

OEA/Ser.L/V/II.166
Doc. 183
30 November 2017
Original: Spanish

REPORT No. 152/17
PETITIONS 280-08, 860-08, 738-08
and 629-08

REPORT ON ADMISSIBILITY

HUGO TOMÁS MARTÍNEZ GUILLÉN AND OTHERS
CHILE

Approved by the Commission at its session No. 2110 held on November 30, 2017.
166th Special Period of Sessions.

Cite as: IACHR, Report No. 152/17, Petitions 280-08, 860-08, 738-08, and 629-08.
Admissibility. Hugo Tomás Martínez Guillén and Others. Chile. November 30, 2017.



REPORT No. 152/17**PETITIONS**

280-08 – HUGO TOMÁS MARTÍNEZ AND FAMILY
 860-08 GABRIEL AUGUSTO MARFULL AND FAMILY
 738-08 EGIDIO ENRIQUE PARÍS POA AND FAMILY
 629-08 RICARDO RUZ ZAÑARTU AND FAMILY
 REPORT ON ADMISSIBILITY
 CHILE
 NOVEMBER 30, 2017

I. INFORMATION ABOUT THE PETITION

Petitioner:	Nelson Guillermo Caucoto Pereira
Alleged victim:	P-280-08: Hugo Tomás Martínez Guillén, Raquel Uberlinda Martínez Rodríguez (wife) and Manuel Fernando Martínez Rodríguez
	P-860-08: Gabriel Augusto Marfull González and Pedro Marfull González (brother)
	P-738-08: Egidio Enrique París Poa, Enrique Isaac París Horvitz (son) and Maria Eugenia París Horvitz (daughter)
	P-629-08: Ricardo Ruz Zañartu, Pedro Edgardo Ruz Castillo (son) and Sylvia María Castillo Araya (wife)
State denounced:	Chile
Rights invoked:	Articles 8 (Judicial Guarantees), 25 (Judicial Protection), 63, 1.1 (Obligation to Respect Rights) and 2 (Duty to Adopt Provisions of Internal Law) of the American Convention on Human Rights ¹

II. PROCEDURE BEFORE THE IACHR²

Date on which the petition was received:	P-280-08: March 12, 2008
	P-860-08: July 29, 2008
	P-738-08: June 25, 2008
	P-629-08: May 23, 2008
Date on which the petition was transmitted to the State:	P-280-08: October 26, 2012
	P-860-08: May 9, 2014
	P-738-08: July 1, 2008
	P-629-08: October 26, 2012
Date of the State's first response:	P-280-08: June 17, 2013
	P-860-08: July 10, 2014
	P-738-08: December 11, 2013
	P-629-08: January 16, 2013
Additional observations from the petitioning party:	P-280-08: January 5, 2017
	P-860-08: December 19, 2016
	P-738-08: December 21, 2016

¹ Hereinafter the "Convention" or the "American Convention"

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

	P-629-08: December 22, 2016
Additional observations from the State:	P-280-08: N/A
	P-860-08: July 10, 2014
	P-738-08: N/A
	P-629-08: N/A

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 on Human Rights (instrument of ratification deposited on August 21, 1990)

IV. ANALYSIS OF 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 8 (judicial guarantees) and 25 (judicial protection) of the American Convention, in relation to its Articles 1.1 (obligation to respect rights) and 2 (duty to adopt provisions of domestic law)
Exhaustion of domestic remedies or applicability of an exception to the rule:	P-280-08: Yes, on March 29, 2007
	P-860-08: Yes, on January 24, 2008
	P-738-08: Yes, on January 29, 2008
	P-629-08: Yes, on March 25, 2008
Timeliness of the petition:	P-280-08: Yes, on March 12, 2008
	P-860-08: Yes, on July 21, 2008
	P-738-08: Yes, on June 25, 2008
	P-629-08: Yes, on May 23, 2008

V. ALLEGED FACTS

Preliminary question

1. Between March and May 2008, four petitions submitted by the same petitioner were received, recorded and processed in separate files under numbers 280-08, 860-08, 738-08 and 629-08. At the end of the admissibility stage, the IACHR decided to consolidate these four petitions together and process them jointly at the merits stage, on the ground that the alleged facts are similar and the issues are substantially the same according to the provisions of Article 29(5) of the Commission's Rules of Procedure.

Common Allegations

2. In each and every one of the petitions contained in this report, the petitioner specifically denounces the lack of economic compensation to the alleged victims for the damages caused during General Augusto Pinochet's dictatorship; and that, consequently, the alleged victims' judicial guarantees and the right to judicial protection have been violated.

