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REPORT No. 127/20
PETITION 243-12
REPORT ON ADMISSIBILITY

JUAN ALMONTE HERRERA ET AL.
DOMINICAN REPUBLIC

Approved electronically by the Commission April 25, 2020.

Cite as: IACHR, Report No. 127/20, Petition 243-12. Admissibility. Juan Almonte Herrera et al. Dominican Republic. April 25, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Genaro Rincón Mieses, Manuel de Jesús Dandre, Francisco de León Herrera, Roberto Antuan José, Reemberto Pichardo Juan, Gregoria Corporan, and Arnulfo Leonardo Avila.
Alleged victim:	Juan Almonte Herrera, Ana Josefa Montilla, Yuberky Almonte Herrera, Joel Almonte, Genaro Rincón, and Francisco de León Herrera.
Respondent State:	Dominican Republic
Rights invoked:	Articles 4 (life), 5 (humane treatment/personal integrity) y 7 (personal liberty) in conjunction with Articles 1 and 2 of the American Convention on Human Rights ¹ ; Articles 1, 2, and 3 of the Inter-American Convention to Prevent and Punish Torture, ² and Articles I, II, III, and IV of the Inter-American Convention on Forced Disappearance of Persons ³

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	February 10, 2012
Notification of the petition to the State:	February 23, 2012
State's first response:	March 8, 2013
Additional observations from the petitioner:	July 17, 2013, August 13, 2014.
Precautionary measure granted:	Precautionary Measure MC 297-09 granted on December 11, 2009, submitted to the Inter-American Court of Human Rights ⁵ on March 3, 2010.
Provisional measure lifted:	Provisional Measure MP 5-10 granted on May 25, 2010 and lifted on November 13, 2015

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 (instrument of ratification deposited on April 19, 1978); IACPPT ((instrument of ratification deposited on January 29, 1987)

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, under the terms of the section.
Rights declared admissible	Articles 3 (juridical personality), 4 (life), 5 (humane treatment/personal integrity), 7 (personal liberty), 8 (judicial guarantees), 11 (protection of honor and dignity) and 25 (judicial protection) of the American Convention in conjunction with Articles 1.1 and 2 thereof, as well as Articles 1, 6, 7, and 8 of the IACPPT

¹ Hereinafter, the "American Convention".

² Hereinafter, the "IACPPT"

³ Hereinafter, the "IACFDP"

⁴ The observations submitted by each party were duly transmitted to the opposing party.

⁵ Hereinafter "I/A Court H.R."

Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, the exception provided for in Article 46.2.c of the Convention applies.
Timeliness of the petition:	Yes, as referred to in Section VI

V. FACTS ALLEGED

1. The petitioners allege that Mr. Juan Almonte Herrera (hereinafter "the alleged victim") was illegally detained and subsequently disappeared by members of the National Police in the Manganagua sector located in the National District, on September 28, 2009. They state that to this day they have no information regarding his whereabouts or the location of his bodily remains. They further claim that members of his family and his attorneys were harassed and threatened for denouncing the facts and demanding presentation of the alleged victim.

Allegations regarding Juan Almonte Herrera

2. The petitioners allege that the alleged victim was the Vice President of the Dominican Unity Movement (hereinafter "MUNDO") and a member of the Dominican Human Rights Committee, and that on September 19, 2009 he was accused by the national police of supposedly having taken part in the kidnapping of Eduardo Antonio Baldera Gómez, the son of a financial sector entrepreneur in the province of María Trinidad Sánchez (Nagua).

3. They state that on September 28, 2009 the alleged victim left his home in Manganagua to go to work at the "Ranger" Guardianes Profesionales company, and that between 10:30 and 11:00 a.m. he was intercepted by four police officers in civilian clothing, who were members of the National Police Criminal Intelligence Division (hereinafter "DINTEL") and the Anti-Kidnapping Division, forced into the vehicle the policemen were driving, and arrested without a court warrant. They report that, on that same day, during the Channel 11 news broadcast, the Chief of Police announced the start of a search for Cecilio Díaz, José Luis Caba Tineo, Rubén Darío Cisneros (Silvestre), Rafael Hernández (Huáscar), Ramón Polanco, and the alleged victim, due to the kidnapping of Eduardo Antonio Baldera Gómez. They also assert that the police disseminated the name of the alleged victim on the Internet as one of those involved in the kidnapping.

