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**REPORT No. 54/20**  
**PETITION 442-11**  
REPORT ON ADMISSIBILITY

RELATIVES OF JUAN FRANCISCO PEÑA FUENZALIDA  
CHILE

Approved electronically by the Commission on April 22, 2020.

**Cite as:** IACHR, Report No. 54/20, Petition 442-11, Admissibility, Relatives of Juan Francisco Peña Fuenzalida, Chile. April 22, 2020.

**I. INFORMATION ABOUT THE PETITION**

Petitioner:	Nelson Caucoto Pereira <sup>1</sup>
Alleged victim:	Relatives of Juan Francisco Peña Fuenzalida <sup>2</sup>
State denounced:	Chile <sup>3</sup>
Rights invoked:	Articles 8 (fair trial) and 25 (judicial protection) of the American Convention, <sup>4</sup> in connection with Articles 1(1) (obligation to respect rights) and 2 (domestic legal effect) of the same instrument

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

Filing of the petition:	April 6, 2011
Notification of the petition to the State:	June 14, 2017
State's first response:	December 28, 2017
Additional observations from the petitioner:	February 6, 2018 and November 21, 2019
Notice of the possible decision to archive	April 10, 2017
Response to the notice of possible decision to archive	April 11, 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 Convention (instrument of ratification deposited 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, in connection with Articles 1(1) (obligation to respect rights) and 2 (domestic legal effect) of the same instrument
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, on October 6, 2010
Timeliness of the petition:	Yes, on April 6, 2011

**V. ALLEGED FACTS**

1. The petitioner alleges failure to provide reparation to the relatives of Juan Francisco Peña Fuenzalida (hereinafter the "alleged victim") for the harm caused by his extrajudicial detention and subsequent

<sup>1</sup> The petition was also initially lodged by Franz Moller Morris. However, he indicated in a communication dated September 26, 2017, that he was no longer a petitioner.

<sup>2</sup> The alleged victim's siblings Rosa Peña Fuenzalida, Aurora Peña Fuenzalida, Óscar Peña Fuenzalida; and the alleged victim's mother Zunilda del Carmen Fuenzalida Fuenzalida.

<sup>3</sup> In keeping with Article 17(2)(a) of the Rules of Procedure of the IACHR, Commissioner Antonia Urrejola Noguera, a Chilean national, did not participate in the discussion or decision on the present matter.

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

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

forced disappearance during the military dictatorship of Augusto Pinochet, as well as violation of the rights to a fair trial and to judicial protection in the framework of civil proceedings, amounting to a denial of justice.

2. The petitioner claims<sup>6</sup> that the alleged victim began his mandatory military service in the Coraceros Regiment at Viña del Mar on January 2, 1974, and that on October 3, 1974, he was transferred to the Rancagua Regiment in Arica. According to the relatives of the alleged victim, they did not receive any news from him after this day, so in October 1974, after two weeks without any news, the sister of the alleged victim went to the Ministry of Defense where they communicated by radiogram with the regiment, which said that the alleged victim was in the field. During the month that followed they telephoned the regiment and were given contradictory answers: sometimes they were told that he was in the field, while at others his existence as a conscript was denied. In May 1975, the parents of the alleged victim traveled to Arica, where they were informed by the regiment that their son had deserted on October 31, 1974, and that he had been discharged. His sister Aurora again went to the Ministry of Defense and was referred to the office of the National Intelligence Directorate (DINA), where she was told that the alleged victim had been transferred to Santiago and was in detention. On June 5, 1975, Lieutenant Colonel Carlos López Tapia certified that Juan Francisco Peña Fuenzalida was doing his military service in the Rancagua Regiment in Arica and that he had been in barracks from January 2 to October 3, 1974. For his part, the Colonel of that regiment signed a confidential order stating that the alleged victim had been discharged on October 31, 1974.

