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**REPORT No. 5/19**  
**PETITION 1560-08**  
REPORT ON ADMISSIBILITY

JUAN PAREDES BARRIENTOS AND FAMILY  
CHILE

Approved electronically by the Commission on January 31, 2019.

**Cite as:** IACHR, Report No. 5/19. Petition 1560-08. Admissibility. Juan Paredes Barrientos and Family. Chile. January 31, 2019.



**I. INFORMATION ABOUT THE PETITION**

|                          |   |
|--------------------------|---|
| <b>Petitioner:</b>       | Nelson Guillermo Caucoto Pereira  |
| <b>Alleged victim:</b>   | Juan Paredes Barrientos and Family <sup>1</sup>   |
| <b>Respondent State:</b> | Chile <sup>2</sup>  |
| <b>Rights invoked:</b>   | Article 8 (fair trial) and Article 25 (judicial protection) of the American Convention on Human Rights, <sup>3</sup> in connection with its Article 1.1 (obligation to respect rights) and Article 2 (domestic legal effects) |

**II. PROCEEDINGS BEFORE THE IACHR<sup>4</sup>**

|   |                   |
|---|-------------------|
| <b>Filing of the petition:</b>                      | February 15, 2008 |
| <b>Notification of the petition to the State:</b>   | February 23, 2017 |
| <b>State's first response:</b>                      | May 23, 2017      |
| <b>Additional observations from the petitioner:</b> | November 28, 2017 |

**III. COMPETENCE**

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|--|---|
| <b>Competence <i>Ratione personae</i>:</b> | Yes   |
| <b>Competence <i>Ratione loci</i>:</b>     | Yes   |
| <b>Competence <i>Ratione temporis</i>:</b> | Yes   |
| <b>Competence <i>Ratione materiae</i>:</b> | Yes, American Convention (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**

|  |   |
|--|---|
| <b>Duplication of procedures and International <i>res judicata</i>:</b>              | No  |
| <b>Rights declared admissible</b>  | Article 8 (fair trial) and Article 25 (judicial protection) of the American Convention in connection with its Article 1.1 (obligation to respect rights) and Article 2 (domestic legal effects) |
| <b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b> | Yes, September 25, 2007   |
| <b>Timeliness of the petition:</b>   | Yes, February 15, 2008  |

**V. ALLEGED FACTS**

1. The petitioner alleges that national courts have dismissed the reparation claims filed by the next-of-kin of Juan Antonio Eduardo Paredes Barrientos for his kidnapping, torture, and forced disappearance perpetrated against him by state agents as of September 11, 1973, during the civilian-military dictatorship. The petitioner alleges that the victim's rights were declared subject to the statute of limitations without

<sup>1</sup> The family of Mr. Paredes is comprised of the following: Mireya Paredes Barrientos, Ximena Paredes Barrientos, Raymundo Paredes Ahlgree, and Nicolás Paredes Ahlgree.

<sup>2</sup> 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.

<sup>3</sup> Hereinafter "Convention" or "American Convention."

<sup>4</sup> The observations submitted by each party were duly transmitted to the opposing party.

considering that, because of their gravity, there are no statute of limitations for the violations that are at the origin of his claim. He adds that the violation of the right to adequate compensation has taken place in the context of systematic refusal by national courts to fulfill their international obligations to adequately compensate the direct next-of-kin of the victims of gross violations of basic rights during the dictatorship. He asserts that the state, as the respondent party, through the State Defense Council (hereinafter CDE, by the Spanish acronym), claims that civil proceedings are inadmissible and that the judgment was issued by a judge who was a part of and headed this institution for decades, undermining the guarantee of independence and impartiality.

2. In that respect, the petitioner contends that the National Truth and Reconciliation Commission became convinced that Juan Antonio Eduardo Paredes Barrientos, on September 11, 1973, after having survived the bombing raid of the Palacio de la Moneda, was detained by army troops and taken to the Tacna Regiment, from where he was taken out on September 13, 1973 in a military vehicle to an unknown destination, and since then his whereabouts are unknown. To provide context, the petitioner refers to the many criminal complaints and proceedings filed by the family since the seventies, which were many times annulled and dismissed in both military and civil courts, until as of the year 2000 a long series of serious criminal investigations began, and criminal proceedings aimed at investigating the disappearances that occurred in the Palacio de la Moneda and the Tacna Regiment, including the disappearance of Mr. Paredes, are still pending, because of which he states that, in the present petition, there are no objections to the criminal investigation.

