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**REPORT No. 170/19**  
**PETITION 1620-09**  
REPORT ON ADMISSIBILITY

GUSTAVO GUILLERMO RAMÍREZ CALDERÓN AND FAMILY  
CHILE

Approved by the Commission on December 5, 2019 in San Salvador, El Salvador.

**Cite as:** IACHR, Report No. 170/19, Petition 1620-09. Admissibility. Gustavo Guillermo Ramírez Calderón and family. Chile. December 5, 2019.

**I. INFORMATION ABOUT THE PETITION**

Petitioner	Nelson Caucoto Pereira and Paulina Ester Galván Calderón <sup>1</sup>
Alleged victim	Gustavo Guillermo Ramírez Calderón and family <sup>2</sup>
Respondent State	Chile <sup>3</sup>
Rights invoked	Articles 4 (life), 5 (personal integrity), 8 (fair trial) and Article 25 (judicial protection) of the American Convention on Human Rights <sup>4</sup> in relation to Articles 1.1 (obligation to respect respects) and 2 (duty to adopt domestic legislation)

**II. PROCEEDINGS BEFORE THE IACHR<sup>5</sup>**

Filing of the petition	December 11, 2009
Notification of the petition	May 7, 2014
State's first response	August 25, 2016
Notification of the possible archiving of the petition	November 7, 2017
Response to the notification regarding the possible archiving of the petition	November 27, 2017

**III. COMPETENCE**

<i>Ratione personae:</i>	Yes
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<i>Ratione materiae:</i>	Yes, American Convention (deposit of instrument on August 21, 1990); Inter-American Convention to Prevent and Punish Torture <sup>6</sup> (deposit of instrument on September 30, 1988) and Inter-American Convention on Forced Disappearances of Persons (deposit of instrument on January 26, 2010).

**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 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (right to fair trial), and 25 (judicial protection) of the American Convention on Human Rights in relation to Article 1 (obligation to respect rights) and 2 (duty to adopt domestic legislation); Articles I (life, liberty and personal security), XVII (recognition of juridical personality and civil rights) XVIII (fair trial) and XXV (protection from arbitrary detention) of the American Declaration; Articles 1, 6 and 8 of the Convention against Torture; and Article I of the Inter-American Convention on the Forced Disappearances of Persons
Exhaustion or exception to the exhaustion of remedies	Yes, June 11, 2009
Timeliness of the petition	Yes, on December 11, 2009

<sup>1</sup> Through a document presented on January 10, 2018, the petitioner Primitiva Calderón Román quit being a petitioner.

<sup>2</sup> Primitiva Calderón Román, mother of the alleged victim and Paulina Ester Galván Calderón, sister of the alleged victim.

<sup>3</sup> Based on Article 17.2.a of the Rules of procedure of the Commission, Commissioner Antonia Urrejola Noguera, a Chilean national, did not participate in the debate or decision of this matter.

<sup>4</sup> Hereinafter the "Convention" or the "American Convention"

<sup>5</sup> The observations submitted by each party were duly transmitted to the opposing party.

<sup>6</sup> Hereinafter "Convention against Torture".

## V. SUMMARY OF ALLEGED FACTS

1. The petitioner denounces the arrest, torture, forced disappearance and murder of Gustavo Guillermo Ramírez Calderón (hereinafter, “the alleged victim”), as well as the lack of diligence in the investigation of the facts, resulting in violations of judicial guarantees and the right to judicial protection, and the lack of reparation and compensation by the State to the relatives of the alleged victim.

2. The petitioners report<sup>7</sup> that the alleged victim was part of the Chilean National Liberation Army. They point out that on September 6, 1975, he was kidnapped along with his partner, sister-in-law and her boyfriend, all of whom were transferred to the premises located on Calle Eighteen, where some relatives of him were also detained. On November 12, 1975, the alleged victim was transferred to the compound known as “4 Alamos”, being under the control of the Directorate of National Intelligence (hereinafter “DINA”), being transferred again on November 18, 1975, to an enclosure known as “Villa Grimaldi”. This was the last day that the whereabouts of the alleged victim were known, by testimonies of other abducted persons.

