

OEA/Ser.L/V/II.
Doc. 358
24 November 2020
Original: Spanish

REPORT No. 340/20
PETITION 40-09
REPORT ON ADMISSIBILITY

JORGE FELIPE CASTILLO GONZÁLEZ
CHILE

Approved electronically by the Commission on November 24, 2020.

Cite as: IACHR, Report No. 340/20, Petition 40-09. Admissibility. Jorge Felipe Castillo González. Chile. November 24, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Jorge Felipe Castillo González
Alleged victim	Jorge Felipe Castillo González
Respondent State	Chile ¹
Rights invoked	None specified

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition	January 16, 2009
Additional information received during initial review	December 27, 2011
Notification of the petition	May 5, 2014
State's first response	July 24, 2015
Notification of the possible archiving of the petition	October 18, 2018
Response to the notification regarding the possible archiving of the petition	November 27, 2018

III. COMPETENCE

<i>Ratione personae:</i>	Yes
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<i>Ratione materiae:</i>	Yes, American Convention on Human Rights ³ (deposit of instrument 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 I (Right to life, liberty and personal security) XVIII (Right to due process) and XXV (Right of protection from arbitrary arrest) of the American Declaration; Articles 5 (humane treatment), 8 (judicial guarantees), and 25 (judicial protection) of the American Convention, in relation to its Articles 1.1 and 2.
Exhaustion or exception to the exhaustion of remedies	Yes, in the terms of Section VI
Timeliness of the petition	Yes, in the terms of Section VI

V. SUMMARY OF ALLEGED FACTS

1. This petition deals with allegations of custodial mistreatment by the State, together with delay in redressing these alleged violations.

2. The petitioner claims that the State of Chile has failed to redress violations of his rights that occurred in 1985 while he was a member of the *Carabineros* of Chile (national police). According to the petitioner, he was a Corporal working in the Department of Printing of the *Carabineros* – when, on August 15, 1985, he and colleague were detained by the Investigations Police of Chile on suspicion that they had committed the crime of robbery. While in the custody of the Investigations Police of Chile, the petitioner complains of being held incommunicado and of inhumane treatment, more specifically that (a) he was detained in inhumane conditions; (b) he was interrogated in a manner than was verbally abusive and threatening. The petitioner states that he was subsequently handed over to the *Carabineros* on August 16, 1985 where he

¹ Pursuant to the provisions of Article 17.2.a of the Commission's Rules of Procedure, Commissioner Antonia Urrejola, a Chilean national, did not participate in the discussion or decision of the present case.

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

³ Hereinafter "the Convention" or "the American Convention".

continued to be subjected to maltreatment. In this regard, he states that he was subjected to psychological torture, coercive interrogation and threats such as being woken up with bright lights in his eyes, and having guns pressed against his head or chest. The petitioner asserts that criminal charges were brought against him, but were initially dismissed by a criminal court of first instance on October 3, 1985; and finally by the *Primera Corte de Apelaciones* on November 7, 1985. In the interim, the petitioner alleges that on August 20, 1985, he was dismissed from his post in the Carabineros.

3. The petitioner contends that between August 20, 1985 and January 1, 1986, he applied to the Inspector General of the Carabineros for reinstatement but that his applications was refused on January 1, 1986. The petitioner contends that up to 2011 he has complained to various authorities about his detention maltreatment and the failure to reinstate him, but without receiving any redress. Some of the State authorities cited by the petitioner include the President of Chile, and the *Contraloría General de la República*⁴. As relates to custodial mistreatment, the petitioner also alleges that he attempted to have his matter considered by the National Commission on Political Imprisonment and Torture Report⁵ but without success. The petitioner also indicates that he complained about his custodial mistreatment to the Inspector General of the Carabineros at the same time that he applied for reinstatement, but without success.

4. In response, the State argues that the Commission is not competent to adjudicate this petition, because its allegations predate Chile's ratification of the American Convention in August 1990. More specifically, the State asserts that in its reservation to the American Convention, it expressly stated that its recognition of the competence of the Commission (and the jurisdiction of the Court) would apply to events subsequent to the date of deposit of the instrument of ratification or, in any case, to events which began subsequent to March 11, 1990.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

5. The Commission observes that this petition is based primarily on the alleged failure of the State to investigate the circumstances of the detention and maltreatment and/or to provide redress. In this context, Commission reiterates, first, that where there are allegations of illegal detention and maltreatment while in custody, the internal remedies that must be taken into account for the purposes of admissibility of the petition are the criminal investigation, resolution, and punishment of the perpetrators. The Commission also notes that the State was made aware of the situation described in the petition through various authorities but appears to have taken no steps to undertake an investigation into the claims of detention and torture made by the petitioner. In this way the present case represents an exception regarding the exhaustion of domestic remedies pursuant to the exception established in Article 46.2.c) of the Convention.

6. Regarding the deadline for presenting the petition, the Commission observes that (a) the facts alleged took place starting in 1985; (b) the consequences of the facts, including the alleged failure to investigate and punish those responsible and, continues to the present day. Thus, taking into account that this petition was filed on January 16, 2009, the Inter-American Commission finds that the petition was filed within a reasonable period of time, in the terms of Article 32(2) of the Rules of Procedure of the IACHR.

VII. COLORABLE CLAIM

7. The Commission notes that this petition deals with the alleged detention and maltreatment of the alleged victim, together with the allegation about the delay in redressing these complaints. Having regard for the elements of facts and law presented by the parties, the Commission considers that the claims of the petitioner are not manifestly unfounded. In this regard, the Commission considers that the facts supporting these allegations would have taken place prior to August 21, 1990, the date on which the Chilean State deposited the ratification instrument for the American Convention. Therefore, with regard to the alleged facts that took place prior to that date, the Commission will apply the American Declaration. Accordingly, the Commission considers that the allegations of detention and torture could describe prima facie violations of the rights established in articles I (life, liberty and personal security), XXV (protection from arbitrary arrest), and XVIII (judicial protection) of the American Declaration, to the detriment of the alleged victim. With regard to the allegations relating to failure to investigate and punish those responsible or to provide reparation, the

⁴ A state authority charged with ensuring compliance with the State's laws/legal system by other state entities.

⁵ This Commission, headed by Bishop Sergio Valech was charged with investigating the record of abuses committed under the regime of Augusto Pinochet between 1973 and 1990.

Commission considers that these continue until the present day; and accordingly, constitute prima facie violations of Articles 5(right to humane treatment), 8 (judicial guarantees) and 25 (judicial protection) of the American Convention, in relation to its Articles 1.1 and 2.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles I, XVIII and XXV, of the American Declaration as well as Articles 5, 8 and 25 of the American Convention in relation to its 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 24th day of the month of November, 2020. Joel Hernández, President; Flávia Piovesan, Second Vice-President; Esmeralda E. Arosemena Bernal de Troitiño, and Stuardo Ralón Orellana, Commissioners.