**FOLLOW-UP FACTSHEET OF REPORT No. 61/01**

**CASE 11.771**

**SAMUEL ALFONSO CATALÁN LINCOLEO**

**(Chile)**

1. **Summary of the case**

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| **Victim (s):** Samuel Alfonso Catalán Lincoleo  **Petitioner (s):** Compromiso Cristiano por los Derechos Humanos (FASIC)  **State:** Chile  **Merits Report No.:** [61/01](http://cidh.org/annualrep/2000eng/ChapterIII/Merits/Chile11.771.htm), published on April 16, 2001  **Admissibility Report No.:** Analyzed in Merits Report No. 61/01  **Themes:** Right to Life / Right to Humane Treatment / Right to Personal Liberty / Right to a Fair Trial / Right to Judicial Protection / Enforced Disappearance / Memory, Truth and, Justice / Domestic Effects.  **Facts:** The case is about the forced disappearance of Samuel Alfonso Catalán Lincoleo, aged 29, an agricultural technician with ties to the Communist Party, who was arrested at 2:00 a.m. on August 27, 1974, in his home in the city of Lautaro, Chile. The arrest was carried out by police (*carabineros*), soldiers, and civilians. His family denounced the incident before the Chilean judicial system in 1979, but the proceedings were archived in October 1981 in accordance with Decree-Law No. 2191 of 1978, which ordered an amnesty for abuses committed following the September 1973 coup d’état in Chile. New legal action was initiated in 1992, but was definitively dismissed in November 1995 under the aforementioned amnesty law. Finally, Chile’s Supreme Court of Justice ruled on an appeal for annulment regarding the merits of the case in a decision handed down on January 16, 1997, which declared that the time allotted for legal action had expired under applicable statutory limitations.  **Rights violated:** The Inter-American Commission concluded that the Chilean State had unquestionably violated, with respect to Samuel Alfonso Catalán Lincoleo, the right to personal liberty, life, and humane treatment set forth in Article I of the American Declaration and in Articles 4, 5, and 7 of the American Convention. The IACHR furthermore concludes that the Chilean State has violated, with respect to the members of Mr. Catalán Lincoleo’s family, the rights enshrined in Articles 8 and 25 of the American Convention, in conjunction with Articles 1(1) and 2 thereof. The Inter-American Commission also stated, once again, that Decree-Law No. 2191—the amnesty law enacted in 1978 by Chile’s former military regime—is incompatible with Articles 1, 2, 8, and 25 of the American Convention. |

1. **Recommendations**

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| **Recommendations** | **State of compliance in 2020** |
| 1. Establish responsibility for the murder of Samuel Alfonso Catalán Lincoleo by due process of law, so that the guilty may be duly punished. | Pending compliance |
| 2. Adapt its domestic legislation to the provisions of the American Convention, in such a way as to leave Decree-Law N° 2191 of 1978 without effect. | Pending compliance |
| 3. To take the steps necessary for the members of the victim’s family to receive adequate and timely compensation, including full reparations for the human rights violations described herein as well as payment of fair compensation for physical and nonphysical damages, including moral damages. | Total compliance[[1]](#footnote-1) |

