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REPORT No. 91/18
PETITION 574-07
REPORT ON ADMISSIBILITY

GIORGIO VERA FERNÁNDEZ
CHILE

Approved electronically by the Commission on August 23, 2018.

Cite as: IACHR, Report No. 91/18, Petition 574-07. Admissibility. Giorgio Vera Fernández.
Chile. August 23, 2018.



I. INFORMATION ABOUT THE PETITION

Petitioner:	Giorgio Vera Fernández
Alleged victim:	Giorgio Vera Fernández
Respondent State:	Chile ¹
Rights invoked:	Alleged Articles of Inter-American Treaties unspecified ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	April 28, 2007
Additional information received at the stage of initial review:	May 10, July 5, August 1 and September 5 and 25, 2007; May 1, 2008; May 12 and November 24, 2010; January 12, 2011
Notification of the petition to the State:	January 28, 2011
State's first response:	May 26, 2011
Additional observations from the petitioner:	July 19, 2011; March 5 and August 17, 2012; August 10, 2013
Additional observations from the State:	June 6, 2012

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 ⁴ (instrument deposit made on August 21, 1990; and Inter-American Convention to Prevent and Punish Torture (deposit of ratification made on September 30, 1988)

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 5 (personal integrity), 7 (personal liberty), 8 (judicial guarantees) and 25 (judicial protection) of the American Convention in relation to its Articles 1.1 and 2; and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture
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 Noguera, of Chilean nationality, did not participate in either the discussion or decision in the present case.

² The petitioner alleges the violation of Articles, 1, 3, 5, 7, 8, 9, 10 and 11 of the Universal Declaration of Human Rights.

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

⁴ Hereinafter the "American Convention" or the "Convention".

V. ALLEGED FACTS

1. Mr. Giorgio Vera Fernández (hereinafter, "Mr. Vera" or "the petitioner"), a former officer with the Chilean *Carabineros*, alleges that he was persecuted and received death threats from a group of *Carabineros* and that he was sentenced to seven years in prison by the military jurisdiction in criminal proceedings that failed to comply with the guarantees of due process.

2. Mr. Vera points out that in 1992, when he was 18 years old, he joined the Chilean *Carabineros* in the city of Valparaíso. He states that in 1993 he became aware of some irregularities that occurred inside the institution, and that as a consequence he received death threats. He states that he reported the events to his direct superior, a captain of *Carabineros*, who took no action due to the power of the *carabineros* involved in the alleged irregularities. He alleges that a *Carabineros* lieutenant for internal affairs who had been investigating these officers for some time, pointed out that his life was in danger, so he decided to leave the institution in 1994. He indicates that, despite this, he continued to receive threats from a group of *carabineros*.

3. He alleges that on May 23, 1995, individuals wearing civilian attire, posing as his friends, went to his maternal grandmother's house to look for him, but did not find him. He indicates that that same day, when he arrived at his grandmother's house, she told him what had happened. Scared, he took his weapon and went searching for them to find out what they wanted. On finding them, he states that they insulted him and shot him in his hand and left leg, after which he fired at them to defend himself. He indicates that, shortly thereafter, the individuals identified themselves as *Carabineros*, so the petitioner dropped his weapon and surrendered. He adds that, after surrendering, one of the *Carabineros* threw him on the ground and pointed a gun at his head while another said they ought to kill him before more people arrived. He alleges that he was not killed thanks to the large number of individuals who arrived at the scene and a *carabiniro* who intervened to help him.

4. He indicates that afterwards he was taken to a clinic and then to a police station where he was informed that one of the *carabineros* and a child passer-by had died in the confrontation. He points out that in the station the officers under the command of the unit chief beat and threatened him demanding that he took responsibility for their deaths. He states that he was then taken to a room where the Military Prosecutor of Valparaíso told him that he would be released if he took the blame. The petitioner alleges that he refused to do so and told the Prosecutor that he had been severely beaten minutes earlier, which was evident from the bruising on his face. He notes that the prosecutor told him that this was "not his problem" and ordered the *carabineros* to take him to another station where he was tortured for two days by officers of *Carabineros* Intelligence so that he would incriminate himself. He states that the prosecutor later ordered him to be transferred to the Valparaíso Prison and held in a punishment cell where he was left incommunicado for five days. He maintains that he was again taken to the Military Prosecutor of Valparaíso, who asked him if he would now take the blame. The petitioner points out that, when he refused to do so, the prosecutor informed him that he was going to prosecute him and request the death penalty provided for in the military justice system.

5. Mr. Vera indicates that criminal proceedings were initiated against him in the military jurisdiction for illicit mistreatment of *Carabineros* and he was detained from May 23, 1995, until April 14, 1997, he was released on bail. He states that during this time he was brutally beaten and tortured. He notes that on April 14, 2003, he was sentenced at the first instance to five years in prison for the crime of homicide. He adds that, without having legal representation, he appealed this conviction and that on November 23, 2006, the Court Martial increased his sentence to seven years in prison.

