

OEA/Ser.L/V/II.
Doc. 142
12 May 2020
Original: Spanish

REPORT No. 132/20
PETITION 751-10
REPORT ON ADMISSIBILITY

RODRIGO CISTERNA FERNANDEZ ET AL.
CHILE

Approved electronically by the Commission on May 12, 2020.

Cite as: IACHR, Report No. 132/20, Petition 751-10. Admissibility. Rodrigo Cisterna Fernández *et al.*
Chile. May 12, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Rafael Poblete Saavedra
Alleged victim:	Rodrigo Cisterna Fernández et al. ¹
Respondent State:	Chile ²
Rights invoked:	Articles 4 (life), 5 (humane treatment), 8 (fair trial), 24 (equality before the law), and 25 (judicial protection) of the American Convention on Human Rights ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	May 21, 2010
Additional information received at the stage of initial review:	December 15, 2010
Notification of the petition to the State:	April 20, 2016
State's first response:	August 16, 2016
Additional observations from the petitioner:	October 29, 2018
Notification of the possible archiving of the petition:	October 1, 2018
Petitioner's response to the notification regarding the possible archiving of the petition:	November 19, 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 Convention (instrument of ratification deposited 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 4 (life), 5 (humane treatment), 8 (fair trial), 13 (freedom of thought and expression), 15 (assembly), and 25 (judicial protection) of the American Convention, in relation to its Article 1(1) (obligation to respect rights)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, the exception of Article 46(2)(b) of the American Convention applies
Timeliness of the petition:	Yes, in the terms of Section VI

¹ Evelyn Elizabeth Sanhueza Nauco (wife) and Rodrigo Cisterna Sanhueza (son); as well as Víctor Alejandro Varela Gavilán, Raúl Alex Aguayo Hernández, Moisés César Faúndez Arriagada, Raúl Octavio Sanhueza Salamanca, Gastón Alfredo Abello Ortega, and José Bernardo Sanhueza Salamanca.

² In keeping with Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Antonia Urrejola Noguera, of Chilean nationality, did not participate in the deliberations or decision in this matter.

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

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

V. ALLEGED FACTS

1. The petitioner claims the international responsibility of the State of Chile for violating the right to life of Rodrigo Cisterna Fernández; the right to personal integrity of his widow Evelyn Elizabeth Sanhueza Nauco and his son Rodrigo Cisterna Sanhueza; the right to personal integrity of Víctor Alejandro Varela Gavilán, Raúl Alex Aguayo Hernández, Moisés César Faúndez Arriagada, Raúl Octavio Sanhueza Salamanca, Gastón Alfredo Abello Ortega, and José Bernardo Sanhueza Salamanca; and the rights to fair trial, judicial protection, and equality before the law of all of them.

2. The petition indicates that on May 3, 2007, nearly 3,000 forestry workers of the Arauco province held a protest over salaries in front of one of the plants of the Bosques Arauco and Celulosa Arauco business group, in the Horcones (Arauco) locale. The protest, which was peaceful and was carried out by unarmed workers, with their faces uncovered, was allegedly repressed with violence by agents of the Carabineros police force, who shot at the demonstrators at the moment when one of them, Rodrigo Cisterna Fernández, advanced towards the police troops driving a heavy machine (front loader). As a result of the shots Rodrigo Cisterna died, and workers Víctor Varela Gavilán, Raúl Aguayo Hernández, Moisés Faúndez Arriagada, and Raúl Sanhueza Salamanca suffered gunshot wounds. Also wounded were Messrs. Gastón Abello Ortega, who lost his left eye when it was hit by a teargas cannister; and José Sanhueza Salamanca, who suffered cranioencephalic trauma with loss of consciousness, concussions, and wounds inflicted by police club blows, along with other workers who are not among the group of victims represented by the petitioner.

3. On the grounds of these facts a criminal investigation was initiated before the military criminal justice, numbered as Case No. 250-2007 of the Office of the Military Prosecutor of Concepción, and at the request of the National Government the military court designated as the investigating judge (*Ministro en Visita*) active-duty Air Force General Renato Nuño Loco. The investigation covered both the death of Rodrigo Cisterna Fernández and the wounds and other lesions inflicted on the workers who had participated in the protest, who were recognized as victims in the proceedings. By a ruling of December 5, 2007, the investigative judge decided to conclude the investigation without having established individual responsibilities; the motions to reopen the investigation, order of new evidence, and recusal of the judge, filed by the victims, were dismissed by the same official. Subsequently, on March 12, 2008 said investigating judge dismissed the case definitively, arguing that (i) with regard to the death of Rodrigo Cisterna, the special exemption from criminal liability on grounds of immediate self-defense was applicable to the police agent who fired the shots, given the possibility of being run over by the front loader that the deceased was driving; and (ii) with regard to the wounds and lesions suffered by the other victims, a finding of criminal liability was not in order due to various factual and evidentiary considerations. On March 20, 2008, the victims appealed this resolution; they asked that the dismissal be voided, that the investigation be reopened, and that the evidence they considered had been omitted be ordered. By a ruling of July 10, 2008, the military court confirmed the dismissals, but decided that they were temporary instead of definitive, as a result of which should new information appear the police investigation could be reopened. There is no notice of any proceedings subsequent to this ruling on appeal. In the petitioners' view, this military criminal justice investigation, and the decisions that put an end to it, are affected by serious evidentiary, procedural, factual and legal shortcomings, which taken together constitute violations of their rights to a fair trial, judicial protection, and equality; in particular, they complain about the victims' lack of participation in the investigation, irregularities in respect of evidence and the weighing thereof, the lack of independence of the military judges who conducted the proceedings, and the impunity that currently affects the case, since the charges against the persons being investigated were dismissed.