1. **Procedural Activity**
2. In 2020, the IACHR requested updated information from the State on compliance with the recommendations issued in Report on Merits No. 61/01 on August 7. As of the closing date of this report, the Commission had not received such information from the State. The Commission notes with concern that the State has not presented information about measures adopted to implement the recommendations since 2013 and the petitioners since the publication of Merits Report No. 61/01.
3. In 2020, the IACHR requested updated information from the petitioners on compliance with the recommendations issued in Report on Merits No. 61/01 on August 7. As of the closing date of this report, the Commission had not received such information from the petitioners.
4. **Analysis of the information presented**
5. In 2020, the parties did not present information to the Commission regarding the actions adopted by the State to comply with recommendations issued in Merits Report No. 61/01.
6. In this sense, because of the lack of updated information on the level of compliance with the recommendations, the IACHR reiterates the analysis of compliance and the conclusions made in its 2019 Annual Report.
7. **Analysis of compliance with the recommendations**
8. **With regards to the first recommendation**, in 2009, the Chilean State informed that on January 29, 2001, a complaint was filed with the Santiago Court of Appeal against Mr. Augusto Pinochet Ugarte and others for the crimes of qualified abduction, illicit association, and illegal burials of persons, including that of Samuel Catalán Lincoleo, whose proceedings were registered as No. 2182-98. On August 25, 2003, the proceedings were totally and definitively dismissed, on the grounds that the 4th Military Court of Valdivia had already established *res judicata* in connection with those same incidents. On August 31, 2005, the Ninth Chamber of the Santiago Court of Appeal, in resolving the jurisdictional consultation placed before it, upheld the definitive dismissal of the proceedings.[[2]](#footnote-2) In 2010, the State observed that the Extraordinary Visiting Minister (*Ministro en Visita Extraordinaria*) from the Temuco Court of Appeals had presided over case No. 113.958 (Catalán Lincoleo), which was in the preliminary inquiry phase, without any person currently standing trial or having been convicted. The State reported that there were still pending investigative measures to be carried out. In subsequent communications dated January 17, 2012, January 10, 2013, and January 9, 2014, the State reiterated the aforementioned information, stating that the process was still in the preliminary phase, as there were pending proceedings to be completed, and the alleged perpetrators of the crimes in question had not been charged.[[3]](#footnote-3)
9. The petitioners did not present information regarding measures adopted by the State to comply with this recommendation.

1. The IACHR observes with concern that the State has not complied with this recommendation and that despite the amount of time that has passed, case No. 113.958 remains in the preliminary inquiry phase, without anyone having been brought to trial[[4]](#footnote-4). In this context, the Commission recalls that the duty to investigate must be discharged “in a serious manner, not as a mere formality that is doomed to fail from the very beginning and it must pursue a goal and be undertaken by the State as its own legal duty rather than a mere processing of private interests, dependent upon the procedural initiative of the victim or the victim’s next of kin or on the contribution of evidence by private parties, without an actual quest for truth on the part of the public authorities”.[[5]](#footnote-5) The Commission invites the State to present specific information on the procedures pending in Case No. 113.958 and the actions that it has adopted to move this investigation forward.[[6]](#footnote-6) Based on the foregoing, the IACHR considers that Recommendation 1 is pending compliance.
2. **Regarding the second recommendation**,in 2010, the State observed that, having examined various alternatives, it determined that the most viable was the enactment of a law interpreting Article 93 of the Penal Code, which sought to reconcile the non-application of the Amnesty Law (DL 2191) with the institution of *res judicata* and the principle of *ne bis in idem.* As a result two bills were introduced: a) an interpretative law that brings Chilean criminal legislation in line with international human rights treaties, whose bill was, at that time, in its second reading in the Senate; and, b) an amendment which establishes a new review mechanism for cases of human rights violations, whose bill was, at that time, in its first reading.[[7]](#footnote-7) In its communication of December 30, 2010, the State informed that the bill which sought to exclude the extinguishment of criminal liability for crimes against humanity and war crimes as set forth in the international instruments ratified by Chile had been sent to the Senate on May 6, 2009 and was currently in its second reading as required under the Constitution. The State indicated that another bill had reportedly been introduced to establish a new mechanism of review for cases involving human rights violations and informed that said bill was, at that time, in its first reading.[[8]](#footnote-8) In 2014, the State informed that no further progress had been made on the bill regarding the interpretation of Article 93 of the Penal Code and that it remained in the Senate where it had been since May 6, 2009.[[9]](#footnote-9)
3. The petitioners did not present information regarding measures adopted by the State to comply with this recommendation.
4. The Commission reiterates that, despite the efforts made by the State to adapt Chile’s laws to conform to the American Convention, no progress has been made in the constitutional procedures required to pass the bills presented by the Executive branch to Congress in 2009. Since all branches of the Chilean government must be involved in the process of adapting domestic laws to conform to the American Convention, the Commission invites the Legislative branch to comply its recommendations.[[10]](#footnote-10) Additionally, the IACHR invites the State to provide updated and detailed information regarding the current status of the two draft legislative bills. Based on the foregoing, the IACHR considers that Recommendation 2 is pending compliance.
5. **Level of compliance of the case**
6. Based on the foregoing, the IACHR concludes that the level of compliance is partial. Consequently, the Commission will continue to monitor compliance with Recommendation 1 and 2.
7. The IACHR notes that it has not received up-to-date information from the petitioners regarding measures adopted by the State to comply with the recommendations issued in Merits Report No. 61/01 and invites them to submit said information.
8. **Individual and structural results of the case**
9. This section highlights the individual and structural results of the case, as informed by the parties.
10. **Individual results of the case**