6. The petitioner maintains that the criminal proceedings were riddled with deficiencies and that he was denied access to justice and due process. In the first place, he argues that as a civilian, he should have been tried by the ordinary justice and not by a military court, which is composed of judges without legal training and without impartiality. He states that in Chile, however, the legislation allows the military courts to try civilians when accused of committing an offense against members of the forces. He indicates that in his appeal he requested a trial before the ordinary courts but the Court Martial rejected this request. Secondly, he

claims he had no legal assistance during his trial despite requests addressed to the Legal Aid Agencies in Valparaíso and Santiago. Allegedly the first one answered that it could not provide counsel due to the fact that the court was in Santiago, and the second one that it was impeded from providing counsel because the case occurred in Valparaíso. He argues that, in the absence of counsel, he could not file a *cassation* appeal, a remedy with mandatory legal representation.

7. The State, for its part, alleges a failure to exhaust domestic remedies. In its view the petitioner should have filed a *cassation* appeal with alleged lack of legal representation being insufficient as a justification for the omission. It argues that, in a letter dated April 3, 2007, the Head of the Legal Aid Department of the Ministry of Justice indicated that the Executive lacked the authority to intervene in judicial causes, in light of the independence of the branches of government. However, this letter informed him that Diego Portales University had a Program of Public Interest and Human Rights Services, and that he was given the contact details of this institution. The State also alleges that in Chile there is a Legal Aid Agency, a public body in charge of providing free legal advice to those lacking resources.

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

8. The petitioner alleges that on April 14, 2003, he was sentenced at first instance to five years in prison in the military jurisdiction. On November 23, 2006, this decision that was upheld in the second instance by the Court Martial, which rejected his request to be tried before the ordinary jurisdiction and also increased his sentence to seven years in prison. He alleges that he was unable to file an appeal due to a lack of legal representation, which is mandatory for this appeal procedure. He indicates that he resorted to the Legal Aid Agencies in Valparaíso and Santiago, which rejected his request for legal representation. The State alleges a failure to exhaust domestic remedies because the petitioner did not file a *cassation* appeal. The State argues that he could have applied to the Diego Portales University and the Legal Aid Agency.

9. In view of the fact that the present complaint involves the investigation of the criminal responsibility of a civilian, the Commission considers that the adequate remedy is a criminal investigation in the ordinary jurisdiction. In this regard, the Commission recalls that the military jurisdiction only provides adequate remedies to prosecute members of the forces for the commission of offenses and misdemeanors that, by their very nature, affect legal interests specific to the military. Therefore, in the present case, the exception established in Article 46.2.a) of the Convention in connection with the alleged violations of due process is applicable.

10. With regard to the alleged violation of the right to personal integrity and liberty, the petitioner alleges that he reported to his direct superior, a captain of Chilean *Carabineros*, and to the Military Prosecutor of Valparaíso, the death threats made by various *carabineros* against him, as well as the mistreatment, torture and the five-day incommunicado detention in the Valparaíso prison. He also alleges that these complaints failed to trigger an investigation of the events or in the punishment of those responsible. He also indicates that some of the acts of violence were perpetrated during the period in which he was held under State custody. The State of Chile has not submitted observations in this regard.

11. In previous cases the Commission has stated that, whenever crimes of this nature are committed, the State has the obligation to promote and facilitate criminal proceedings and that, in such cases, such proceedings are the adequate remedy to clarify the facts, try the perpetrators and to establish the corresponding criminal sanctions, as well as enabling other forms of monetary reparations. The Commission observes, however, that, to date, these events have not been investigated by the authorities, and that therefore the exception established in Article 46.2.c) of the Convention applies.

12. Finally, given that the events alleged in the claim took place between 1993 and 2006 and the petition was received on April 28, 2007, the Commission concludes that it has been filed within a reasonable time in light of Article 32.2 of its Rules of Procedure.

VII. ANALYSIS OF COLORABLE CLAIM

13. In view of the factual and legal elements presented, as well as the nature of the matter brought to its attention, the IACHR considers that, if proved, the alleged death threats perpetrated against Mr. Vera by State agents, the ill-treatment and incommunicado detention, as well as the violations of due process, could characterize violations of the rights enshrined in Articles 5 (right to personal integrity), 7 (right to personal liberty), 8 (judicial guarantees) and 25 (judicial protection) of the American Convention, in connection with its Articles 1.1. and 2. In addition, the Commission considers that the alleged torture suffered during his detention could characterize violations of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

14. On the other hand, in relation to the alleged violations of the Universal Declaration of Human Rights, the Commission lacks the competence to establish violations of its provisions. Notwithstanding the above, the IACHR may take those provisions into account when interpreting the American Convention at the merits stage of this case, in light of Article 29 of that Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 5, 7, and 25 of the American Convention in relation to its Articles 1.1 and 2; and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture; and

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 23rd day of the month of August, 2018. (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.