4. On September 29, 2009, family members and friends of the alleged victim went to police headquarters (*Palacio de la Policía*) and were told that he was being held in one of the cells in the basement, and interrogated regarding his ties to Cecilio Díaz. The petitioners maintain that on September 30, the alleged victim's lawyers filed a habeas corpus suit with the Second Chamber of the Criminal Division of the Court of First Instance of the National District and that, on October 2, 2009, the Court convened a hearing at which the lawyers requested his immediate release. They state that the Public Prosecutors' Office (*Ministerio Público*) asked the judge to reject the appeal because it did not know the alleged victim's whereabouts. The petitioners state that, in judgment No.198/2009 handed down on October 2, 2009, the court ordered the immediate release of the alleged victim and notified the National Police of that ruling, which the police disobeyed.

5. Given the failure to execute the habeas corpus writ, the petitioners state that on October 2, 2009 they asked the IACHR to grant precautionary measures on behalf of the alleged victim, his family members, and his lawyers. Those measures were granted on December 11, 2009.

6. The petitioners state that based on information from eye witnesses the alleged victim died on October 3, 2009 from the torture inflicted on him by the head of police during an interrogation. They allege that, according to that testimony, the police chief "shot him in the head causing brain matter to be blown out of his nostrils" and then other police officer tried to take the alleged victim and another unknown person to the Plaza de Salud hospital, but both victims died on the way there. The witnesses also told the petitioners that the police officers cremated the bodies in the Batey Yagua community.

7. They state that on October 4, 2009, in the “El Nacional” newspaper, the head of the National Police, Raúl Guillermo Guzmán Fermín, admitted having detained the alleged victim, along with seven other people. They point out that, on October 5, 2009, a journalist told family members of the alleged victim that his information matched that provided by the witnesses.

8. Petitioners affirm that on October 6, 2009 the police again raided the home of the alleged victim in search of evidence and, that same day, MUNDO issued a press release reporting the detention of the alleged victim and the police's contempt of court refusal to heed Judgment No. 198/2009, as well as the threats, harassment, violations, monitoring, and phone-tapping to which the alleged victim's attorneys and family members were being subjected by criminal investigation units.

9. The petitioners state that on October 9, 2009, they reported the alleged victim's situation to the Public Prosecutors' Office and from then on began expanding their search for him. They state that on October 12, 2009, they were told that two burnt corpses had been taken to the Forensic Pathology Institute. They tell how Mr. Juan Almonte's body was not returned to his family members, even though they identified him from his dental prosthesis. They say that an attempt was made to obtain a DNA test, but they never received the results because the samples were unlawfully manipulated by the Head of Police and due to irresponsibility on the part of the professionals involved in an attempt to prevent identification of the alleged victim.

10. Petitioners report that on February 16, 2010, a commission comprised of members of MUNDO and the Dominican Human Rights Committee met at National Police headquarters with a view to discussing the situation of the alleged victim and implementation of the precautionary measures. They state that that meeting was to no avail because the police chief was only interested in stopping investigation and accusation against him and other officers. The petitioners state that on February 25, 2010, they reported what had happened to the National District Public Procurator's Office (*Procuraduría Fiscal del Distrito Nacional*).

11. They maintain that on May 25, 2010, the I/A Court H.R. granted provisional measures on behalf of the alleged victim, his next of kin, and his lawyers.⁶ They allege that on May 14, 2010, a suit was filed with the National District Public Procurator's Office in which the plaintiffs were the family members and lawyers of the alleged victim, which had not yet been resolved when the initial petition was lodged. The petitioners point out that in February 2011, after they had requested several appointments with the National District Public Procurator, he received them and told them he knew nothing about the case and would convene a meeting with the magistrates in the Procurator-General's Office, which never happened. They allege that family member went on numerous occasions in March 2011 to the office of the Deputy Procurator-General, who never received them or called on them again.

Allegations regarding alleged victims Ana Josefa Montilla, Yuberkis Almonte Herrera, Joel Almonte, Genaro Rincón, and Francisco de León Herrera

12. They state that on September 29, 2009, a team made up of members of DINTEL and the Anti-Kidnapping Unit burst into the home of Juan Almonte Herrera to conduct a raid without a judicial warrant and without the presence of personnel of the Public Prosecutors' Office. They described how there they detained 11 next of kin, including the alleged victim's sister Yuberkis Almonte Herrera, who were later released. The officers took away political propaganda for MUNDO (a political organization to which all the detainees belonged), money, a Mitsubishi pickup truck, a suitcase containing personal documents, and a computer, which were never returned.