Hugo Tomás Martínez Guillén - P-280-08

3. The petitioner indicates that Mr. Hugo Tomás Martínez Guillén (hereinafter "Mr. Martínez") was arrested without a warrant at his home on November 2, 1973, by members of the corps of *Carabineros*. He told his wife that he was being taken to the 1st *Carabineros* Police Station of Iquique for the alleged purchase of a stolen radio. Subsequently, Mr. Martínez was transferred to the Telecommunications Regiment of Iquique and accused of drug trafficking.

4. Faced with the arrest of the alleged victim, on November 6, 1973, his wife filed a writ of *amparo* before the Court of Appeals of Iquique, which was rejected the following day on the grounds that Mr. Martínez had been subject to military jurisdiction. On December 18, 1973, Mr. Martínez was taken to the Pisagua Detainee Camp, where he remained until mid-January 1974, when his whereabouts were no longer known. On March 5, 1974, before Mr. Martínez's disappearance, his wife filed a complaint for "*presunta desgracia*" ("alleged misadventure") with the Second Criminal Court of Iquique. However, in an April 2, 1974 judgment, the judge decided that the action had not been proven, and on April 16, 1974, the Court of Appeals upheld this judgment. The petitioner indicates that these facts are based on information contained in the official records of the "Rettig Report" prepared by the National Truth and Reconciliation Commission (1991).

5. After the discovery of a mass grave containing Mr. Martínez's body, the petitioner indicated that on June 15, 1990, his wife filed a complaint for illegal burial with the Inspecting Minister appointed by the Supreme Court of Justice, against all those who might be responsible. On November 15, 1990, the Supreme Court ruled in favor of the Military Tribunal, leaving the case in the hands of the Military Prosecutor's Office of Iquique, which ordered the closure of the investigation on February 26, 1991, and dismissed the case definitively based on Legal Decree 2191 (amnesty law). According to the petitioner, the Court Martial confirmed that ruling. No possible perpetrator has been singled out or punished during these proceedings.

6. Subsequently, in 1998, the alleged victim's family filed a lawsuit against the Chilean Treasury with the aim of obtaining civil compensation for the damages and losses caused after the forced disappearance of Mr. Martínez. On September 25, 2000, the Twenty-Seventh Civil Court of Santiago rejected the suit on the grounds that the claimants had not provided sufficient evidence to prove that the alleged violations of Mr. Martínez's human rights were actually perpetrated by agents of the State. After an appeal filed by the claimant, on July 10, 2006, the Santiago Court of Appeals overturned the first instance decision, and ruled that the State should compensate Mr. Martínez's family. The Chilean Treasury filed a cassation appeal against this decision on the merits. On October 29, 2007, the Supreme Court of Justice annulled the judgment of the second instance, rejecting the claim for compensation based on the same grounds as the Civil Court of Santiago.

Gabriel Augusto Marfull González - P-860-08

7. The petitioner alleges that on September 14, 1973, Mr. Gabriel Augusto Marfull González (hereinafter "Mr. Marfull") was arrested in the street by Air Force personnel and taken to El Bosque Air Base; twenty-five days later his body was found in the Medical Legal Institute. The autopsy revealed that the cause of death was a bullet wound received on September 15, 1973. The petitioner points out that the Report of the National Truth and Reconciliation Commission (1991) indicated that Mr. Marfull was executed by agents of the State.

8. Regarding the criminal proceedings, the petitioner states that on January 30, 1974, Mr. Marfull's brother, Pedro Marfull González, filed a criminal complaint with the Santiago Aviation Prosecutor's Office, which was temporarily dismissed on April 22, 1975, and archived seven days later. Therefore, he filed a criminal complaint before the Fourth Criminal Court of San Miguel, which culminated in being definitively dismissed under the amnesty law on December 3, 1987, and this decision became final on December 21, 1987.

9. On the other hand, the petitioner argues that afterwards the alleged victim's next of kin initiated criminal proceedings with the First Criminal Court of Santiago, requesting civil compensation for the damages caused. As part of these proceedings, on December 3, 2004, the Chilean Treasury was found liable at first instance to indemnify the alleged victim's brother, Mr. Pedro Marfull, for moral damages. This was based on the fact that the perpetrator of the crime (Reynaldo Gómez) at the time had the status of guarantor of public security, dependent on the State. The Chilean Treasury appealed this ruling before the Court of Appeals of Santiago, and in a judgment dated January 18, 2006, the Court confirmed the judgment of first instance and increased the amount of compensation from \$ 30,000,000.00 Chilean pesos (approximately US\$. 51,413.88) to \$ 150,000,000.00 pesos (US\$283,141.74).³ However, on January 24, 2008, in a cassation appeal, the Supreme Court reversed the previous decision regarding the granting of civil compensation, since it considered that this had been awarded by a judicial body other than that established by law. In the opinion of the Supreme Court, the victim's representatives had to go to the civil jurisdiction and initiate a new trial by means of a lawsuit against the Treasury. The petitioner alleges that this final decision, denying the possibility of economic reparation, violates the right to effective judicial protection.

