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REPORT No. 170/18
PETITION 766-08
REPORT ON ADMISSIBILITY

JULIO FIDEL FLORES PÉREZ AND JULIA FILOMENA PÉREZ
CAMPAÑA
CHILE

Approved electronically by the Commission on December 21, 2018.

Cite as: IACHR, Report No. 170/18, Petition 766-08. Admissibility. Julio Fidel Flores Pérez and Julia Filomena Pérez. Chile. December 21, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Nelson Guillermo Caucoto Pereira
Alleged victim:	Julio Fidel Flores Pérez and Julia Filomena Pérez Campaña
Respondent State:	Chile ¹
Rights invoked:	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), and 25 (judicial protection) of the American Convention on Human Rights, ² in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	July 1, 2008
Notification of the petition to the State:	May 5, 2014
State's first response:	January 31, 2017
Additional observations from the petitioner:	November 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 Declaration of the Rights and Duties of Man ⁴ (ratification of the OAS Charter on June 5, 1953); and American Convention (deposit of instrument of ratification 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 (life, liberty, and personal security) and XVIII (right to a 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 1.1 (obligation to respect rights) and 2 (domestic legal effects)
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 In accordance with the provisions of Article 17.2.a of the Commission's Rules of Procedure, Commissioner Antonia Urrejola, of Chilean nationality, did not participate in either the discussion or decision in the present case.

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

³ The observations submitted by each party were duly transmitted to the opposing party.

⁴ Hereinafter "the Declaration" or "the American Declaration".

V. FACTS ALLEGED

1. The petitioner claims that the Chilean courts have rejected and hampered reparation actions filed by Julia Filomena Pérez Campaña (hereinafter, also the "alleged victim") for the kidnapping and forced disappearance of her son Julio Fidel Flores Pérez, perpetrated by state agents since January 10, 1975. He adds that the violation of the right to adequate compensation takes place in the context of a systematic refusal of the courts to comply with their international obligations to provide adequate reparation for the next of kin of the victims of serious human rights violations.

2. In this regard, he argues that at the time of his disappearance, Julio Fidel Flores Pérez was a 22-year-old student of mining engineering at the State Technical University and an activist in the *Movimiento Izquierda Revolucionaria* (MIR). He states that on January 10, 1975, Julio Flores was kidnapped from his family's home by heavily armed state agents of the National Intelligence Directorate (DINA), and transferred to the clandestine detention and torture center, known as Villa Grimaldi, where he disappeared and was last seen on January 30, 1975. The petitioner submits that the alleged victim's disappearance was part of a concerted action by the DINA aimed at dismantling the MIR. He adds that the State tried to cover up the crime by adding Julio Flores' name to a fake list of 119 Chileans who had died in fighting abroad. The petitioner indicates that subsequently, on August 16, 1981, Mrs. Pérez had to deal with the murder by state agents of her 27-year-old daughter, Arcadia Patricia Flores Pérez.

3. The petitioner states that, following the abduction of her son, Mrs. Pérez filed writs of *amparo* before the Court of Appeals of Santiago, on January 13 and April 18, 1975, which were arbitrarily dismissed and the case files sent to the Criminal Court of San Miguel, and that an investigation under file No 9541-9 was initiated and temporarily stayed on June 30, 1977. Subsequently, on July 24, 1980, she filed a criminal complaint for the aggravated kidnapping of Julio Flores, which was temporarily stayed on October 15 of that year. The petitioner indicates that on August 1, 1978, Julio Pérez's family filed a second criminal complaint with the Santiago Criminal Court, which was referred to the Military Justice after the Judge decided that he lacked jurisdiction. Consequently, on November 30, 1989, the 2nd Military Court ordered a complete and definitive closure of the investigation on the basis of the Amnesty Decree Law.

4. After receipt of a *cassation* appeal filed by the complainants, the accompanying documentation shows that the Supreme Court re-opened and consolidated the investigation with case file No 2182-98 "Villa Grimaldi", subject Julio Flores. On January 18, 2007, Judge - *Ministro de Fuero* - Alejandro Solís, issued a judgment at first instance, sentencing six of the accused to more than 10 years in prison for having committed aggravated kidnapping. However, he rejected the civil claim against the State of Chile, on the grounds of the exception of lack of jurisdiction argued by the State Defense Counsel. He declared himself without jurisdiction to hear civil claims for compensation and reparation, on the ground that such lawsuits should be heard before the courts of civil jurisdiction. On December 27, 2007, this judgment was upheld at the second instance by the Court of Appeals of Santiago, which in turn was subject to a *cassation* appeal to the Supreme Court on April 15, 2009. This Court pronounced a judgement of replacement, altered the conviction by reducing the sentence of the perpetrators to 5 and 4 years in prison, by granting them supervised parole, and upheld the rejection of the civil claim on the basis of the exception of lack of jurisdiction.

