

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 59/05; Petition 381/04
Session: Hundred Twenty-Third Regular Session (11 – 28 October 2005)
Title/Style of Cause: Magdalena Mercedes Navarrete, Alberto Reyes Navarrete, Victor Eduardo Reyes Navarrete, Patricio Hernan Reyes Navarrete, Pamela Adriana Vivanco, Katia Ximena del Carmen Espejo Gomez, Elena Alejandrina Vargas Gomez, Ilia Maria Pradenas Paez, Mario Melo Acuna and Carlos Gustavo Melo Pradenas v. Chile
Doc. Type: Decision
Decided by: President: Clare K. Roberts;
First Vice-President: Susana Villaran;
Second Vice-President: Paulo Sergio Pinheiro;
Commissioners: Evelio Fernandez Arevalos, Freedy Gutierrez, Florentin Melendez.
Commissioner Jose Zalaquett, a Chilean national, did not participate in the discussion or decision of the case, in accordance with Article 17(2)(a) of the Commission's Rules of Procedure.
Dated: 12 October 2005
Citation: Mercedes Navarrete v. Chile, Petition 381/04, Inter-Am. C.H.R., Report No. 59/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by: APPLICANT: Nelson Caucoto
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I. SUMMARY

1. On January 22, 2004 the lawyer Nelson Caucoto ("the petitioner") submitted a complaint to the Inter-American Commission on Human Rights ("the Commission") against the Republic of Chile ("the State") for the alleged violation of the rights to a fair trial (Article 8) and to judicial protection (Article 25), together with violation of the obligations to respect rights and to adopt appropriate measures (Articles 1.(1) and 2) established in the American Convention on Human Rights ("the American Convention"), for allegedly failing to provide reparation for damages suffered by the relatives of Mario Melo Pradenas, Ramón Luis Vivanco, Rodolfo Alejandro Espejo Gómez and Sergio Alfonso Reyes Navarrete, who were detained and subsequently disappeared at the hands of State agents during the military dictatorship.[FN2]

[FN2] The petitioner also alleged violations of Articles 4, 5, 7, 24 and 63 (1), but these were not supported by the complaint. During its 119th session the Commission decided to open this case, among others, because of the alleged violation of the right to a fair trial. As explained in paragraph 19 (infra) below, the core of the petition refers to the rejection of judicial reparation

and not to the summary execution of Messrs. Melo Pradenas, Vivanco, Espejo Gomez and Reyes Navarette.

2. With respect to the admissibility of the complaint, the petitioner argued that the action of the Chilean courts had closed off the possibility of access to justice and that the petition meets the requirements of form and substance for admissibility. In response, the Chilean State asked that the complaint be declared inadmissible, as totally out of order, because it deals with events that occurred before the deposit of the instrument of ratification and that began prior to March 11, 1990. Consequently, and in light of the reservation entered by the State, it argues that the facts of the complaint are expressly excluded from the jurisdiction of the Commission and of the Inter-American Court of Human Rights.

3. After examining the positions of the parties, the Commission has concluded that it is competent to decide the complaint presented by the petitioner and that the case is admissible, in light of Article 46 of the American Convention. Consequently, the Commission has decided to notify its decision to the parties and to publish this admissibility report and include it in its Annual Report.

II. PROCEEDINGS BEFORE THE COMMISSION

4. On January 22, 2004 the Commission received a complaint submitted by the lawyer Nelson Caucoto, and it acknowledged receipt thereof on April 22 of that year. On May 4, 2004 the complaint and its attachments were sent to the Government of Chile, with the Commission's request that it present its response within two months. On February 18, 2005 the Government of Chile responded as to the admissibility of the petition. The State's response was presented seven months after the time limit, and the State did not request an extension nor offer any explanation for the delay in its response.[FN3] On February 22, 2005 the Commission transmitted the State's response to the petitioner. On April 26, 2005 the Commission received the petitioner's response to the State's observations, but requested no observations on that response because it merely reiterated the arguments contained in the petition. There has been no further correspondence with the parties since that date.

[FN3] Article 30(3) of the Commission's Rules of Procedure provides: "The State shall submit its response within two months counted from the date the request is transmitted. The Executive Secretariat shall evaluate requests for extensions of this period that are duly founded. However, it shall not grant extensions that exceed three months from the date of the first request for information sent to the State."

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

5. The petition points out that, in the wake of the tremendous devastation in terms of human lives and disappearances left behind by the military dictatorship, Chile has been opening the way to the judicial settlement of cases. Criminal investigations have made substantial progress in clarifying the events and in bringing the guilty parties to justice. Nevertheless, the petition maintains, progress on the criminal front has been clouded by the attitude of the Chilean courts on the issue of reparations.

