

OEA/Ser.L/V/II.
Doc. 100
13 May 2020
Original: Spanish

REPORT No. 90/20
PETITION 1694-09
REPORT ON ADMISSIBILITY

JUAN ALEJANDRO VARGAS CONTRERAS AND FAMILY
CHILE

Approved electronically by the Commission on May 13, 2020.

Cite as: IACHR, Report No. 90/20, Petition 1649-09. Admissibility. Juan Alejandro Vargas Contreras. Chile. May 13, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Nelson Caucoto Pereira and María Graciela Vargas Contreras ¹
Alleged victim	Juan Alejandro Vargas Contreras and family ²
Respondent State	Chile ³
Rights invoked	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), and 25 (judicial protection) of the American Convention on Human Rights ⁴ in connection with articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof

II. PROCEEDINGS BEFORE THE IACHR⁵

Date of filing	December 29, 2009
Notification of the petition	June 4, 2014
State's first response	August 25, 2016
Additional observations from the petitioner	September 8, 2017

III. COMPETENCE

<i>Ratione personae</i>	Yes
<i>Ratione loci</i>	Yes
<i>Ratione temporis</i>	Yes
<i>Ratione materiae</i>	Yes, American Declaration on the Rights and Duties of Man ⁶ (ratification of the OAS Charter on June 5, 1953); American Convention (deposit of instrument of ratification on August 21, 1990); Inter-American Convention to Prevent and Punish Torture ⁷ (deposit of instrument of ratification on September 30, 1988); and Inter-American Convention on Forced Disappearance of Persons (deposit of instrument of ratification on January 26, 2010)

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 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), and 25 (judicial protection) of the American Convention, in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof; Articles I (life, liberty, and personal security), XVII (recognition of juridical personality and civil rights), XVIII (fair trial) and XXV (protection against arbitrary arrest) of the American Declaration; Articles 1, 6, and 8 of the Convention against torture; Article I of the Inter-American Convention on Forced Disappearance of Persons
Exhaustion or exception to the exhaustion of remedies	Yes, under the terms of section VI
Timeliness of the petition	Yes, under the terms of section VI

V. SUMMARY OF FACTS ALLEGED

1. The petitioners claim the responsibility of the State for the extrajudicial detention and forced disappearance of the alleged victim, Juan Alejandro Vargas Contreras, in the 1973 military coup. They moreover

¹ Initially, Franz Moller Morris was one of the petitioners; however, by a communication dated September 26, 2017, he announced his withdrawal as such.

² María Graciela Vargas Contreras, sister of the alleged victim.

³ In conformity with the provisions of Article 17.2.a of the IACHR Rules of Procedure, Commissioner Antonia Urrejola Noguera, a Chilean national did not partake in the discussion or the decision on this matter.

⁴ Hereinafter "American Convention" or "Convention."

⁵ The observations submitted by each party were duly transmitted to the opposing party.

⁶ "American Declaration" or "Declaration."

⁷ "Convention against torture."

allege the State's lack of compensation to the relatives of the alleged victim given the application of the statute of limitations.

2. According to the petition,⁸ the alleged victim was a member of the presidential guard (GAP) of former President Salvador Allende and of the Socialist Party, and lived at Tomás Moro presidential house. They report that on September 11, 1973, in fulfilling his duty, he and other GAP members went to La Moneda presidential palace, where military officers arrested him. He was taken to the headquarters of the Tacna Regiment and held in detention. They submit that according to survivors' statements, the prisoners were tortured and abused by the army's intelligence service (SIM) as they were forced to kneel, lie down with their hands on the back of their necks or stand with lifted arms as well as were trampled on and beaten. The petitioners submit that on September 13 of that year, the alleged victim was taken from that site, along with other prisoners, to an unknown destination. According to survivors, military officers took the prisoners to the Peldehue military training camp, where these were executed and buried. The petitioners say that the alleged victim's whereabouts remain unknown, the execution of prisoners has not been officially recognized, and the bodies have not been returned to the relatives yet.⁹

3. The petitioners indicate that, on April 6, 1975, an amparo appeal was filed to the Court of Appeals of Concepción, but it was dismissed on the same day on the grounds that the alleged victim was not on the list of detainees. However, said court asked the Fourth Major Criminal Court to undertake the corresponding process; thus, on June 7, 1975, an investigation was initiated. On September 26, 1975, the judge of the Fourth Criminal Court of Concepción found that the claims did not establish the crime reported and decided to stay the case provisionally. On October 14, 1975, the Court of Appeals upheld the decision. The petitioners indicate that the case was reopened on July 21, 1989, filed in the archives on June 7, 1990, reopened on July 30, 1990, and filed in the archives on October 3, 1990. They also submit that on June 29, 1990, María Angélica Vargas Contreras, the alleged victim's sister, reported the presumed death of the alleged victim to the Fifth Major Criminal Court of Santiago to request information on his whereabouts. On June 27, 1991, she requested that her declaration be turned into a criminal complaint, for the alleged victim had been subjected to readily identifiable crimes committed by people that could and should be identified. No further information was provided in that regard.

4. On April 18, 2000, the alleged victim's relatives presented a claim for damages to the 21st Civil Court of Santiago. On December 3, 2002, the said court denied the claimants' claim for compensation to redress the damage caused. On January 31, 2003, the claimants appealed to the Court of Appeals of Santiago, but the court upheld the denial, arguing that the remedies were barred by the statute of limitations under the Chilean civil legal framework. Thus, on October 2, 2007, they filed an appeal before the Supreme Court of Justice. On April 15, 2009, the supreme court called for the parties to enter a friendly settlement agreement, but the Chilean Attorney General's Office declined the offer. By a resolution dated June 10, 2009, the Supreme Court ruled on the appeal by granting the Attorney General's Office's plea that the events were barred under the statute of limitations, confirming the lower court's decision. On May 25, 2009, the trial court's judge issued an enforcement order, which rendered the Supreme Court's decision a final judgment. As a result, domestic remedies were exhausted.