*Pecuniary compensation measures*

* Payment of economic reparations in favor of the relatives of Mr. Samuel Alfonso Catalán Lincoleo: Sofía Lincoleo Montero (mother), Adrina del Carmen Albarrán Contres y Gabriela Isidoro Bucarey Molinet (mothers of his children), Samuel Miguel Catalán Albarrán (son), Elena del Carmen Catalán Bucarey (daughter) and the eight siblings of Mr. Catalán Lincoleo, including the life reparation pension (*pensión de reparación de carácter vitalicio*) established by Law 19.123 and the reparation voucher of Law 19.980. The total amount of reparations received by the victim’s next of kin as of December 2007 was $113,804.00 USD.

*Rehabilitation measures*

* Educational benefits granted in favor of the victim’s children Samuel Miguel Catalán Albarrán and Elena del Carmen Catalán Bucarey.

*Satisfaction measures*

* The name of Samuel Alfonso Catalán Lincoleo was included in the list of more than 3,000 victims of human rights violations which occurred between September 1973 and March 1990, which is located in the Memorial of the General Cemetery of Santiago de Chile, described as “the main milestone of the policy of building memorials and the most important work erected in the country to preserve historical memory and to reclaim the good name and dignity of the victims”.

1. **Structural results of the case**

* There is no structural impact informed by the parties.

1. IACHR, 2009 Annual Report, [Chapter III, Section D: Status of compliance with the recommendations of the IACHR](http://www.cidh.org/annualrep/2009eng/Chap.III.h.eng.htm#11.771), para. 206. [↑](#footnote-ref-1)
2. IACHR, 2017 Annual Report, [Chapter II, Section F: Status of compliance with the recommendations of the IACHR](http://www.oas.org/en/iachr/docs/annual/2017/docs/IA2017cap.2-en.pdf), para. 518. [↑](#footnote-ref-2)
3. IACHR, 2017 Annual Report, [Chapter II, Section F: Status of compliance with the recommendations of the IACHR](http://www.oas.org/en/iachr/docs/annual/2017/docs/IA2017cap.2-en.pdf), para. 519. [↑](#footnote-ref-3)
4. IACHR, 2017 Annual Report, [Chapter II, Section F: Status of compliance with the recommendations of the IACHR](http://www.oas.org/en/iachr/docs/annual/2017/docs/IA2017cap.2-en.pdf), para. 522. [↑](#footnote-ref-4)
5. IACtHR. [Case Albán Cornejo et al. Vs. Ecuador, Judgement of November 22, 2007](http://www.corteidh.or.cr/docs/casos/articulos/seriec_171_ing.pdf). Series C No. 171, para. 62. [↑](#footnote-ref-5)
6. IACHR, Annual Report 2017, [Chapter II, Section F: Status of compliance with the recommendations of the IACHR](http://www.oas.org/en/iachr/docs/annual/2017/docs/IA2017cap.2-en.pdf), para. 522. [↑](#footnote-ref-6)
7. IACHR, Annual Report 2010[, Chapter III, Section D: Status of compliance with the recommendations of the IACHR](http://www.cidh.org/pdf%20files/IACHR-ANNUAL-REPORT-2010.pdf), para. 284. [↑](#footnote-ref-7)
8. IACHR, Annual Report 2017, [Chapter II, Section F: Status of compliance with the recommendations of the IACHR](http://www.oas.org/en/iachr/docs/annual/2017/docs/IA2017cap.2-en.pdf), para. 521. [↑](#footnote-ref-8)
9. IACHR, Annual Report 2017, [Chapter II, Section F: Status of compliance with the recommendations of the IACHR](http://www.oas.org/en/iachr/docs/annual/2017/docs/IA2017cap.2-en.pdf), para. 539. [↑](#footnote-ref-9)
10. IACHR, Annual Report 2017, [Chapter II, Section F: Status of compliance with the recommendations of the IACHR](http://www.oas.org/en/iachr/docs/annual/2017/docs/IA2017cap.2-en.pdf), para. 522. [↑](#footnote-ref-10)