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REPORT No. 139/18
PETITION 359-14
REPORT ON ADMISSIBILITY

MARTÍN ALMADA AND FAMILY
PARAGUAY

Approved electronically by the Commission on November 20, 2018.

Cite as: IACHR, Report No. 139/18. Petition 359-14. Admissibility. Martín Almada and Family. Paraguay. November 20, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Martín Almada
Alleged victim:	Martín Almada and family ¹
Respondent State:	Paraguay
Rights invoked:	Articles 8 (fair trial), 11 (privacy), 24 (equal protection) of the American Convention on Human Rights ² and other international treaties ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	March 4, 2014
Additional information received at the stage of initial review:	March 11 and October 31, 2014, and April 1, 2015
Notification of the petition to the State:	September 7, 2016
State's first response:	April 11, 2017
Additional observations from the petitioner:	August 28, 2017
Additional observations from the State:	May 24, 2018

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 of the Rights and Duties of Man ⁵ (ratification of the OAS charter on May 3, 1950); American Convention (deposit of instrument made on August 24, 1989) and Inter-American Convention to Prevent and Punish Torture (deposit of instrument made on March 9, 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 I (life, liberty and personal security), V (honor, personal reputation, and private and family life), VII (protection for mothers and children) and XVIII (fair trial) of the American Declaration and Articles 5 (humane treatment), 8 (fair trial), and 25 (judicial protection) of the American Convention in relation to its Articles 1 (obligation to respect rights) and 2 (domestic legal effects), and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of Section VI
Timeliness of the petition:	Yes, in the terms of Section VI

¹ The petition includes as an alleged victim the petitioner's wife, Celestina Pérez de Almada, as well as their sons and daughter, Ricardo M. Almada, Lincoln M. Almada, Celeste Almada, and their nephew Lorenzo Delio Jara Pérez.

² Hereinafter "the Convention" or "the American Convention".

³ Article 7 of the Universal Declaration of Human Rights.

⁴ The observations submitted by each party were duly transmitted to the opposing party.

⁵ Hereinafter "the Declaration" or "the American Declaration".

V. ALLEGED FACTS

1. The petitioner claims that he was the victim of illegal detention and torture by state agents in the context of the state repression during the dictatorship led by Alfredo Stroessner and the execution of the regional intelligence plan known as "Operation Condor". He also alleges that his wife, Celestina Pérez, was forced to listen on the telephone while he was tortured, causing her death due to cardiac arrest. He argues that he and his family have been the target of institutional violence since the State has violated their right to due process and access to justice and it has prevented them from knowing the truth of what happened, it has re-victimized them and promoted the impunity of the perpetrators. He adds that Mrs. Pérez has been denied the status of victim, thus preventing him and their children from receiving full compensation for damages suffered as a result of the State's persecution policy.

2. The petitioner indicates that he was illegally detained on November 24, 1974, in San Lorenzo, at the "Juan Bautista Alberdi" institute where he worked as the director. He claims that members of the Police Commission forced their way into the room where he was, accompanied by teacher Celestina Pérez –also his wife— his 6-year-old daughter, Celeste Almada, and his 17-year-old nephew, Lorenzo Jara. He adds that the officers destroyed the place, stole valuables –including money to be used for the personnel's salary— and proceeded to beat him and his nephew and load them into a vehicle used to kidnap regime opponents, known as the "Little Red Riding Hood." He claims that his nephew was tortured and that as a consequence he lost his right eye and was taken to Puerto de Itá Enramada; and that, in his own case, he was taken before a Military Court on charges of subversion, where he was interrogated by Chilean and Argentine agents, among other nationalities. The petitioner alleges that during his abduction, members of the secret police frequently tortured him by means of "beatings, immersion in a fetid pool, and with electric shocks." After suffering cardiac arrest he was taken to the police hospital where he remained for a week and was later returned to the torture chamber. The petitioner claims that there were 30 days of "terrible torments" until the Military Court found him to be an "intellectual terrorist", placing him in maximum-security prisons and in the *Emboscada* concentration camp, where he remained deprived of his liberty for a thousand days.

3. The petitioner alleges that during the first few days of his illegal detention, his wife was subjected to continuous suffering because his captors phoned her and forced her to listen to his cries of pain. He adds that on the ninth day of his capture the police handed his wife a package with his bloodstained clothing, and that the next day, they told her that he had died thus causing her to die of cardiac arrest at the age of 33. He indicates that once he was released, he lived in exile in Panama and later in France with their three children. He claims that once the dictatorship was at an end, he returned to Paraguay and that on May 25, 1989 he filed a complaint against Alfredo Stroessner and the perpetrators the various crimes inflicted on him and his family. The petitioner alleges that after decades of criminal investigation and despite his continuous procedural activity, there has been no progress and no convictions and that the perpetrators that he has been able to individualize, have died. As an additional obstacle, the judge in charge of the case refuses to investigate the commission of torture because it was not expressly contemplated as an offense in the Criminal Code in force at the time.