4. The petitioner adds that the alleged victims subsequently appealed to the civil courts to seek compensation for the harm they suffered; they point out that on April 21, 2011, the same persons represented before the IACHR filed a civil action for compensation against the Chilean State, in Case C-3.228-2011 of the First Civil Court of Concepción, which ruled favorably on their claims in a judgment of April 1, 2013, and found the State responsible for the conduct. Nonetheless, the Court of Appeals of Concepción overturned this judgment in a ruling of December 31, 2014, which was subsequently upheld by the Supreme Court of Chile in a decision of January 19, 2016.

5. In its answer the State limits its argument to alleging untimely filing of the petition as a basis for inadmissibility, since more than six months had elapsed between the decision of the military court, on July 10, 2008, and the date the petition was received at the IACHR, May 21, 2010. For this reason the State considers that the requirement set out at Article 46(1)(b) of the American Convention has not been met.

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

6. The petitioners' central claim refers to the death of Rodrigo Cisterna Fernández and the wounds suffered by several workers at the hands of the police force Carabineros de Chile in the events of May 3, 2007, as well as to the impunity in which the case remains due to the decisions of the military justice system, which carried out the investigation until it was closed by decisions to dismiss charges against the persons allegedly responsible.

7. The consistent precedents established by the Commission indicate that whenever a crime against life is committed, the State has the obligation to promote and *ex officio* conduct the corresponding criminal proceeding, and that in such cases the criminal justice route is the adequate remedy for clarifying the facts, prosecuting the persons responsible, and establishing the corresponding sanctions, in addition to making possible other forms of reparation, in keeping with the guarantees set forth in the American Convention.⁵ The Inter-American Commission has been equally consistent in considering that an investigation conducted by the military criminal justice system is not suitable for attaining these goals, since the military jurisdiction does not offer adequate remedies for investigating, prosecuting, and punishing the alleged violations of the human rights enshrined in the American Convention, purportedly committed by members of the armed forces, or with their collaboration or acquiescence.⁶ Accordingly, in those cases in which the death of a civilian person and/or the personal lesions suffered by civilians have been investigated through the military criminal justice system, the Commission has applied the exception to the prior exhaustion requirement enshrined in Article 46(2)(b) of the American Convention, which applies when the person allegedly injured has been denied access to the remedies under domestic law or has been prevented from exhausting them.⁷ Therefore, considering this consistent position of the Commission and the facts set forth in the petition, the Commission concludes that said exception to the prior exhaustion requirement applies in the instant case.

8. As for the timeliness of the filing of the petition with the IACHR, bearing in mind that the facts in question occurred on May 3, 2007; that the military criminal courts, on appeal, dismissed charges against the persons being investigated on July 10, 2008; that the petition was received at the Executive Secretariat of the Inter-American Commission on May 21, 2010; and that the effects of the situation of impunity surrounding the alleged facts extend to the present day, the Commission finds that the petition was filed in a reasonable time, in the terms of Article 32(2) of the IACHR's Rules of Procedure, in keeping with Article 46(1)(b) of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

9. The petitioner alleges facts which include the deprivation of life of an unarmed forest worker by the Chilean police forces while repressing a peaceful labor protest, the infliction of wounds – with bullets, metal projectiles, clubs, and teargas cannisters – on several other workers who were participating in the same public demonstration, and the alleged denial of their judicial guarantees by the military criminal courts, which

⁵ IACHR, Report No. 3/12, Petition 12,224, Admissibility, Santiago Antezana Cueto et al., Peru, January 27, 2012, para. 24; Report No. 124/17, Petition 21-08, Admissibility, Fernanda López Medina et al., Peru, September 7, 2017, paras. 3, 9-11; Report No. 72/18, Petition 1131-08, Admissibility, Moisés de Jesús Hernández Pinto and family, Guatemala, June 20, 2018, para. 10; Report No. 70/14, Petition 1453-06, Admissibility, Maicon de Souza Silva, Renato da Silva Paixão et al., July 25, 2014, para. 18.

⁶ See, for example, IACHR, Report No. 50/17, Petition 464-10B, Admissibility, José Ruperto Agudelo Ciro and family, Colombia, May 25, 2017, para. 9; IACHR, Report No. 26/17, Petition 1208-08, Admissibility, William Olaya Moreno and family, Colombia, March 18, 2017, para. 6.

⁷ See, among others, IACHR, Report No. 79/19, Admissibility, Carlos Hernando Casablanca Perdomo and family, Colombia, May 23, 2019, para. 14; Report No. 162/17, Admissibility, María del Pilar Sulca Berrocal, Peru, November 30, 2017, paras. 11, 12; Report No. 122/19, Petition 1442-09, Admissibility, Luis Fernando Hernández Carvajal et al., Colombia, July 14, 2019, para. 8.

carried out and closed the investigation, giving rise to an effect of impunity in relation to the facts which persists to this day.

10. Mindful of these considerations, and after examining the factual and legal elements set forth by the parties, the Commission considers that the petitioner's allegations are not manifestly groundless, and that if the facts alleged are verified, they would tend to establish violations of Articles 4 (life), 5 (humane treatment), 8 (judicial guarantees), 13 (freedom of thought and expression), 15 (right to peaceful assembly), and 25 (judicial protection) of the American Convention, in relation to its Article 1(1) (obligation to respect rights), in the terms of this report, to the detriment of the alleged victims.

11. As regards the alleged violation of Article 24 (equality before the law) of the Convention, the Commission observes that the petitioners have not offered arguments or sufficient support that would allow it to consider, *prima facie*, its possible violation by the State.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8, 13, 15, and 25 of the American Convention, in relation to its Article 1(1);

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 12th day of the month of May, 2020. (Signed): Joel Hernández, President; First Vice President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.