5. For its part, the State says that it has no objections regarding the civil claims in the petition, without prejudice to the observations on the merits that it may submit in due course. As for criminal remedies, the State contends that case No. 126.461-MG has been filed on the alleged victim by a justice of the Court of Appeals of Santiago, acting in the capacity of visiting justice. It asserts that the case is at trial.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

6. The IACHR recalls that whenever an alleged crime prosecutable ex officio is committed, the State is obligated to promote and further the criminal prosecution¹⁰ and that, in such cases, the criminal process is the adequate means to clarify the facts, prosecute those responsible and establish the corresponding criminal

⁸The petition is based on the report by the National Commission for Truth and Reconciliation, known as Rettig Report, which allegedly reports what happened with the people arrested in the attack on La Moneda.

⁹The petitioners further submit that on May 13, 1974, the alleged victim's live-in lover, Merari Agurto, was arrested at his house, prosecuted, and sentenced to two years of life in prison. The alleged victim's brother was also prosecuted and sentenced. He had to flee to the United States as an exile.

¹⁰ See IACHR, Report No. 105/17. Petition 798-07. Admissibility. David Valderrama Opazo et al. Chile. September 7, 2017.

punishment. The Commission notes that the State indicated that a judicial process on this matter is pending at the national level. However, the Commission observes that although it has been over 40 years since the facts took place, the detention, torture, and disappearance of the alleged victim have not been clarified, and those responsible have not been punished either. Therefore, the Commission concludes that the exception to the exhaustion of domestic remedies outlined in Article 46.2.c of the Convention is applicable. Given the context and the characteristics of the petition referred to in this report, the Commission deems that the petition was filed within a reasonable time and that it meets the requirement on timeliness.

7. Moreover, as for reparation proceedings in the contentious-administrative jurisdiction, the Commission has repeatedly argued that such is not an appropriate remedy for the purpose of analyzing the admissibility of a claim of this nature,¹¹ since it is not suitable for providing full redress that includes clarification of the facts and justice to family members. Nevertheless, although a criminal process is an adequate remedy to investigate the facts in this case, the Commission observes that the petitioners also allege specific violations committed in the damages proceeding. Thus, given the connection between the two processes, the Commission considers that in the contentious-administrative jurisdiction, the domestic remedies were exhausted with the trial court's order of June 25, 2009, enforcing the Supreme Court's decision of June 10, 2009. Thus, the Commission finds that the instant petition meets the requirement set forth in Article 46.1.a of the Convention. The IACHR received the petition on December 29, 2009; thus, the petition meets the requirement outlined in Articles 46.1.b of the Convention and 32.1 of the IACHR Rules of Procedure.

VII. COLORABLE CLAIM AND COMPETENCE

8. In terms of competence *ratione temporis* and *ratione materiae*, the Commission will analyze the facts alleged in the light of the obligations outlined in the American Convention, the Inter-American Convention on Forced Disappearance of Persons and the Convention against Torture regarding those acts committed or continued after the said instruments took effect in relation to the State of Chile. The Commission will analyze the acts committed before the American Convention took effect in relation to the State, in the light of the obligations established in the American Declaration.

9. The Commission observes that the instant petition involves allegations of detention, torture, and forced disappearance of the alleged victim. In view of these considerations and after examining the factual and legal remedies presented by the parties, the Commission considers that the claims of the petitioner are not manifestly unfounded and require a substantive study on the merits since the alleged facts, if corroborated as true, could characterize violations of articles I (life, liberty, and personal security), XVII (recognition of juridical personality), XVIII (fair trial), and XXV (protection from arbitrary arrest) of the American Declaration. Moreover, the Commission observes that the instant petition includes allegations regarding the ongoing crime of forced disappearance and the alleged ineffectiveness of the criminal proceedings to establish the facts and punish those responsible, and the failure to clarify said crimes, as well as the failure to provide compensation for the facts, by judicial application of the statute of limitations in civil matters. 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 the application of the statute of limitations is an obstacle to effective access to justice for victims seeking reparations¹². 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 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention, in connection with articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof, Articles 1, 6, and 8 of the Convention against Torture, and Article I of the Inter-American Convention on Forced Disappearance of Persons.¹³

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 3, 4, 5, 7, 8 and 25 of the American Convention, in relation to Articles 1.1 and 2 thereof; Articles I, XVII, XVIII and XXV of the American

¹¹ See IACHR, Report No. 72/16. Petition 694-06. Admissibility. Onofre Antonio de La Hoz Montero and Family. Colombia. December 6, 2016, par. 32; IACHR, Report No. 81/18. Petition 190-07. Admissibility. Edgar José Sánchez Duarte. Colombia. July 7, 2018.

¹² 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.

¹³ See IACHR, Report No. 105/17. Petition 798-07. Admissibility. David Valderrama Opazo et al. Chile. September 7, 2017.

Declaration; Articles 1, 6 and 8 of the Convention against torture; and Article I of the Inter-American Convention on Forced Disappearance of Persons; and

2. To notify the parties of this decision; to proceed 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 13th day of the month of May, 2020. (Signed): Joel Hernández, President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.