6. The petitioner argues that in the cases at hand, despite the fact that crimes against humanity were involved, the State has used domestic precepts of private law to deny the reparations to which the relatives of the victims are entitled under international law. The petitioner declares that during the years 2002 and 2003, the Supreme Court of Chile denied reparations to relatives of victims of forced disappearances, summary executions, and torture committed during the military dictatorship.[FN4] In the petitioner's view, these rulings have established a negative jurisprudence that has been followed by the lower courts and that has nullified the possibility of obtaining adequate reparations in four cases that he is pursuing.

[FN4] As examples, the petitioner cites the following rulings by the Supreme Court of justice: "Domic vs. Fisco de Chile", Case 4753-2001, "Cortés Barraza vs. Fisco de Chile", Case 1122-2001, and "Pisan vs. Fisco de Chile" Case 2850-2001.

7. The first of these cases deals with the ruling issued by the 17th Civil Court of Santiago on June 19, 2002 in the case of Navarrete con Fisco de Chile (Case 3118-2000). The petitioner argues that the judgment in this case denied a petition of reparation for mental suffering of the mother, Magdalena Mercedes Navarrete, and the brothers, Alberto Reyes Navarrete, Víctor Eduardo Reyes Navarrete and Patricio Hernán Reyes Navarrete, as a result of the death of Mr. Sergio Alfonso Reyes Naverrete, a militant socialist who was arrested on June 19, 1974 by agents of the National Intelligence Department (DINA) and has been missing since then. On November 7, 2002 the plaintiffs brought an appeal against the decision, but this was dismissed as desierto[FN5] by the Santiago Court of Appeals. The Court of Appeals returned the case to the court of first instance which, on June 26, 2003, confirmed its earlier ruling (with an order of *cumplase*), thereby closing the case.

[FN5] "Desierto" is a juridical term used in Chile to mean "lapsed" or "expired", signifying that an appeal is untimely or out of order.

8. The second case refers to the ruling of the 16th Civil Court of Santiago in the case of "Vivanco Medina con Fisco de Chile" (Case 3245-2000). In that case, Mrs. Pamela Adriana Vivanco Medida sought compensation for suffering following the death of her father Ramon Luis Vivanco Diaz, a militant Communist, who was arrested by soldiers of the San Bernardo Infantry School and was subsequently executed on October 6, 1973, together with ten other workers. On October for 2002 the court of first instance denied reparations, and that judgment

was appealed and the appeal dismissed. Finally, the case was returned to the lower court, which confirmed its judgment on June 3, 2003.

9. The third case refers to the ruling of the 17th Civil Court of Santiago in the case of “Espejo Gómez con Fisco de Chile” (Case 2918-2000). In those proceedings, the court of first instance, in a ruling of June 19, 2002, denied the application for reparation brought by the sister, Katia Espejo Gomez, and the mother, Elena Alejandrina Vargas, for mental suffering following the arrest and subsequent forced disappearance of Rodolfo Alejandro Espejo Gomez, events which began on August 15, 1974. That ruling was appealed, the appeal was dismissed, and the case returned to the lower court, which confirmed the judgment on July 9, 2003.

10. Lastly, the petition refers to the case of “Melo Acuña con Fisco de Chile” (Case 3830-2001) which was heard by the Eighth Civil Court of Santiago. The case began with an application by the brother, Carlos Gustavo Melo Pradenas, and the parents, Mario Melo Acuña and Iliá Maria Pradenas Perez, of Mario Melo Pradenas, who requested compensation for the suffering occasioned by his arrest and subsequent forced disappearance at the hands of military agents, which events began on September 29, 1973. On September 27, 2002 the court issued a ruling denying the plaintiffs’ demands. That decision was appealed and the appeal was dismissed. The case was returned to the lower court, which confirmed its judgment on January 23, 2003.

11. The petitioners maintain that during the period 2002-2003 the Civil Chamber of the Supreme Court of Justice has systematically rejected appeals for cassation, denying reparations in the following cases:

1. Appeal for cassation Case 4753-2001, “DOMIC CON FISCO DE CHILE” case, ruling of 15 May 2002. Victim: Jorge Jordán Domic, executed on 16 October 1973, in the city of La Serena, by La Caravana de la Muerte.
2. Appeal for cassation Case 1122-1999, “CORTES BARRAZA CON FISCO DE CHILE” case, ruling of 7 May 2003. Victim: Hipólito Pedro Cortes Álvarez, executed on 16 October 1973 in La Serena, by La Caravana de la Muerte.
3. Appeal for cassation Case 2850-2001, “PIZZANI CON FISCO DE CHILE” case, ruling of 15 April 2003. Victim: Juan Chamorro Arévalo, kidnapped and disappeared in the city of Concepción on 16 September 1973.

