

OEA/Ser.L/V/II.  
Doc. 290  
23 September 2020  
Original: Spanish

**REPORT No. 273/20**  
**PETITION 2253-12**  
REPORT ON ADMISSIBILITY

RELATIVES OF JORGE ISAAC FUENTES ALARCÓN  
CHILE

Approved electronically by the Commission on September 23, 2020.

**Cite as:** IACHR, Report No. 273/20, Petition 2253-12. Admissibility. Relatives of Jorge Isaac Fuentes Alarcón. Chile. September 23, 2020.

**I. INFORMATION ABOUT THE PETITION**

Petitioner:	Nelson Caucoto Pereira <sup>1</sup>
Alleged victim:	Relatives of Jorge Isaac Fuentes Alarcón <sup>2</sup>
Respondent State:	Chile <sup>3</sup>
Rights invoked:	Articles 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights <sup>4</sup> , in relation to its articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)

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

Date of receipt	December 6, 2012
Notification of the petition to the State:	September 7, 2017
State's first response:	October 3, 2017
Additional observations from the petitioner:	May 7, 2018
Advisement of intent to archive:	April 27, 2017
Response to notice of archival:	April 28, 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 (deposit of the instrument of ratification made 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 relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, on June 6, 2012
Timeliness of the petition:	Yes, on December 6, 2012

**V. FACTS ALLEGED**

1. The petitioning party denounces the lack of reparation to the relatives of Jorge Isaac Fuentes Alarcón (or hereinafter "alleged victim") for the damage caused by his extrajudicial detention, torture and subsequent forced disappearance, as well as violation of judicial guarantees and the right to judicial protection in the course of the civil proceedings, constituting a denial of justice.

2. The petitioner submits<sup>6</sup> that the alleged victim, a Chilean, student leader and member of the Revolutionary Left Movement (MIR) was detained on May 17, 1975 in Asunción by Paraguayan security personnel. In September of the same year, he was handed over to members of the Directorate of National

<sup>1</sup> The petition was also initially presented by Franz Moller Morris, but by communication dated September 26, 2017, he indicated that he was resigning as a petitioner.

<sup>2</sup> Luzmila del Carmen Ortiz Ortiz, and Jorge Mauricio Fuente Ortiz, widow and son of the alleged victim.

<sup>3</sup> Pursuant to the provisions of Article 17.2.a of the Commission's Regulations, Commissioner Antonia Urrejola Noguera, a Chilean national, did not participate in the debate or decision on this matter.

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

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

<sup>6</sup> The petitioner based his story and the facts denounced in this petition on the Report of the National Truth and Reconciliation Commission (Rettig Report)

Intelligence (DINA) and smuggled into Chile. He was first taken to the Cuatro Álamos detention center and then to Villa Grimaldi, where he was tortured and remained until January 12, 1976, when he was taken out in a van along with other detainees with an unknown destination. His whereabouts are unknown to this day.

3. On October 6, 1975, an amparo remedy was filed before the Santiago Court of Appeals. Faced with a series of negative reports from different institutions, the submission was rejected and the antecedents were forwarded to the First Major Crime Court of the President Aguirre Cerda Department. The processing of this case is unknown. On December 11 of the same year, the alleged victim's mother filed a complaint for illegal arrest before the 11th Criminal Court of Santiago, where various testimonies were received, including 14 people who claimed to have seen the alleged victim in Villa Grimaldi. On February 12, 1976, the Ministry of the Interior indicated that Jorge Isaac Fuentes Alarcón was not detained by order, but that there was a history of his detention in Paraguay. On August 26, 1977, the case was temporarily dismissed, and said resolution was approved by the Court of Appeals, despite pending proceedings such as the establishment of the Tribunal in Villa Grimaldi. At the beginning of 1978, a criminal complaint was presented before the same court, which was joined to the case. In November of the same year, the temporary dismissal of the case was decreed, but it was overturned by the Court of Appeals, which ordered the reopening of the summary and the arrest of Osvaldo Romo, who was not present at the moment. In July 1983 the case was dismissed again and, in November of the same year, the Court of Appeals ordered its reopening and the Court was established at the Interpol offices, where it was made aware of a letter between the United States Attaché in Buenos Aires and the Director of Investigations of Chile, in which he confirmed the arrest of the alleged victim in Asunción and that the Federal Bureau of Investigation (FBI) had initiated an investigation for his ties with left-wing groups in the region. On March 18, 1991, a complaint for illegal detention, torture and disappearance was filed before the 11th Criminal Court of Santiago, but as of 1992 this case was in summary status and proceedings were pending.