3. The petitioner contends that the present petition is based on the refusal of Chile's highest court to grant reparations to the next-of-kin of Mr. Paredes, because they argue that civil proceedings are subject to statutes of limitations. Regarding this, he indicates that the alleged victims of the present petition filed a civil claim for compensation for damages on October 20, 1997 against the State Treasury of Chile with the Ninth Civil Court of Santiago for the purpose of seeking material compensation for damages sustained as a result of the forced disappearance of Mr. Paredes. He indicates that, on May 26, 2000, the claim was ruled for their benefit and the CDE, instead of enforcing the ruling, decided to challenge it by filing an appeal. The petitioner indicates that, on June 8, 2006, the Court of Appeals of Santiago dismissed the appeal, upholding the judgment for compensation ruled for the benefit of the alleged victims. Nevertheless, he points out that the judgment was once again challenged by the CDE with a cassation appeal filed with the Supreme Court of Justice, which on September 25, 2007, ruled for the benefit of the State Treasury, overturning the judgment and ruling that the claims for compensation that had been filed were governed by statutes of limitations, as well as contending that the regulations on the statutes of limitations appearing in the Civil Code must be enforced, because they do not allow for any exception. The petitioner therefore alleges that remedies under domestic law have been exhausted.

4. He adds that in Chile there continues to be a systematic refusal to provide reparations to the direct next-of-kin of the victims of gross human rights violations, despite the confirmed evidence of the crimes, thus questioning the role of the CDE, which is involved in litigations against the next-of-kin and is neglecting its treaty obligations to provide redress. Finally, he reports that the resolution that decreed the statute of limitations for the compensation proceedings was issued by the Supreme Court of Justice, comprised of a judge who has been working for more than 40 years in the CDE, in charge specifically of the administrative dispute section. The petitioner therefore alleges that this judge's participation in this and other human rights cases constitutes a clear violation of the judicial guarantee of independence and impartiality.

5. As for the State, it sent its response, pointing out that, regarding the petition's civil aspects and without detriment to the observations on the merits that might eventually be made, it does not have any objections regarding meeting the formal requirements for admissibility by the petitioner. It adds that, regarding the criminal proceedings, the remedies under domestic law have not been exhausted.

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

6. The IACHR observes that the parties agree to understand that domestic remedies have not been exhausted regarding the criminal proceedings and that the petitioner asserts that the present petition is confined to reporting the failure of providing access to civil reparations for the alleged victims as a result of the disappearance of Mr. Paredes, whose civil complaint was dismissed because of the statute of limitations, as alleged by the CDE. The petitioner states that, on October 20, 1997, the alleged victims filed a civil complaint for compensation for damages with the Ninth Civil Court of Santiago, which was ruled for their benefit on May 26, 2000, a verdict that had been upheld by the Court of Appeals of Santiago on June 8, 2006. Finally, on September 25, 2007, the Supreme Court, after hearing the cassation appeal filed by the CDE, had overturned the judgment on compensation, ruling that civil proceedings came under the statute of limitations, thus exhausting on that basis the remedies under domestic law. As for the State, it alleges the failure to exhaust domestic remedies in the criminal field, because the criminal investigation into the facts of which Mr. Paredes was a victim is still at first instance. Adding that with respect to the petition's civil aspects, it has no objections to meeting the formal requirements of admissibility by the petitioner.

7. The Commission considers, on the basis of the above, that the alleged victims exhausted the domestic remedies envisaged in civil proceedings and concludes that the present petition meets the requirement set forth in Article 46.1.a of the Convention and Article 3.1.1 of the Rules of Procedure. Bearing in mind that the judgment of the Supreme Court dates back to September 25, 2007 and that the present petition was received on February 9, 2008, the Commission considers that the requirement set forth in Article 46.1.b of the Convention has been met.

## **VII. ANALYSIS OF COLORABLE CLAIM**

8. In view of the elements of fact and law submitted by the parties and the nature of the case being heard and the context in which the complaints have been filed, the IACHR considers that, if proven, the alleged facts regarding the failure to provide reparations for the incidents that occurred, in judicial application of the statute of limitations in civil proceedings, they tend to be establish possible violations of the rights protected in Articles 8 and 25 of the American Convention, in connection with Articles 1.1 and 2 of said treaty.

## **VIII. DECISION**

1. To declare the present petition admissible in connection with Articles 8 and 25 of the American Convention in connection with Articles 1.1 and 2 of the same instrument.

2. To notify the parties of the present decision, to continue examining the merits of the case, and to publish the present decision and include 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 31<sup>st</sup> day of the month of January, 2019. (Signed): Margarette 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.