3. However, the petitioner says that in 1990, Manuel Ángel Ulloa Espinoza, a fellow conscript of the alleged victim during his military service, declared before a public notary that in October 1974 the alleged victim had escaped from the Rancagua Regiment in Arica. His search was entrusted to a Corporal Carrasco, who had orders to kill him if he resisted; two days later Carrasco returned with the alleged victim. The petitioner says that later, as a result of the alleged victim's escape, Lieutenant Ortega arrived at the regiment, apparently from intelligence, together with a contingent of civilians and military personnel, who interrogated the entire company and treated them as prisoners of war. At the end of the interrogations, on October 24, 1974, the alleged victim was taken out of the camp blindfolded, with his hands tied, and put into a jeep to Arica, without any explanation given. As of that date the alleged victim was never seen again.

4. On December 22, 1975, the sister of the alleged victim filed an application for constitutional relief (amparo). The Court requested information from various institutions; the Ministry of the Interior replied that the alleged victim was not being detained on its orders; DINA did not reply, and the Military Prosecutor's Office in Arica stated that the alleged victim was being prosecuted for desertion, but that the case had been shelved because his whereabouts were unknown. The application was dismissed on February 6, 1976, a decision that was upheld by the Supreme Court. Likewise, in August 1978 and April 1979, complaints were filed with the Arica Criminal Court for presumed disappearance, but there are no known proceedings in that case.

5. On April 4, 2001, a civil case proceeded with the 19th Civil Court of Santiago, which issued judgment on September 3, 2003, denying the claim of the relatives of the alleged victim for compensatory damages, based on the statute of limitations for civil actions. In a judgment of May 16, 2008, the Court of Appeals of Santiago overturned the first instance judgment, obliging the State to provide compensation. The State Defense Council filed before the Supreme Court a cassation appeal against this ruling, which granted the appeal on August 31, 2010, overturning the ruling that ordered compensation. On October 6, 2010, the Civil Court of first instance issued an order of enforcement.

6. For its part, the State points out that the petition lacks a clear and coherent account that would allow a clear understanding of the alleged violations; however, in the interests of good faith and understanding that the petitioner's claim is based on the proceedings in the civil sphere, it has no objections to make regarding compliance with the formal requirements, without prejudice to the observations on the merits that it may make at the appropriate time. Regarding allegations of events said to have taken place in October 1974 concerning violation of the rights to life, human treatment, and personal liberty of the alleged victim, the State points out that a verdict of guilty exists for the crime of aggravated homicide against Luis Carrera, Hernán de la Fuente, and Juan Vidal. The State also recalls its reservations to the American Convention, in which it placed on record that the State's recognitions of competence applied to events subsequent to the date of deposit of this

<sup>6</sup> The petitioner based his account and the facts alleged in this petition on the report of the National Truth and Reconciliation Commission (Rettig Commission).

instrument of ratification or, in any case, to events which began subsequent to March 11, 1990. Therefore, the Commission would not be competent to rule on them because of an *ex ratione temporis* restriction.

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

7. The IACHR notes that the petitioner states that the petition is limited to alleging lack of access to civil reparation for the alleged victims as a result of the disappearance of Juan Francisco Peña Fuenzalida, whose civil suit was rejected on the basis of the statute of limitations. The Commission notes that a proceeding in the civil jurisdiction was initiated on April 4, 2001, before the 19th Civil Court of Santiago and that on October 6, 2010, the court of first instance issued an order of enforcement of the Supreme Court's decision of August 31, 2010 rejecting the petitioners' claims. On that basis, the Commission concludes that domestic remedies have been exhausted and that the instant petition meets the requirement established in Article 46(1)(a) of the Convention.

8. In addition, the petition was submitted to the IACHR on April 6, 2011, fulfilling the rule on the timely lodging of petitions established in Articles 46(1)(b) of the Convention and 32(1) of the IACHR Rules of Procedure of the IACHR.

## **VII. ANALYSIS OF COLORABLE CLAIM**

9. The Commission notes that the petition includes allegations regarding a lack of compensation to the relatives of the alleged victim for his abduction and forced disappearance owing to a 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 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 Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects), and consistent with other similar cases previously 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 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 22<sup>nd</sup> day of the month of April, 2020. (Signed): Joel Hernández, President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitño, and Julissa Mantilla Falcón, Commissioners.

<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; I/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 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.