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REPORT No. 59/16

PETITION 89-07

REPORT ON ADMISSIBILITY

**JUAN ALBERTO CONTRERAS GONZÁLEZ, JORGE EDILIO
CONTRERAS GONZÁLEZ AND FAMILY
CHILE**

Approved by the Commission at its session No. 2070 held on December 6, 2016.
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 JUAN ALBERTO CONTRERAS GONZÁLEZ, JORGE EDILIO CONTRERAS GONZÁLEZ AND FAMILY
 CHILE
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I. INFORMATION ABOUT THE PETITION

Petitioning party:	Nelson Guillermo Cauco Pereira
Alleged victims:	Juan Alberto Contreras González and Jorge Edilio Contreras González and family
State denounced:	Chile

II. PROCEDURE BEFORE THE IACHR

Date on which the petition was received:	January 26, 2007
Date on which the petition was transmitted to the State:	July 11, 2011
Date of the State's first response:	January 17, 2012
Additional observations from the petitioning party:	April 8, 2012 and July 30, 2012
Additional observations from the State ¹:	June 25, 2012 and July 12, 2012

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 Declaration on Human Rights and Duties (hereinafter, "American Declaration") and American Convention on Human Rights (hereinafter, "American Convention"), deposit of instrument of ratification made 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

Duplication of proceedings and international <i>res judicata</i>:	No
Rights found admissible:	Articles I (life, liberty and personal security) and XVIII (fair trial) of the American Declaration and articles 5 (humane treatment), 8 (fair trial) and 25 (judicial protection) of the American Convention
Exhaustion of domestic remedies or applicability of exceptions:	Yes, August 22, 2006
Timeliness of the petition:	Yes, January 26, 2007

¹ All the observations were duly transmitted to the other party.

V. ALLEGED FACTS

1. The petitioner reports that on July 4, 1976, there was a family discussion inside Family Contreras' residence, in Santiago, when Chilean Air Force officers suddenly broke into the domicile. He says that the officers took Juan Orlando Contreras Gonzáles and Jorge Edilio Contreras González (siblings) into a neighboring room and shot them dead. He states that the bodies were later taken by the same patrol to Hospital Barros Luco. The petitioner complains that despite the public officials' accountability for the facts denounced, judicial authorities have systematically rejected the actions for reparation filed by the family of the alleged victims. Based on the foregoing, he alleges the violation of Articles 4, 8, 25, 1.1 and 2 of the American Convention.

2. The petitioner declares that on December 23, 1999, a civil complaint for reparation of damage was filed before the 28th Civil Court in Santiago, which on April 10, 2001, ruled to dismiss the action, since the facts had prescribed, according to the provisions concerning the legal remedies system of the Civil Code. The petitioner alleges that the mentioned resolution was appealed before the Court of Appeals in Santiago, which on August 22, 2006 confirmed the judgement.

3. He argues that domestic remedies have been exhausted, as otherwise he would have to resort to the Supreme Court, which would be impracticable unless the present position or composition of the sentencing court changes. In addition to this, he argues that his decision of not appealing before the Supreme Court is based on exceptions to Article 31 (2) of the IACHR Rules of Procedure. As to Article 31.2 (a) of the Commission's Rules, he alleges that judicial mechanisms available do not guarantee an effective protection of the rights whose violation is reported, because among judicial authorities there is a systematic tendency to reject petitions for reparation on the beliefs as follow: that these must be subjected to common law rules of the Civil Code according to which family members have a period of four years to sue the State; that damages were already redressed through Law 19.123 and its complementary rules; and that there is no evidence for the facts motivating the petition for reparation –when victims only invoke the results of the report of the Chile's National Commission on Truth and Reconciliation, it is said that there is lack of evidentiary basis. As an example, he mentions other 12 complaints that had to be filed before the IACHR for the same reasons. Concerning article 31.2 (b) of the IACHR's Rules, he alleges that it is impossible to exhaust remedies under domestic law, since although they exist, the Supreme Court applies private law rules instead of international treaties and constitutional provisions. As to article 31.2 (c) of the IACHR's Rules, he alleges that there is unwarranted delay as the facts took place in the context of the Chilean situation in between years 1973 and 1989, and that the family members have had to put up with unwarranted delays by the criminal and civil law courts only to receive unfavorable judgments. In addition, concerning the State's allegation about other similar cases where sentences were favorable to family members, the petitioner argues that these were heard by another Chamber of the Supreme Court (Second Chamber, specialized in criminal law), different from the one that would be competent to hear the case if an appeal for annulment had been filed –that is the Third Chamber (specialized civil matters)–, the one that continuously dismisses this type of petitions.