13. They state that the next of kin and friends of the alleged victim were constantly harassed and surveyed by the Police and that the alleged victim's wife, Ana Josefa Montilla, had to remain in the United States because to the threats to which she and her family were subjected.

14. They point out that, as of October 3, 2009, the National Police stepped up its persecution, monitoring, phone tapping, surveillance of offices and homes, and threats against the representatives, next of

⁶ See I/A Court H.R. Provisional Measure No. 5/10. Resolution lifting the measure. November 13, 2015.

kin, and friends of Juan Almonte Herrera. They describe how, because of that, t on December 11, 2009, he IACHR granted precautionary measures on their behalf and the I/A Court H.R. issued provisional measures to protect them on May 25, 2010.

15. They tell how they conducted national and international campaigns publicly denouncing what had happened and demanding to know the whereabouts of Juan Almonte Herrera and that the police officers, officials, and civilians involved in his disappearance be brought to justice. They report that they were threatened and harassed by State agents, because of their public statements and the steps they took before the authorities with a view to ascertaining the whereabouts of the alleged victim.

16. The State, for its part, alleges that the petitioners did not appear before the appropriate authorities to denounce the forced disappearance of the alleged victim, nor did they provide circumstantial evidence, proof, or information. Consequently, the State opposes the exception to the exhaustion of domestic remedies requirement. The State indicates that the Public Prosecutor's Office, through its representation in the Office of National District Public Prosecutor, decided *ex officio* to open an investigation under Articles 30, 262, and 263 of the Code of Criminal Procedure. The State reports that in order not to obstruct the procedures and compromise the information and inquiries conducted it cannot reveal the findings of said investigation, since the domestic legal order establishes that in the investigative and preparatory phase information is only made available to the parties. The State did not pronounce on the allegations regarding threats, surveillance, phone tapping and house searches directed against the legal representatives and next of kin of the alleged victim.

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

17. The petitioners point out that the Dominican Criminal Code in force when the petition was lodged did not contain a legal characterization of the crime of forced disappearance, so that there was no procedure available to take the matter to court. They state that a favorable judgment was handed down in one habeas corpus suit, which they regard as the only appropriate remedy in cases of forced disappearance. That notwithstanding, they point out that it was not effective because the judicial ruling was not enforced by the judicial authorities. They indicate that, for that reason, they filed a constitutional complaint and suit as civil action plaintiffs with the National District Public Procurator's Office on February 23 and May 4, 2010, because, even though a civil action suit is not the appropriate remedy for cases of kidnapping and disappearance, it does allow the plaintiffs to report contempt of court as a way to compel enforcement of the judgment. That being so, they request application of the exception provided for in Article 46.2.c of the Convention, because the aforementioned complaint was not resolved in a reasonable period of time. For its part, the State argues that domestic remedies were not exhausted because the petitioners did not appear before the appropriate authorities to denounce the facts set forth above.

18. The petitioners report that the fact that the legal representatives of the alleged victim and his next of kin were subjected to threats, surveillance, phone tapping, and house searches limited the possibility of their accessing effective judicial remedies because of the generalized fear they were experiencing at the time, justifying the exception provided for in Article 46.2.b of the Convention. The State, for its part, did not put forward any specific arguments in that regard.

19. Regarding Mr. Juan Almonte Herrera, the Commission considers that habeas corpus is the appropriate remedy in such cases in which a person is deemed to be illegally deprived of his or her liberty.⁷ In the instant case, the Commission notes that said recourse was used by the petitioners and resolved on October 2, 2009 by the Second Chamber of the Criminal Division of the Court of First Instance of the National District. It likewise bears in mind that, faced with noncompliance with the court ruling, the petitioners filed a complaint and instituted a civil action suit with the National District Public Procurator's Office, to no avail. From the information available in the file on the petition and the provisional measure, the Commission observes that it does not transpire that the State has complied with the court order to release the alleged victim and that, thus far, there has been no clarification of either the circumstances of his disappearance or his whereabouts. The

⁷IACHR, Report No 16/08, Petition 12.359. Admissibility. Cristina Aguayo Ortiz et al. Paraguay. March 6, 2008, par. 79.