4. The petitioner indicates that on April 25, 2006, as the surviving spouse, he requested the Ombudsperson's Office to recognize Mrs. Pérez as a victim of human rights violations, as well as the corresponding compensation as a victim of torture with serious and manifest physical and psychological consequences based on numerous evidence including medical opinions. However, on March 31, 2009, the Delegation of the Fifth Shift of the Ombudsperson's Office rejected his request on the grounds of lack of sufficient evidence. In view of this decision, the petitioner resorted to the Court of Accounts, which ruled in his favor on September 27, 2011, reversing the resolution and ordering the execution of the corresponding compensation. The petitioner states that the Ombudsperson's Office appealed the decision but it was upheld by the First Instance Civil Court, which initiated the execution of the judgment.

5. The petitioner states that, however, on March 27, 2014, the Attorney General's Office –on behalf of the Ombudsperson's Office — requested that execution of judgment be annulled on the basis of the

exception of lack of entitlement, since the Ombudsperson's Office does not have legal personality and therefore the State could not have been sued through it. The request was rejected by the First Instance Court. The Attorney General appealed the decision before the Court of Civil and Commercial Appeals, which on February 24, 2015, decided to accept the objection raised and reject the execution of judgment. The petitioner alleges that on April 7, 2015 he filed an unconstitutionality claim against such resolution before the Supreme Court of Justice. The Supreme Court dismissed the claim on June 12, 2016. The petitioner alleges that the Ombudsperson's Office rejected his request summarily without proper consideration of the evidence submitted, the health and economic situation of the surviving victims or the context of State terrorism in which the events took place. He argues, in general terms, that waiting for so many years violates the notion of timely justice, with the ongoing unwarranted delay on the case due to decisions issued by courts with no impartiality which show lack of due diligence and adequate remedies to pursue integral reparations.

6. The petitioner also argues that there have been procedural irregularities and lack of impartiality in the context of a claim for compensation for moral damages filed on September 2, 2009, against Hirán Delgado Von Leppel, former President of the Supreme Court, who accused him before the Prosecutor's Office for the alleged production of non-authentic documents, giving rise to an investigation that was duly dismissed. He argues that after multiple procedural obstacles, including errors in notifications, the defendant requested the expiration of instance before the First Instance Court on Civil and Commercial Matters, which ruled in favor of the request on May 10, 2011. On October 2, 2012 the ruling was confirmed in second instance, with costs. He adds that on December 23, 2013, the Supreme Court rejected a challenge raised by him and that on April 14, 2014 the First Instance Court initiated proceedings for the execution of the costs imposed on him. He indicates that he filed a claim before the Complaints Office of the Judicial Branch and that the proceedings on the case were finished on October 29, 2014.

7. For its part, the State argues that the petition is manifestly groundless, unfounded and vague in its formulation. It indicates that on March 6, 2004, the Ministry of Economy acknowledged the petitioner's status as a victim of dictatorship and granted him the corresponding compensation. With regard to Ms. Pérez's case, it argues that her status as a victim has not been disputed but rather whether or not the execution of judgment against the State is admissible. In its view, the petitioner erroneously sued the State before the civil courts in connection with matters that should have been resolved before the Ombudsperson's Office that has the available resources to pay compensation. It thus argues that the petitioner has failed to exhaust the appropriate domestic remedies and that there is no evidence that he has resorted to the appropriate remedies either in connection with the allegations of lack of impartiality. Regarding Mr. Almada's sons and daughter, it argues that they are not beneficiaries of his compensation and that according to the law they must pursue their own compensation before the Ombudsperson's Office where, at the moment, there is no record of their applications.

8. Regarding the case against Hirán Delgado Von Leppel, the State maintains that as shown by the audit carried out in connection with the claim pursued by Mr. Almada before the Complaints Office of the Judicial Branch "there is no recorded violation of the law" and that therefore the expiration of the claim was attributable to the negligence of the petitioner. It argues that although in connection with this aspect of the petition some remedies were not pursued, when analyzing the remedies effectively exhausted it is clear that the petitioner's claim is extemporaneous since the appeal was rejected by the competent Civil and Commercial Court of Appeal, on October 2, 2012, while the petitioner filed his claim before the Commission on March 4, 2014 and thus the petition was filed after six month period counted from the date on which the final judgment was notified. Finally, the State argues that the petition does not refer to human rights violations that may be subject to the Commission's competence but rather refers to proceedings in which the petitioner obtained adverse results.