3. The petitioner alleges that since then, the alleged victim remains missing, without information about his whereabouts or what happened to him. The petitioner claims that alleged victim would have died because of the torture carried out against him. He explains that relatives of the alleged victim, who were also detained at the time, heard his voice inside the premises of Eighteenth Street, which confirmed that he was being held there. Also, another witness reported that he heard the torture carried out against the alleged victim, and during the last episode, he heard one of the torture perpetrators shout “cardiac arrest” and then saw officers run to the room where the alleged victim was. Likewise, it indicates that in the investigations carried out within the framework of the judicial proceedings, it would have been verified that two police officers, Prefect Navarrete Arriagada and Mr. Víctor Zúñiga Zúñiga, witnessed the recruitment and detention of the alleged victim. For his part, Prefect Navarrete indicated that he did not know about the whereabouts of the alleged victim after he had been handed over to “4 Alamos,” and Mr. Zúñiga Zúñiga ratified the allegations of Mr. Navarrete and indicated that he did not know the identity of the officials of the DINA who had received the alleged victim. However, subsequently, both officials denied the above.

4. On October 15, 1975, the relatives of the alleged victim filed an appeal for amparo -action for protection of constitutional rights- before the Court of Appeals of Santiago, which was rejected and sent to the Ninth Criminal Court of Santiago, in order to instruct the process by the disappearance of the alleged victim. On December 2, 1975, the case was initiated, being referred to the Minister in Visit. However, on October 18 of the same year, the latter declared himself incompetent, thus referring the case to the Second Military Court, which accepted its jurisdiction on January 17, 1980. On September 1, 1981, the Military Court temporarily dismissed the case because the perpetration of the crime was not established, decision ratified by the Martial Court. On October 18, 1989, the Military Public Ministry requested to be part of the process, in order for the final order to be dismissed, under the Amnesty Law approved at that time. As a consequence, on October 30, 1989, the final dismissal of the case was decreed; confirmed by the Martial Court on September 4, 1990. In parallel, in September 1977, a complaint was filed before the Ninth Criminal Court, requesting to summon two police officers allegedly linked to the disappearance of the alleged victim, which was accumulated to the above mentioned case. Said inquiry was entrusted to the Investigation Police, which conducted several interviews and hearings, resulting in no evidence. Because both remedies were dismissed by the Court, the petitioners filed a complaint with the Supreme Court, which is still in process.

5. Regarding the civil action, it follows from what was alleged by the petitioners that on September 6, 2000, the next of kin of the alleged victim filed a civil proceeding before the Civil Court of Santiago, initiating the trial on September 6, 2000 and sentencing on April 30, 2002, in which the compensation was denied. Consequently, on October 9, 2002, the petitioners filed an appeal before the Court of Appeals of Santiago, which, on July 5, 2007, confirmed the rejection of the petitioners' claims, considering that the statute of limitations applied. On September 10, 2007, they filed an appeal to the Supreme Court of Justice, which was rejected with a final ruling on June 11, 2009.

<sup>7</sup> The petitioner based his account and the facts denounced in this petition in the Rettig report.

6. For its part, the State indicates that in relation to the allegation of lack of civil reparation, it has no objections to raise regarding compliance with the requirements, without prejudice to the observations on the merits that it may present in due time. Regarding the criminal scope of the petition, he informs that in relation to the alleged victim, the case is pending under Role No. 2182-98 "Villa Grimaldi-Iván Olivares and others", the case currently being under the analysis of the Supreme Court due to the filing of appeals over the merits.

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

7. The Commission recalls that whenever an alleged crime prosecuted *ex officio* is committed, the State has the obligation to promote and give impulse to the criminal process and that, in such cases, this constitutes the appropriate way to clarify the facts, judge those responsible and establish the corresponding criminal sanctions. In this regard, the Commission reiterates that the military jurisdiction does not constitute an appropriate forum to elucidate the truth of the alleged violations in cases such as the one under analysis; and therefore, does not provide an adequate remedy to investigate, prosecute and punish human rights violations allegedly committed by members of the public force.<sup>8</sup> The Commission denotes that the State indicates that an appeal procedure is still pending before the Supreme Court. In this regard, he notes that, after 27 years, the detention, torture and disappearance have not been clarified, nor have those responsible been punished. On the merit of the foregoing, the Commission concludes that in this case the provisions of Article 46.2.c of the Convention apply. In view of the context and the characteristics of the petition, the Commission considers that it was presented within a reasonable time.