4. On June 24, 2003, a civil case was initiated in the 2nd Civil Court of Santiago, the judgment of which was issued on June 4, 2017, denying the claim of the relatives of the alleged victim to compensation for the damage caused, in application of the statute of limitations of civil actions. In a judgment of August 3, 2009, the Santiago Court of Appeals reversed the first instance judgment, forcing the State to provide compensation. However, this ruling was appealed for cassation before the Supreme Court, and on June 6, 2012, the Court accepted the argument of the State that the plaintiffs' claims were based on actions already prescribed and thus revoked the judgment of the Court of Appeals granting compensation.

5. For its part, the State indicates that, regarding the allegation of lack of civil reparation, it has no objections to raise regarding compliance with the formal requirements, without prejudice to the observations on the merits that it may make at a later occasion. Regarding allegations about events that would have taken place as of 1975, consisting of the violation of the rights to life, personal integrity and personal liberty of the alleged victim, the State indicates that there is a criminal case, "Operation Condor", which is in the plenary stage. Additionally, it recalls its reservations to the American Convention, by virtue of which it was declared that the acknowledgments of competence conferred by the State refer to events subsequent to the date of deposit of the instrument of ratification, or, in any case, to events which would have started after March 11, 1990. Therefore, the Commission would not have jurisdiction to rule on them due to an *ex ratione temporis* restriction.

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

6. The IACHR notes that the petitioner affirms that the petition is limited to denouncing the lack of access to civil reparation derived from the disappearance and torture of the alleged victim, whose civil claim was rejected based on the statute of limitations. The Commission observes that in the civil jurisdiction the case began on June 24, 2003 before the Second Civil Court of Santiago and that on June 6, 2012, the Supreme Court rejected the petitioners' claims because they were based on prescribed actions. Based on this, the Commission concludes that domestic remedies have been exhausted and that the present petition meets the requirement established in Article 46.1.a of the Convention.

7. In addition, the petition was presented to the IACHR on December 6, 2012, complying with the requirement of the deadline for presentation established in Articles 46.1.b of the Convention and 32.1 of the IACHR Rules of Procedure.

## VII. ANALYSIS OF COLORABLE CLAIM

8. The Commission observes that the relatives of the alleged victim had access to the remedies provided in the Chilean law and that the matter was analyzed and resolved internally, including by the Supreme Court, the highest judicial instance. However, the petition includes claims regarding the lack of compensation to the relatives of the alleged victim for his kidnapping, torture and forced disappearance, in judicial application of the statute of limitations in civil matters. Regarding civil actions for reparation for crimes against humanity, as in the present petition, both the Commission and the Inter-American Court have said that the application of the statute of limitations constitutes an obstacle to effective access to justice to guarantee the right of the victims to be repaired, and therefore should not be applied in such circumstances<sup>7</sup>. Therefore, the Inter-American Commission considers that it is incumbent on it to exercise its complementary competence in this matter and to analyze in the merits stage whether the domestic system offered the petitioners the adequate channels to seek due reparation and guarantee the right to an effective judicial protection. Taking into account the foregoing, 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, with regard to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects), in conformity with similar cases already decided upon by the IACHR.<sup>8</sup>

## VIII. DECISION

1. Declare the present petition admissible in relation to Articles 8 and 25 of the American Convention, in relation to its Articles 1.1 and 2; and

2. Notify the parties of this decision; continue with the analysis of the merits of the matter; and 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 23<sup>rd</sup> day of the month of September, 2020. (Signed): Joel Hernández, President; Flávia Piovesan, Second Vice-President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.

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<sup>7</sup> IACHR, Report No. 52/16, Case 12.521. Background. Maria Laura Ordenes Guerra and others. Chile. November 30, 2016, para. 134; See also IACHR, Report No. 5/19, Petition 1560-08. Admissibility. Juan Paredes Barrientos and Family. Chile. January 31, 2019; I/A Court HR, Case of Ordenes Guerra and others vs. Chile, Judgment of November 29, 2018 (Merits, Reparations and Costs), para. 89.

<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.