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

9. Regarding the alleged violations of life and integrity against the petitioner and his family allegedly committed by state agents in the framework of the dictatorship, the petitioner indicates that on May 25, 1989, he filed a criminal complaint on the alleged death and torture, which is at the preliminary stage. The

State, for its part, failed to submit allegations or background on this aspect of the petition. The Commission observes that, in situations referring to crimes against life and integrity, the remedies that must be taken into account for the purposes of the admissibility of the claim are those relating to the criminal investigation and punishment of the perpetrators. Based on the foregoing, the IACHR concludes that, in this aspect of the petition, the exception to the exhaustion of domestic remedies contemplated in Article 46.2.c of the American Convention applies. On the other hand, the petition was received on March 4, 2014 and the factual allegations in the complaint have taken place as from November 24, 1974 and its effects in terms of the alleged denial of justice and other consequences allegedly continue to the present. Therefore, in view of the context and the characteristics of the facts included in this report, the Commission considers that the petition was submitted within a reasonable time and that the admissibility requirement relating to timeliness has been satisfied.

10. Regarding the allegations on the lack of recognition of Mrs. Lopez's status as victim, and the corresponding compensation, the Commission observes that the ruling favoring the petitioner's claim was revoked on February 24, 2015 and that in response he filed an unconstitutionality claim which was rejected on June 12, 2016 thereby exhausting domestic remedies. For its part, the State alleges with respect to this aspect of the petition that available remedies were not fully exhausted and that the claim should be pursued before the Ombudsperson's Office. In this regard, the IACHR has established that the requirement of exhaustion of domestic remedies does not necessarily demand that the alleged victims exhaust all available avenues. Consequently, if the alleged victim raised the issue in one of the valid and adequate alternatives according to the domestic legal system and the State had the opportunity to remedy the matter within its jurisdiction, as it was the case in connection with this claim, the purpose of this international requirement is satisfied. The Commission thus concludes that this aspect of the petition meets the requirement established in Article 46.1.a of the Convention. Regarding the filing period, the remedies would have been exhausted on June 12, 2016 while the petition was under consideration for admissibility. According to the doctrine established by the IACHR, compliance with the requirements set forth in Article 46.1.b of the Convention must be analyzed in light of the situation at the moment of pronouncing on the admissibility or inadmissibility of the claim. In light of the above, the IACHR finds that the requirement must be considered satisfied.

11. Finally, regarding the allegations in the context of the claim for compensation against Hirán Delgado, the petitioner alleges that exhaustion of domestic remedies took place on December 23, 2013 when the Supreme Court rejected his challenge. For its part, the State alleges that the final decision was the ruling of October 2, 2012 rejecting the appeal and therefore this aspect of the petitioner's claim is extemporaneous. In this regard, the IACHR reiterates that the domestic remedies that must be taken into account for the purpose of exhaustion of domestic remedies are those capable of resolving the legal situation infringed. The Commission notes that in this case the remedy pursued allows for the presumption that a favorable outcome might have enabled a new hearing of the claim and therefore it finds that domestic remedies have been filed and exhausted in accordance with Article 46.1.a of the American Convention. Likewise, the petition was submitted within a period of six months, counted from the date of the final decision, thus complying with the requirement established in Articles 46.1.b of the Convention and 32.1 of the Rules of Procedure.

VII. ANALYSIS OF COLORABLE CLAIM

12. Based on the factual and legal elements submitted by the parties, the nature of the matter brought to its attention, and the context in which the complaint is framed, the IACHR considers that, if proven, the lack of investigation and punishment of the perpetrators involved in the offenses against life and physical integrity experienced by Mr. Almada and Mrs. López, as well as the absence of compensation due to the non recognition of Mrs. López's status as victim of the dictatorship, as well as the alleged damage derived from the denial of justice and adequate reparation, could characterize possible violations of the rights protected in Articles 5 (right to humane treatment), 8 (right to a fair trial), 11 (right to privacy) and 25 (right to judicial protection) of the Convention, in concordance with Articles 1.1 and 2 of the same instrument, as well as articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, and Articles I, V, VII and XVIII of the American Declaration with respect to the alleged events occurring prior to the entry into force of the Convention.

13. Regarding the allegations relating to the lack of impartiality in the proceeding against Hirán Delgado Von Leppel, based on the available information and under a *prima facie* standard, the Commission does not identify legal or factual elements supporting a claim of a possible violations of human rights, and therefore it declares this aspect of the petition inadmissible.

14. Finally, regarding the argument on the alleged violation of Article 24 (equality) of the American Convention, the Commission observes that the petitioner has failed to submit elements supporting a *prima facie* colorable claim on its violation.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 8, 11 and 25 of the American Convention in connection with Articles 1.1 and 2 of the same instrument, as well as to Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, and to Articles I, V, VII and XVIII of the American Declaration;

2. To find the instant petition inadmissible in relation to Article 24 of the American Convention;
and

3. 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 20 day of the month of November, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.