Egidio Enrique París Roa – P-738-08

10. The petitioner claims that Mr. Egidio Enrique París Roa (hereinafter "Mr. París"), a psychiatrist and teacher at the University of Chile and a Higher Education adviser to the Office of the President of the Republic, was arrested on September 11, 1973, as he left the Palacio de la Moneda, and was transferred with other detainees to the "Tacna Regiment" where they were tortured. He notes that on September 13, they were taken by military truck to an unknown destination where they were shot and buried. He indicates that his family suffered persecution and that his remains have not been returned to the family, which is why, to date, Mr. París remains a "disappeared detainee" appearing in the Report of the Truth and Reconciliation Commission (1991) as a victim of a human rights violation.

11. The petitioner indicates that on October 14, 1973, an *amparo* appeal was filed with the Santiago Court of Appeals in favor of Mr. París. This was declared inadmissible on October 18, 1973. He also alleges that on November 15, 1973, Mr. París' family filed a complaint for "*presunta desgracia*" ("alleged misadventure") with the Second Court of Higher Value Crimes in Santiago, which declared the investigation closed and temporarily adjourned the case on December 3, 1974, on the grounds of a lack of evidence as to the commission of an offense. Subsequently, on April 4, 1975, the Court of Appeals of Santiago confirmed the temporary adjournment of the case.

12. The petitioner alleges that on March 29, 1974, an *amparo* appeal was filed before the Court of Appeals of Santiago in favor of 131 missing persons as of September 11, 1973, including Mr. París, which was dismissed on December 28, 1974. This decision was upheld by the Supreme Court of Justice in a decision of January 31, 1975. In this decision, the Supreme Court also ordered the appointment of an Extraordinary Inspecting Minister, who subsequently initiated a trial (No. 1382-76), but who relinquished competence over the record of the case to a military judge, who ordered the investigation file to be close on August 9, 1976, and the temporary adjournment of the case on September 14, 1976. Subsequently, on February 2, 1990, the Second Military Court totally and definitively dismissed proceedings No. 1382-76 under the amnesty law.

13. On the other hand, as alleged by the petitioner, on August 29, 1979, a complaint (No. 45-80) was filed for the abduction and alleged homicide of Mr. París, which was finally closed and dismissed on March 28, 1980, by the Third Military Prosecutor's Office. This decision for a dismissal was appealed on May 12, 1980, and confirmed by the Court of Appeals of Santiago on October 22 of the same year.

14. The petitioner points out that in 1997, Mr. París' family filed a civil suit for his disappearance before the Fourth Civil Court of Santiago, which by decision of December 23, 1999, determined that the State had an obligation to make financial reparations to the claimants. The Treasury appealed this decision, and on

³ These amounts in dollars correspond to the exchange rate of the Chilean peso at the time of the events, according to the statistical database of the official website of the Central Bank of Chile: <http://si3.bcentral.cl/Indicadoresiete/secure/Indicadoresdiarios.aspx>.

July 4, 2006, the Court of Appeals upheld the first instance decision that the State should compensate the victims. On August 16, 2016, the Treasury filed a cassation appeal against this decision. The Supreme Court of Justice decided the matter on January 29, 2008, establishing the inadmissibility of the reparation in favor of the alleged victims, considering that the civil action was time-barred.

Ricardo Ruz Zañartu – P-629-08

15. The petitioner alleges that Mr. Ricardo Ruz Zañartu (hereinafter "Mr. Ruz"), a well-known political activist, was serving a criminal sentence in the Santiago penitentiary, when on June 21, 1975, he was abducted from that establishment by agents of the National Intelligence Directorate (DINA), tortured and then returned to the penitentiary. Subsequently, on April 20, 1978, Mr. Ruz was released along with fifty-seven other political prisoners; however, on November 27, 1979, he was detained by *Carabineros* at a vehicle checkpoint while he was traveling in a taxi, and moments later extrajudicially executed in the context of that police operation. The National Truth and Reconciliation Commission (1991) came to the conclusion that Mr. Ruz qualified as a victim of political violence.