5. The petitioner alleges that in spite of the numerous proceedings already initiated since the 1970s, this decision forces the alleged victim to file fresh claims, specifically a civil suit against the Chilean State seeking – perhaps within a decade – to receive reparation for the immediate consequences of a crime against humanity in violation of effective judicial protection. Thus the petitioner requests the application of the exception provided for in Article 46.2.c of the Convention on the grounds that there continues to be a systematic refusal in the civil jurisdiction to provide reparation to the next of kin of victims of serious human rights violations.

6. For its part, the State maintains that the petition is inadmissible. It argues that domestic remedies have not been exhausted, since the alleged victim has not made use of the procedural tools provided by domestic law to remedy the alleged violation of rights. It argues that the alleged victim has not appeared before the relevant civil courts to claim the alleged compensation. It adds that there is nothing preventing the

alleged victim from recourse to the civil courts to file the appropriate civil claim for compensation, even in spite of the time that has elapsed, since remedies pursued in connection with crimes against humanity do not have barred by the statute of limitations.

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

7. The petitioner argues that the alleged victim filed various *amparos* and criminal actions that were dismissed, until January 18, 2007, when a first instance judgment from *Ministro de Fuego* convicted the defendants, but accepted the exception of lack of jurisdiction submitted by State Defense Counsel with respect to the civil claim, thus requiring the initiation of a new claim before the competent civil courts. This decision was upheld by the Court of Appeals of Santiago, on December 27, 2007, and by the Supreme Court, on April 15, 2009, thus obliging the alleged victims initiate new civil claims against the State, in a trial that could last more than a decade. Consequently, they request that the exception contained in Article 46.2.c of the Convention be declared applicable. For its part, the State alleges a failure to exhaust domestic remedies, since a civil claim was not initiated in order to obtain the appropriate compensation before the competent civil courts.

8. In accordance with the Commission's case law and with decisions of other human rights bodies, ineffective remedies need not be exhausted. According to the IACHR, remedies are ineffective for the purposes of admissibility of the petition when it is demonstrated that none of the avenues to demand redress before domestic justice appear to have prospects of success. To this end, the Commission must be in a position to consider elements allowing it to effectively evaluate the probable outcome of the petitioners' actions. Mere doubts about the prospects of appearing before the courts are not enough to exempt the petitioners from the exhaustion of domestic remedies. In order to decide whether a case is admissible or not and without prejudice to the merits of the case, if such remedies are considered ineffective because they do not have a reasonable prospect of success, the exception to the exhaustion of domestic remedies referred to in Article 31.2(b) of the IACHR's Rules of Procedure will apply.⁵

9. Regarding timeliness of submission, the petition was filed with the IACHR on July 1, 2008, and the remedies were exhausted on April 15, 2009, with the *cassation* judgment while the petition was at the admissibility stage. The IACHR considers that the alleged facts that were the subject of the complaint began on January 10, 1975, and its effects continue up to the present. In view of the context and characteristics of this case, the Commission considers that the petition was filed within a reasonable time and that the admissibility requirement regarding timeliness is satisfied.

VII. ANALYSIS OF COLORABLE CLAIM

10. Having regard to the elements of fact and law presented by the parties and the nature of the matter brought to its attention, and of the context in which the complaint is framed, the IACHR considers that, if proven, the alleged lack of compensation for the events could characterize possible violations of the rights enshrined in Articles 5, 8 and 25 of the American Convention, in conjunction with Articles 1.1 and 2 of said treaty. In relation to the alleged violation of Articles 4 and 7 of the Convention, since certain events took place prior to the entry into force of the American Convention, the IACHR considers that these alleged events could characterize violations of the rights protected in Articles I and XVIII of the American Declaration.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 8, and 25 of the American Convention on Human Rights in conjunction with Articles 1.1 and 2 of the same instrument; and in relation to Articles I and XVIII of the American Declaration;

⁵ IACHR, Report, N° 18/12. Petition 161-06. Admissibility. Juvenile Offenders Sentenced to Life Imprisonment without Parole. United States. March 20, 2012, para. 47.

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 21st day of the month of December, 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, and Flávia Piovesan, Commissioners.