Commission concludes from the above that there has been an unwarranted delay under the terms of Article 46.2.c of the Convention.⁸

20. At the same time, regarding the Mr. Almonte Herrera's next of kin and attorneys, the IACHR considers that the alleged threats, surveillance, and house searches conducted against them did entail widespread fear and prevented them from denouncing what had happened to the police authorities who were allegedly themselves responsible for the harassment. Therefore, the Commission concludes that those circumstances constitute an exception to the exhaustion of domestic remedies rule under Article 46.2.b of the Convention.⁹

21. As regards timeliness of the petition, particularly since it has been established that an exception to the exhaustion of domestic remedies applies in this case, that the petition was received on February 10, 2012, and that the facts referred to in the claim began on September 28, 2009 with effects that are still ongoing, the Commission concludes that the petition was lodged within a reasonable period of time and that the timeliness requirement for admissibility should be deemed to have been met.

VII. ANALYSIS OF DUPLICATION OF PROCEDURES AND INTERNATIONAL RES JUDICATA

22. Finally, in a communication received on July 17, 2013, the petitioners stated that the United Nations Working Group on Enforced or Involuntary Disappearances included in its Report A/HCR/13/21 an urgent communication to the Dominican Government regarding the alleged kidnapping of the alleged victim by police agents. Here the Commission issues a reminder that said international body does not have a cases system that would enable it to issue decisions assigning specific responsibilities. Consequently, the Working Group's procedure consists mainly of taking an emergency non-adversarial step, the principal purpose of which is to establish a channel of communication between affected parties and governments to ensure an effective search for missing persons.¹⁰ The procedure before the inter-American system for the protection of human rights, on the other hand, is treaty-based and is of a contentious or adversarial nature, whereby the Inter-American Commission plays an adjudicatory role in that procedure.

23. Therefore, the IACHR concludes that the present petition meets the admissibility requirement established in Article 46.1.c of the Convention and Article 33.2 of the Commission's Rules of Procedure.

VIII. ANALYSIS OF COLORABLE CLAIM

24. With respect to competence *ratione temporis* and *ratione materiae*, and particularly since the Dominican Republic has not ratified the Inter-American Convention on Forced Disappearance of Persons, the Commission will analyze the facts reported in the instant case in light of the State obligations established in the American Convention and in the Inter-American Convention to Prevent and Punish Torture.

25. Accordingly, given the matters of fact and law presented by the parties, the nature of the matter brought to its attention, and the context surrounding the complaints, the IACHR considers that the petitioners' allegations are not manifestly groundless and require in-depth analysis, because, if corroborated, the alleged illegal detention, torture, and subsequent forced disappearance of Mr. Juan Almonte Herrera by police agents, the alleged threats, house searches, and harassment committed against his next of kin and attorneys, as well as the lack of judicial protection with respect to the facts, could constitute violations of the rights upheld in Articles 3 (juridical personality), 4 (life), 5 (humane treatment/personal integrity), 7 (personal liberty), 8 (judicial guarantees), 11 (protection of honor and dignity), 21 (right to property), and 25 (judicial protection) of the American Convention in conjunction with Articles 1.1 and 2 thereof, as well as Articles 1, 6, 7, and 8 of the IACPPT, to the detriment of the alleged victim, his next of kin, and his attorneys.

⁸ IACHR, Report No. 157/17. Petition 286-07. Admissibility. Carlos Andrade Almeida et al. Ecuador November 30, 2017, par. 20.

⁹ I/A Court of H.R. Advisory Opinion OC-11/90. *Exceptions to the exhaustion of domestic remedies*. 1990, par. 32.

¹⁰ IACHR, Report No. 78/16, Petition 1170-09. Admissibility. Almir Muniz Da Silva. Brazil. December 30, 2016, par. 37.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 3, 4, 5, 7, 8, 11, 21, and 25 of the American Convention in conjunction with Articles 1.1 and 2 thereof, as well as Articles 1, 6, 7, and 8 of the Inter-American Convention to Prevent and Punish Torture.

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 25th day of the month of April, 2020. (Signed): Joel Hernández, President; Antonia Urrejola, First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.