4. In turn, the State declares that the petition is inadmissible. It argues that domestic remedies have not been exhausted and that the petitioner himself acknowledges having ruled out one judicial mechanism for fear that the judgment was unfavorable, without appealing for annulment before the Supreme Court. It also argues that none of the hypotheses in Article 31 of the IACHR's Rules alleged by the petitioner are applicable, as there is procedural law that protects all rights and has all the means necessary for the different procedural stages; there is no obstacle that impedes access to justice; and there is no unwarranted delay inasmuch as the corresponding judicial action has not been pursued. Moreover, it declares that in some cases there have been judgments different from that alleged by the petitioner.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

5. The petitioner declares that on December 23, 1999, a civil complaint for reparation of damage was filed, and that on April 10, 2001, the court of first instance issued a judgement that was later confirmed by the Court of Appeals in Santiago on August 22, 2006, after which domestic remedies have been exhausted. In turn, the State alleges lack of exhaustion of domestic remedies since there was no appeal for

annulment. The Commission believes that the alleged victims exhausted the ordinary remedies in the context of civil matters, that is to say, appeals. According to the jurisprudence of the system, although in some cases, extraordinary remedies can be adequate to fight human rights violations, as a general rule, the only remedies that are necessary to exhaust are those whose functions within the judicial system are adequate to provide protection aimed at redressing the infringement of a given legal right; therefore, in principle, it is about ordinary remedies rather than extraordinary remedies². In view that the ruling by the Court of Appeals of Santiago is dated August 22, 2006, and this petition was received in January 26, 2007, the Commission declares that the requirement in Article 46.1 (b) of the Convention is met.

VII. COLORABLE CLAIM

6. Considering the elements of fact and law submitted by the parties, the nature of the matter filed to it and the context of the facts reported, the IACHR believes that, if proved, the facts alleged concerning the lack of reparation for the facts occurred, in application of prescription in civil matters, these could be possible violations of the rights protected by Articles 5, 8 and 25 of the American Convention in accordance with articles 1 and 2 of said treaty, as well as a violation of Articles I and XVIII of the American Declaration concerning the facts alleged that took place before the American Convention came into force.

VIII. DECISION

1. To declare this petition admissible with regard to Articles 5, 8 and 25 of the American Convention in accordance with Articles 1.1 and 2 of the same instrument, and Articles I and XVIII of the American Declaration;

2. To notify the parties of this decision;

3. To continue with the analysis on the merits; and

4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Panama, Panam, on the 6th day of the month of December, 2016. (Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarette May Macaulay, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, Esmeralda E. Arosemena Bernal de Troitiño and Enrique Gil Botero, Commissioners.

² In this regard, see: IACHR, Report No. 40/08 (Admissibility), Petition 270-07, I.V. Bolivia, July 23, 2008, par. 73; IACHR, Report No. 69/08 (Admissibility), Petition 681-00, Guillermo Patricio Lynn, Argentina, October 16, 2008, par. 41; IACHR, Report No. 51/03 (Admissibility), Petition 11.819, Christian Daniel Domínguez Domenichetti, Argentina, October 24, 2003, par. 45.