The petitioner argued that there was no possibility of changing the membership of the Civil Chamber, and that consequently the outcome of these cases is thoroughly predictable: civil action will be declared out of order, because of the statute of limitations (prescripción), and the relatives of the victims will be denied reparation. The uniformity of the principles repeatedly espoused by the supreme tribunal of the Republic, the petitioner argues, has also affected the lower courts, both at first and second instance, which have adopted the same attitude in denying reparation to the relatives of the victims. The petitioner asked: "What is the point of waiting three, four, five or more years, which is the time these trials take from the beginning until the final judgment, if we already know that their outcome is a foregone conclusion?"

12. The petitioner complains that in all these rulings the courts have denied reparations, thereby violating the standards of international law, in general, and those of the American Convention, in particular, which require states to offer reparation for the human rights violations committed by their agents. The petitioner maintains that application of the civil law statute of limitations to the cases at hand is "extraordinarily erroneous, prejudicial to the interest of the victims, their relatives, and a violation of the international law of human rights". By applying these provisions that deny the right to reparations, the courts are thereby placing the State of Chile in a flagrant violation of the American Convention, since Article 2(1) this treaty requires states to adapt their internal legislation to the provisions of the Convention, something that has not occurred in this case.

13. On the basis of these facts and considerations, the petitioner asked to the Commission to admit the complaint and to declare that the judgments of the Chilean courts, in applying the civil law statute of limitations cases involving the violation of human rights, and, thereby, preventing just reparations to the relatives of the victims, have violated the commitments assumed by the Chilean State when it became a party to the American Convention, in particular, the rights enshrined in Articles 1(1), 2, 8 and 25 of that treaty.

B. Position of the State

14. In its response, the State noted that it was providing information on a complaint relating to events that occurred during the military régime that was in power in Chile from September 1973 to March 1990.

15. The State observed that the reestablishment of democratic government marked the beginning of a lengthy and arduous process of updating and adapting its conduct and its internal rules to bring them into accord with international human rights treaties. The most important fact in this connection was approval of the reform to Article 5 of the Constitution, which provided for general recognition of international treaties approved in this area. There was unanimous political agreement in Chile that the exercise of sovereignty is limited by the duty to uphold the essential rights inherent in human nature. State organs are obliged to respect and promote these rights, guaranteed by the Constitution and also by international treaties in force and to which Chile is party.

16. Once the new Government was installed in power, the new Parliament approved and, subsequently ratified, a series of treaties relating to human rights. In particular, it gave unanimous approval to the American Convention on Human Rights and Chile deposited its instrument of ratification on August 21, 1990.

17. In depositing its instrument of ratification with the OAS, the Government of Chile entered the following declaration or reservation:

a. The Government of Chile declares that it recognizes, for an indefinite period of time and on the condition of reciprocity, the competence of the Inter-American Commission on Human Rights to receive and examine communications in which a State Party alleges that another State

Party has committed a violation of the human rights established in the American Convention on Human Rights, as provided for in Article 45 of the Convention.

b. The Government of Chile declares that it recognizes as legally binding the obligatory jurisdiction of the Inter-American Court of Human Rights in cases dealing with the interpretation and application of this Convention pursuant to Article 62.

c. On formulating said declarations, the Government of Chile notes that the recognition of jurisdiction it has accepted refers to situations occurring subsequent to the date of deposit of this instrument of ratification, or, in any event, to circumstances which arose after March 11, 1990. Likewise the Government of Chile, on accepting the competence of the Inter-American Commission and the Inter-American Court of Human Rights declares that these organs, in applying Article 21(2) of the Convention, shall refrain from judgments concerning the concept of public use or social interest cited in cases involving the expropriation of an individual's property.

Chile notes that the Vienna Convention on the Law of Treaties expressly permits ratification of an international treaty with a reservation that is consistent with the object and purpose of the treaty. Chile maintains that its reservation stems from the conviction of democratic governments that human rights violations that occurred in the recent past must be resolved at the domestic level. In this context, the Chilean State has taken a series of initiatives, such as creating the Truth and Reconciliation Commission (the "Comisión Rettig"), Law 19.123 on reparation for victims of human rights violations, the Dialogue Roundtable and the recently created Commission on Political Prisoners and Torture. The State stressed that it was not questioning the utility of participation by the international community in the handling of such situations, but that it was convinced that the Chilean people and their democratically elected bodies were the appropriate ones to attempt to heal the wounds left by the human rights violations that were committed during the military régime.