16. The petitioner alleges that on May 8, 2000, the alleged victim's next of kin filed a civil suit against the Chilean Treasury with the Twentieth Civil Court of Santiago, with a view to obtaining comprehensive financial compensation for Mr. Ruz's death. Despite having been included in the "Rettig Report", this court issued a ruling rejecting the plaintiffs' claims on March 29, 2001, considering that they could not prove that the death of the alleged victim occurred in circumstances that engaged the patrimonial liability of the State. The court considered it necessary to prove that Mr. Ruz's death had actually caused harm to the plaintiffs. The representatives of the victims filed an appeal before the Court of Appeals of Santiago, which reversed the first instance judgment on November 16, 2006, and determined that the State had an obligation to compensate Mr. Ruz's family, since, in its opinion, there had been a crime against humanity, which the State could not avoid redressing by invoking its domestic law. For this reason, the Chilean Treasury filed a cassation appeal with the Supreme Court, which, by decision of March 25, 2008, annulled the judgment of the second instance, establishing the inadmissibility of the reparation action in favor of the alleged victims, considering that the civil action was time-barred.

Allegations of the State

17. The State contends that the petitions are inadmissible because the facts alleged by the petitioner deal with executions that predate Chile's ratification of the American Convention on March 11, 1990. Therefore the Commission does not have jurisdiction to examine them due to an *ex ratione temporis* restriction. The State further argues that it has made considerable efforts to compensate the victims of the dictatorship through various mechanisms.

18. In the specific case of Mr. Gabriel Augusto Marfull González, the State alleges that the petition is inadmissible due to the failure to exhaust domestic remedies, since his brother did not use the appropriate procedural mechanisms to remedy the alleged violation of Mr. Marfull's rights, since the economic reparation requested by the alleged victims could have been addressed in a civil suit after rejection of the claim in the criminal proceedings. Likewise, it affirms that the petitioner did not raise the exception of non-exhaustion of domestic remedies in the early stages of the proceedings, and that it did not expressly claim the impossibility of exhaustion of domestic remedies. It believes that, for this reason, the IACHR lacks the competence to hear the case.

19. With regard to Mr. París, the State indicates that he was recognized as a victim in the National Truth and Reconciliation Commission's Report (1991); that his children are the beneficiaries of Chile's reparations policies; and that there is a criminal proceeding (case No. 126.461-MG-La Moneda) that is ongoing, with procedural steps pending and with subjects processed. In addition, the State reports that it has fulfilled and continues to fulfill its obligation to provide reparations, so that there have been no violations of the rights enshrined in the Convention. Therefore, it points out that the IACHR does not have jurisdiction to hear this case.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

20. In the four petitions included in this report, the petitioner states that judicial actions have been initiated with the objective of obtaining compensation as a result of the human rights violations committed during the Chilean dictatorship. In this regard, the alleged victims' next of kin filed legal proceedings that, in each case raised, culminated in judgments of the Supreme Court of Justice, thereby exhausting the domestic remedies as follows: (a) P-280-08, judgment of the Supreme Court of Justice of October 29, 2007; (b) P-860-08, judgment of the Supreme Court of Justice of January 24, 2008; (c) P-738-08, judgment of the Supreme Court of Justice of January 26, 2008; and (d) P-629-08, judgment of the Supreme Court of Justice of March 25, 2008. For its part, the State did not dispute what the petitioners indicated regarding the exhaustion of domestic remedies in petitions P-280-08, P-738-08 and P-629-08.

21. The Commission observes that the object of all these petitions is the lack of economic compensation for the alleged victims, for relatives of persons recognized as victims of disappearance and execution during the dictatorship of Augusto Pinochet in the "Rettig Report". In view of these considerations, the information contained in the files of the petitions, and the fact that the State did not contest the exhaustion of domestic remedies, the Inter-American Commission considers that petitions P-280-08, P-738-08 and P-629-08 comply with the requirement of exhaustion of domestic remedies in the terms of Article 46.1.a of the American Convention.