8. Additionally, in relation to the reparation processes before the administrative contentious jurisdiction, the Commission has repeatedly held that said route does not constitute an appropriate remedy for the purpose of analyzing the admissibility of a claim such as the one under analysis,<sup>9</sup> since it is not adequate to provide comprehensive reparation that includes clarification and justice to family members. Notwithstanding the foregoing, although in the present case the criminal process is the appropriate remedy for the investigation of the facts, it is observed that the petitioners also allege specific violations within the framework of the demand for direct reparation. Therefore, given the link between the two processes, it is verified that the petitioners have exhausted the domestic remedies available in the Chilean jurisdiction with the final ruling of the Supreme Court of Justice of June 11, 2009, and, hence, the present petition complies with the requirement established in numeral 46.1.a of the American Convention. Regarding the deadline for submission, the Commission notes that the previous judicial decision was notified to the alleged victim on June 11, 2009 and his petition before this Commission was received on December 11, 2009. In merit of the foregoing, the petition complies with the requirement set forth in Article 46.1.b of the Convention.

## VII. COLORABLE CLAIM

9. In relation to the competence *ratione temporis* and *ratione materiae*, the Commission will analyze the facts of this case in the light of the obligations established in the American Convention, in the Inter-American Convention on Forced Disappearance of Persons and in the Convention against Torture, regarding those events that occurred after their entry into force or whose execution continued after the entry into force of said instruments for the State of Chile. The Commission will analyze the facts completed prior to the entry into force of the American Convention for that State, in the light of the obligations arising from the American Declaration.

10. In view of the factual and legal elements alleged by the parties and the nature of the matter brought to its attention, the Commission considers that, if proven, the facts alleged by the petitioner about the forced disappearance, torture and murder of the alleged victim, and faults in due process, could amount to a violation of the rights protected in Articles I (life, liberty and personal security), XVII (right to recognition of juridical personality and civil rights) XVIII (right to a fair trial) and XXV (protection from arbitrary detention)

<sup>8</sup> See IACHR. Report N. 16/09. Petition 12.302. Admissibility. Luis Eduardo and Andrés Alejandro Casierra Quiñonez. Ecuador, March 19, 2009, par. 36.

<sup>9</sup> See IACHR. Report N. 72/16. Petition 694-06. Admissibility. Onofre Antonio de La Hoz Monteri and family. Colombia. December 6, 2016, par. 32; IACHR, Report N. 81/18. Petition 190-07. Admissibility. Edgar José Sánchez Duarte. Colombia. July 7, 2018.

of the American Declaration. Likewise, as regards the alleged continuity and lack of clarification of said crimes, as well as the allegations regarding the lack of compensation for the events that occurred, in application of the statute of limitations, the Commission considers that these facts could amount to possible violations of Articles 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), and 25 (judicial protection) of the American Convention on Human Rights in relation to Article 1 (obligation to respect rights) and 2 (duty to adopt domestic legislation), as well as Articles 1, 6 and 8 of the Convention against Torture; and Article I of the Inter-American Convention on the Forced Disappearances of Persons.

#### **VIII. DECISION**

1. To find the instant petition admissible in relation to Articles I, XVII, XVIII and XXV of the American Declaration; and Articles 3, 4, 5, 7, 8 and 25 of the American Convention in relation to Articles 1.1 and 2; Articles 1, 6 and 8 of the Convention against Torture; Article I of the Inter-American Convention on Forced Disappearances of Persons over those facts occurred after its entry into force or of which its execution continued after the entry into force for the state of Chile; 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 5<sup>th</sup> day of the month of December, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Margarete May Macaulay, Francisco José Eguiguren Praeli, Luis Ernesto Vargas Silva and Flávia Piovesan, Commissioners.