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REPORT No. 85/17
PETITION 1580-07
REPORT ON ADMISSIBILITY

GLORIA LUCÍA MAGALI NEIRA RIVAS AND
JUAN PABLO BELISARIO POUPIN NEIRA
CHILE

Approved by the Commission at its session No. 2093 held on July 7, 2017.
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I. INFORMATION ABOUT THE PETITION

Petitioning party:	Nelson Guillermo Caucoto Pereira
Alleged victim:	Gloria Lucía Magali Neira Rivas and Juan Pablo Belisario Poupin Neira
State denounced:	Chile
Rights invoked:	Articles 1.1 (obligation to respect rights), 2 (domestic legal effects), 8 (right to a fair trial) 25 (judicial protection) of the American Convention on Human Rights ¹

II. PROCEDURE BEFORE THE IACHR²

Date on which the petition was received:	December 13, 2007
Date on which the petition was transmitted to the State:	July 12, 2011
Date of the State's first response:	September 4, 2014
Petitioner's additional observations:	December 19, 2014
Additional observations from the State:	September 15, 2016

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 on Human Rights (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

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles 8 (right to fair trial) and 25 (judicial protection) of the American Convention on Human Rights, in connection with Article 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the same instrument
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, on July 24, 2007
Timeliness of the petition:	Yes, in accordance with section VI

¹ Hereinafter "Convention" or "American Convention."

² The observations presented by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. The petitioner alleges that Mr. Arsenio Poupin Oissel (hereinafter “Mr. Poupin”), Assistant Secretary General of the Government of President Salvador Allende, was arrested on September 11, 1973, as he was leaving La Moneda Palace, he was taken, along with other detainees, to the “Tacna Artillery Regiment,” from where they were driven in a military truck to an unknown location, where they were shot and buried. He claims that the remains were not handed over to the next of kin and, consequently, the status of Mr. Poupin continues to be “disappeared detainee.” He also contends that these incidents were mentioned in the “Rettig Report.” The petitioner is specifically claiming failure to pay compensation to Mrs. Gloria Lucía Magali Neira Rivas and Mr. Juan Pablo Belisario Poupin Neira (hereinafter “the alleged victims”), the widow and son of Mr. Poupin, respectively.

2. The petitioner argues that shortly after the disappearance of Mr. Poupin, that same year, Mrs. Gloria Lucía Magali Neira Rivas was detained and held for three months without charges, first at a prison camp in the National Stadium and then at the Women’s Correctional Home. He also claims that, as a consequence of the political persecution to which she and her immediate family members were subjected, they had to depart the country and seek refuge in Sweden. The petitioners allege that Mr. Poupin’s immediate family members have systematically been denied any reparation, despite the proof of the illegal criminal acts, which are the basis of their claim. They contend that the criminal proceedings did not give rise to a civil suit to pursue reparation for damages caused by the disappearance of Mr. Poupin.

3. He alleges that in order to obtain civil reparation, the alleged victims filed a suit for civil redress on January 27, 1998 against the Treasury of Chile. On May 12, 2000, the 9th Civil Court of Santiago ordered the State to pay the sum of 50 million pesos to the Neira Rivas family as compensation for damages inflicted upon them. The Chilean Treasury filed an appeal, which led to the Court of Appeals of Santiago overturning the trial court decision in a judgment of January 9, 2006, on the grounds that civil actions for damages caused with criminal intent lapse under the statute of limitations after four years from the time of the crimes. The alleged victims filed a civil cassation appeal with the Supreme Court of Justice, which was denied on July 24, 2007, on the same grounds as in the decision of the Appellate Court of Santiago.

4. With regard to the criminal proceedings against the alleged perpetrators of the disappearance of Mr. Poupin, the petitioner contends in the original petition that the case was brought on November 27, 1987 before the 5th Criminal Court. He argues that on June 19, 1989, this court closed the preliminary investigation and dismissed the case without prejudice. This decision was upheld on September 7, 1989. In June 1991, the family filed a motion with the 5th Criminal Court of Santiago for the kidnapping case to be reopened. In response to the State’s argument on the failure to exhaust criminal proceedings, the petitioner recognizes that even though the case is held up at the stage of the preliminary investigation before the Court of Appeals of Santiago, the alleged victims are precluded from pursuing a civil claim for reparation in said criminal trial, because the matter of civil reparation was settled by the Supreme Court of Justice, declaring it *res judicata*.