22. In the case of P-860-08, the State alleged that Mr. Pedro Marfull González had to file a new civil action against the Treasury, because the criminal proceedings were not adequate for filing an application for civil redress. The Commission notes that the alleged victim presented his claim for compensation in the context of the criminal proceedings, in accordance with the provisions of domestic law. This request for redress was admitted in the criminal jurisdiction by the First Criminal Court of Santiago, a decision that was upheld by the Court of Appeals of Santiago. Therefore the Commission considers, without going into the assessment of the merits, that for the purposes of admissibility of the petition, the alleged victims resorted to an adequate legal avenue, in light of the provisions of domestic law, and the decisions of the national courts that ruled on the matter. In this regard, the Commission reiterates that the requirement of exhaustion of domestic remedies does not imply that the alleged victims have an obligation to exhaust all available remedies at their disposal. If the alleged victim raised the issue by one of the valid and adequate alternatives under domestic law and the State had the opportunity to remedy the matter in its jurisdiction, the purpose of the international standard is met. Therefore, the Commission concludes that in the case of P-860-08, the requirement of exhaustion of domestic remedies is also complied with in accordance with Article 46.1.a of the American Convention.

23. In addition, the Commission notes that the petitions were filed on the following dates: (a) P-280-08, March 12, 2008; (b) P-860-08, July 29, 2008; (c) P-738-08, June 25, 2008; and (d) P-629-08, May 23, 2008. Thus, taking into account the dates on which the final decisions were issued by the Supreme Court of Justice considered in this section, the Commission concludes that the four petitions meet the timeliness requirement for presentation of the petition established in Article 46.1.b of the American Convention. Likewise, the Commission notes that the State did not raise questions regarding compliance with this requirement.

VII. COLORABLE CLAIM

24. In light of the above considerations, and taking into account the case law of the IACHR in cases with a similar factual framework to this one,⁴ the Commission considers that the facts denounced could

⁴ IACHR, Report No. 85/17 (Admissibility), Petition 1580-07, Gloria Lucía Magali Neira Rivas and Juan Pablo Belisario Poupin Neira, Chile, July 7, 2017, para. 9. This case is substantially similar to the ones included in this Report, not only in terms of the factual basis, but was filed by the same petitioner and similar allegations were made. See also, for example, IACHR, Report No. 62/05 (Admissibility), Petition 862-03, Alina María Barraza Codoceo and others, Chile, October 12, 2015 paras. 26 and 27; IACHR, Report No. 61/05 (Admissibility), Petition 698-03, Lucía Morales Compagnon and Sons, Chile, October 12, 2015, para.27; IACHR, Report No. 60/05

[continues ...]

characterize violations of the rights protected in Articles 8 (judicial guarantees) and 25 (judicial protection) of the American Convention, in accordance with its Articles 1.1 (obligation to respect rights) and 2 (duty to adopt provisions of domestic law) to the detriment of: (a) P-280-08 : Raquel Uberlinda Martínez Rodríguez (wife) and Manuel Fernando Martínez Rodríguez (family member); (b) P-860-08: Pedro Marfull González (brother); (c) P-738-08 Enrique Isaac París Horvitz (son) and Maria Eugenia París Horvitz (daughter); and (d) P-629-08 Pedro Edgardo Ruz Castillo (son) and Sylvia María Castillo Araya (wife).

25. With respect to the allegation raised by the State regarding the lack of competence of the Commission to hear facts that occurred prior to the ratification of the American Convention by Chile, the Commission reiterates that the petition refers to the alleged lack of economic compensation to the alleged victims, in particular to the judgments that dealt with compensation after the ratification of the Convention, that is, adopted in legal proceedings under consideration when the Convention was already in force for Chile. In similar cases, the IACHR has concluded that, although the alleged violations of due process are based on the background of the disappearances,⁵ the petition submits claims based on the State's judicial response, and specifically what they claim as the right to have full reparation.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8 and 25 of the American Convention, in conjunction with Articles 1.1 and 2 of the said Convention;
2. To notify the parties of this decision;
3. To continue with the analysis on the merits; and
4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 30th day of the month of November, 2017. (Signed): Francisco José Eguiguren, President; Margarette May Macaulay, First Vice-President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice-President; José de Jesus Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.

[... continuation]

(Admissibility), Petition 511-03, María Ordenes Guerra, Chile, October 12, 2015, paras. 29 and 31; IACHR, Report No. 59/05 (Admissibility), Petition 862-03, Magdalena Mercedes Navarrete and others, Chile, October 12, 2015 para. 31.

⁵ IACHR, Report No. 85/17 (Admissibility), Petition 1580-07, Gloria Lucía Magali Neira Rivas and Juan Pablo Belisario Poupin Neira, Chile, July 7, 2017, para. 10; and IACHR, Report No. 59/05 (Admissibility), Petition 862-03, Magdalena Mercedes Navarrete and others, October 12, 2015, paras. 22 and 23.