18. Consequently, Chile asked the Commission to declare this petition inadmissible, and to do the same with 13 other petitions to which it was responding at the same time, on the grounds that they relate to events that occurred before the deposit of the instrument of ratification and that began prior to March 11, 1990.

IV. ANALYSIS OF ADMISSIBILITY

A. General considerations

19. Before examining the admissibility of the complaint, the Commission deems it necessary to clarify that the petitioner's complaint in this case is not addressed to the arrest and disappearance of Messrs Mario Melo Pradenas, Ramón Luis Vivanco, Rodolfo Alejandro Espejo Gómez and Sergio Alfonso Reyes Navarrete, nor to any possible violation of Article 4 of the American Convention. Nor does the complaint concern the criminal investigation of these extrajudicial summary executions. The petitioner questions the refusal of the Chilean courts to grant compensation to the relatives of these persons, particularly after recognition, in the Rettig Report, of State responsibility for the deaths of Messrs. Sergio Alfonso Reyes Navarrete, Ramón Luis Vivanco, Rodolfo Alejandro Espejo Gómez and Mario Melo Pradenas, and the compatibility of those decisions with the State's obligations under the American Convention.

A. Competence of the Commission *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione loci*

20. The petitioner is entitled by Article 44 of the American Convention to present complaints before the Commission. The petition names as the alleged victims Magdalena Mercedes Navarrete, Alberto Reyes Navarrete, Víctor Eduardo Reyes Navarrete, Patricio Hernán Reyes Navarrete, Pamela Adriana Vivanco, Katia Ximena del Carmen Espejo Gómez, Elena Alejandrina Vargas Gómez, Ilia María Pradenas Páez, Mario Melo Acuña, and Carlos Gustavo Melo Pradenas, with respect to whom Chile is committed to respect and guarantee the rights enshrined in the American Convention. The Commission notes that Chile has been a State Party to the American Convention since August 21, 1990, when it deposited its instrument of ratification. The Commission, therefore, has jurisdiction *ratione personae* to examine the petition.

21. The Commission has jurisdiction *ratione materiae* because the petition complains of possible violations of human rights protected under the American Convention that, if proven, could constitute violations of Articles 1(1), 2, 8 and 25 of the Convention. The petitioner also alleges violations of Articles 4, 5, 7, 24 and 63(1) of the American Convention, but offers no arguments or evidence to substantiate such violations. Specifically, the petitioner alleges the denial of justice in the fact that the Chilean courts of first and second instance denied his application for compensation for mental suffering occasioned by the alleged incidents of arrest and disappearance perpetrated by State agents.

22. The principal argument presented in the response by the State on February 18, 2005 is that Chile is not responsible, under the American Convention, for violations allegedly committed during the period between September 11, 1973 and March 11, 1990. The Commission considers that in the case at hand the allegations refer only to the judgments handed down by the Chilean courts between 1999 and 2003, when the Convention was already in effect for Chile. As to the State's argument that the Commission should declare the petition inadmissible because the events began prior to March 11, 1990, the Commission rejects this argument because the judicial proceedings constitute events independent of the summary executions. The Commission bases this conclusion on the judgment of November 23, 2004 in the case of the Sisters Serrano Cruz v. El Salvador, in which the Inter-American Court held:

84. The Court considers that the events that occurred after recognition of the Court's jurisdiction by El Salvador, referring to the alleged violations of Articles 8 and 25 of the Convention in relation with Article 1.1 thereof, are not excluded by the limitation imposed by the State, because what is at issue are judicial decisions constituting independent events that began after El Salvador's recognition of the Court's jurisdiction, and that could constitute specific and independent instances of the denial of justice occurring after recognition of the Court's jurisdiction.

23. In the case at hand, as in the Sisters Serrano Cruz case, the petitioners have alleged a violation of due process, in particular, that the State applied the statute of limitations under private international law in order to deny justice, i.e. the possibility of reparations for international crimes committed by State agents. Despite the fact that the violations of due

process could not have occurred without the antecedent summary executions, the Inter-American Court considers judicial rulings to be events independent and autonomous from the situation that gave rise to them. In its judgment of September 3, 2004 in the case of Alfonso Martin del Campo Dodd v. Mexico, the Inter-American Court emphasized this point:

79. On this point, the Court must indicate with all clarity that if the alleged crime was continuing or permanent, the Court would have competence to consider the acts or events occurring subsequent to recognition of the Court's jurisdiction. But in a case such as the present one, the supposed crime underlying the alleged violation (torture) was instantaneous, it occurred and was consummated before recognition of contentious jurisdiction. With respect to the investigation of that crime, this was pursued and was reopened on several occasions. This occurred subsequent to recognition of the Court's jurisdiction, but neither the Commission nor the representatives of the presumed victim have provided any evidence to indicate specific violations of due process that the Court might have considered. (Emphasis added).