5. In response, the State argues with respect to the crimes committed against Mr. Poupin in 1973, that the Commission is not competent to hear the case, because Chile deposited the instrument of ratification of the American Convention on August 21, 1990. Additionally, it contends that the petition is inadmissible, inasmuch as the criminal proceeding is still ongoing in the domestic jurisdiction before the Appellate Court of Santiago. It claims that in said case there were nine individuals charged as alleged perpetrators of the crime of aggravated kidnapping of Mr. Poupin and other persons detained on September 11, 1973.

6. The State asserts that in the context of the criminal proceeding against the alleged perpetrators of the disappearance of Mr. Poupin, there was no violation of the right of access to justice and to judicial protection of the alleged victims (Article 8 and 25 of the American Convention). As for the alleged failure to provide civil reparation, it underscores that it has no formal observations to add at this stage.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

7. According to the petitioner, adequate and effective domestic remedies were exhausted for good when the judgment was issued by the Supreme Court of Justice of Chile on July 24, 2007, upholding the judgment of appeal, which cited as grounds for denial that the right to civil reparation had lapsed under the statute of limitations. The State also argued that the petition is inadmissible because the criminal proceeding is pending disposition. As for the alleged failure to pay compensation, it expressly had no objections to make at the current stage of admissibility.

8. The Commission notes that the subject of the petition is the failure to pay compensation to the alleged victims, the family members of a person who disappeared in 1973 during the dictatorship of Augusto Pinochet. In view of these considerations and of the information in the case file of the petition, the Inter-American Commission finds that the instant petition does meet the requirement of prior exhaustion of domestic remedies in accordance with Article 46.1.a of the Convention. Additionally, because the IACHR received the petition on December 13, 2007, it was filed within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment, in keeping with 46.1b of the Convention.

VII. COLORABLE CLAIM

9. Based on the foregoing, in view of the fact that the State does not refute at this stage of the proceedings the alleged failure to provide civil reparation to the alleged victims as stated above, and taking into account the IACHR's own legal precedents in cases with a similar set of facts to that of the instant case,³ the IACHR finds that the facts alleged in the petition could tend to establish violations of the rights protected in Article 8 (right to a fair trial) and 25 (judicial protection) of the American Convention, in connection with Article 1.1 (obligation to respect rights) and 2 (domestic legal effects) of said instrument to the detriment of Mrs. Gloria Lucía Magali Neira Rivas and Mr. Juan Pablo Belisario Poupin Neira, as well as any immediate family members who may be identified in the merits stage.

10. With respect to the allegation raised by the State regarding the Inter-American Commission's lack of competence to hear cases on events taking place prior to the ratification of the American Convention by Chile, the Commission reiterates that the petition is about the failure to pay compensation to the alleged victims, in particular, the judgments of the Court of Appeals of Santiago of January 9, 2006 and of the Supreme Court of Justice of July 24, 2007, both issued when the Convention was already in effect on Chile. In similar cases, the IACHR has concluded that, even though the alleged violations of due process rights are based on the antecedent disappearance,⁴ the petition pursues claims based on the judicial response of the State, and especially, the right to full reparation.

VIII. DECISION

1. To find the instant petition admissible with regard to Article 8 and 25 of the American Convention, in connection with Article 1.1 and 2 of this instrument;
2. To notify the parties of this decision;
3. To continue with the analysis on the merits; and

³ IACHR, Report No. 62/05 (Admissibility), Petition 862-03, Alina María Barraza Codoceo et al, Chile, October 12, 2015, paras. 26 and 27; IACHR, Report No. 61/05 (Admissibility), Petition 698-03, Lucía Morales Compagnon and Children, Chile, October 12, 2005, para. 27; IACHR, Report No. 60/05 (Admissibility), Petition 511-03, María Ordenes Guerra, Chile, October 12, 2005, paras. 29 and 31; and IACHR, Report No. 59/05 (Admissibility), Petition 381-04, Magdalena Mercedes Navarrete et al, Chile, October 12, 2005, para. 31.

⁴ IACHR, Report No. 59/05 (Admissibility), Petition 381-04, Magdalena Mercedes Navarrete et al, Chile, October 12, 2005, paras. 22 and 23.

4. 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 in the city of Lima, Peru, on the 7th day of the month of July, 2017. (Signed): Francisco José Eguiguren, President; Margarete May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, and Luis Ernesto Vargas Silva, Commissioners.