before the Supreme Court of Justice, which called the parties to conciliation on November 16, 2011; however, the State rejected this conciliation, so the case continued. On November 30, 2011, the Supreme Court confirmed the previous decisions, applying the statute of limitations to the claims of the relatives of the alleged victim. On January 18, 2012, the 16th Civil Court of Santiago issued an order to comply.

5. For its part, the State indicates that, on the criminal proceeding in favor of the alleged victim, it is in summary proceedings before the Minister of the Court of Appeals of Santiago. Regarding the allegations of the alleged extrajudicial detention and forced disappearance, in addition to those referring to the right to life, integrity and personal freedom of the alleged victim, the State argues that these events occurred prior to the deposit of the instrument of ratification, given that the events took place in October 1973 and the State ratified said instrument in August 1990, the Commission has no competence to refer to them. Additionally, the State states that as regards the allegation of lack of civil reparation, it has no objections to raise regarding compliance with the requirements, without prejudice to the observations on the merits that it may make at the appropriate time.

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

6. The Commission notes that the petitioner asserts that the petition is limited to denouncing the lack of access to civil reparation for the relatives of the alleged victim, following the forced disappearance of the victim. The Commission notes that the petitioner filed a civil complaint with the Civil Court of Santiago, which was rejected on April 27, 2006, a decision confirmed by the Court of Appeals of Santiago, on June 11, 2009, and by the Supreme Court, on November 30, 2011. The Commission concludes that, in the administrative contentious jurisdiction, domestic remedies were exhausted with the order issued by the judge of first instance on January 18, 2012. Based on this, the Commission concludes that this petition meets the requirement established in article 46.1.a of the Convention.

7. Likewise, regarding the deadline for submission, the Commission notes that the previous judicial decision was notified to the alleged victim on January 18, 2012 and that the petition before the Commission was filed on July 18, 2012. On the merit of the foregoing, the petition complies with the requirement set forth in article 46.1.b of the Convention.

## **VII. COLORABLE CLAIM**

8. The Commission observes that the petitioner has submitted allegations regarding the lack of reparation to the relatives of the alleged victim, Francisco Arnaldo Zúñiga Aguilera, for the damages caused by his extrajudicial detention and subsequent forced disappearance. The Commission also notes that the petitioner states that the petition is limited to denouncing the lack of access to civil reparation. 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>7</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 relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects), in accordance with similar cases already decided by the IACHR.<sup>8</sup>

### VIII. DECISION

1. To find the instant 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 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 12<sup>th</sup> day of the month of March, 2020. (Signed): Joel Hernández, President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Margarette May Macaulay, and Julissa Mantilla Falcón, Commissioners.

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<sup>7</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; 1/A Court H.R., Case of Órdenes Guerra et al. v. Chile. Merits, Reparations and Costs. Judgment of November 29, 2018.

<sup>8</sup> See IACHR, Report N, 152/17. Admissibility. Hugo Tomás Guillén and others. Chile. November 30, 2017; and IACHR, Report N. 5/19, Petition 1560-08. Admissibility. Juan Paredes Barrientos and family. Chile, January 31, 2019.