24. In the present case, all the judicial proceedings that constitute the subject of the complaint took place subsequent to Chile's ratification of the American Convention. In addition, the Commission has jurisdiction *ratione temporis* because the judgments were issued on June 26, 2003, June 3, 2003, July 9, 2003 and January 23, 2003, at which time the Chilean State was bound by the obligation to respect and guarantee the rights enshrined in the American Convention.

25. The Commission has jurisdiction *ratione loci* inasmuch as the alleged violations took place within the territory of a State party to the American Convention.

B. Other requirements of admissibility

1. Exhaustion of domestic remedies

26. As a requirement for admissibility, Article 46(1) of the American Convention requires that the remedies under domestic law have been pursued and exhausted. The petitioner argues that he has pursued and exhausted the domestic remedies available under Chilean legislation. He claims that, through judgments handed down on June 26, 2003, June 3, 2003, July 9, 2003 and January 23, 2003, domestic remedies were exhausted. For its part, the State did not deny or contest the petitioner's assertion. Consequently, the Commission considers that the requirement of Article 46(1) of the American Convention is fulfilled. As well, the petitioner cites three judgments of the Civil Chamber of the Supreme Court of Chile issued during 2002-2003 (*supra*, paragraph 11), the last of them on April 15, 2003, in which the Supreme Court rejected three appeals for cassation denying reparations, to demonstrate the constant practice of the Supreme Court in denying this remedy.

27. In response to the petition, the State submitted no observations regarding the failure to exhaust domestic remedies. The Inter-American Court of Human Rights has repeatedly held that in order to be timely, the objection that domestic remedies have not been exhausted should be raised during the first stages of the proceeding; otherwise, it will be presumed that the respondent State tacitly has waived this defense.

28. The Commission therefore considers that the Chilean State waived the objection of failure to exhaust domestic remedies, because it did not present this objection at the first procedural opportunity, i.e. in its response to the petition that initiated the proceedings. Consequently, the Commission considers that the requirement of Article 46(1)(a) of the American Convention is fulfilled.

2. Timeliness of the petition

29. Article 46(1)(b) of the Convention provides that a petition must be lodged within a period of six months from the date on which the petitioners are notified of the final judgment exhausting domestic remedies. The State has not invoked failure to comply with the six months rule, for which reason it is deemed tacitly to have waived this defense. The Commission concludes that the petition was presented within the time limit established in Article 46(1)(b) of the Convention.[FN6]

[FN6] Moreover, the petitioners argue that the denial of justice culminated in the judgment of the Supreme Court of January 17, 2003. The petitioners submitted their complaint to the Commission on July 14, 2003, i.e. within the six months required by the American Convention.

3. Duplication of proceedings and res judicata

30. The Commission understands that the substance of the petition is not pending in any other international proceeding for settlement, nor is it substantially the same as any petition previously studied by the Commission or other international body. Hence, the requirements set forth in Articles 46(1)(c) and Article 47(d) of the Convention have also been met.

4. Characterization of the facts alleged

31. The Commission notes that the petition raises important questions about the scope of civil reparations for the relatives of victims of grave human rights violations. Consequently, the Commission concludes that the petitioner's complaint describes facts that, if proven, could constitute violations of the rights protected by Articles 8 and 25 of the American Convention, in relation with the obligations of Articles 1(1) and 2, and that the requirements of Article 47(b) are thereby fulfilled.

V. CONCLUSION

32. By virtue of the arguments of fact and of law set forth above, the Commission concludes that the case at hand fulfills the requirements of admissibility established in Article 46 of the American Convention and, without prejudging the merits of the case,

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DECIDES:

1. To declare the petition admissible with respect to Articles 1(1), 2, 8 and 25 of the American Convention.
2. To transmit this report to the State and to the petitioner.
3. To continue its examination of the merits of the case.
4. To publish this decision and to include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on the 12th day of October 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President., Paulo Sérgio Pinheiro, Second Vice-President; Commissioners Evelio Fernández Arévalos, Freedy Gutiérrez, and Florentín Meléndez.