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REPORT No. 174/19
PETITION 313-11
REPORT ON ADMISSIBILITY

EDUARDO ALEJANDRO CAMPOS BARRA AND FAMILY
CHILE

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

Cite as: IACHR, Report No. 174/19, Petition 313-11. Admissibility. Eduardo Alejandro Campos Barra and family. Chile. December 5, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner	Nelson Caucoto ¹
Alleged victim	Eduardo Alejandro Campos Barra and family ²
Respondent State	Chile ³
Rights invoked	Articles 8 (fair trial) and Article 25 (judicial protection) of the American Convention on Human Rights ⁴ in relation to Articles 1.1 (obligation to respect rights) and 2 (duty to adopt domestic legislation)

II. PROCEEDINGS BEFORE THE IACHR⁵

Filing of the petition	March 6, 2011
Notification of the petition	June 14, 2017
State's first response	December 26, 2017
Additional observations from the petitioner	January 30, 2018
Additional observations from the State	May 23, 2018

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)

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 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)
Exhaustion or exception to the exhaustion of remedies	Yes, on September 6, 2010
Timeliness of the petition	Yes, on September 6, 2011

V. SUMMARY OF ALLEGED FACTS

1. The petitioner denounces the lack of reparation to the relatives of the alleged victim, Eduardo Alejandro Campos Barra, for the damages caused by his extrajudicial detention, torture and subsequent forced disappearance. He alleges violations of due process and to the right to judicial protection in the context of civil proceedings, resulting in a denial of justice.

2. The petitioner claims that the alleged victim, a member of the Revolutionary Left Movement (MIR), was arrested on September 13, 1973 by State agents. This day, Mr. Campos Barra called his sister to tell him that he was temporarily in San Bernardo - it was the last communication he had with his family. The petitioner alleges that at the end of September, two detectives appeared in the house of the alleged victim's wife, stating that he had been shot at the San Bernardo Infantry School.

¹ The petition was initially presented also by Franz Moller Morris but on September 26, 2017 he indicated that he quit being a petitioner.

² The petition refers to Silvia Adriana Campos Barra, sister of the alleged victim.

³ 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.

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

⁵ The observations submitted by each party were duly transmitted to the opposing party.

3. On August 8, 1975, a complaint was filed for alleged disappearance before the San Bernardo Crime Court, detailing the circumstances of the alleged victim's disappearance. The petitioner indicates that during the course of this procedure, negative reports were received regarding the whereabouts of the alleged victim from the Ministry of Interior, National Executive Secretary of Detainees (SENDET), Medical Institute, Directorate of National Intelligence (DINA) as well as from the Army Petty Officer School. On October 28, 1979, the case was temporarily dismissed, a decision which was confirmed by the First Court of Appeals, on the grounds that the existence of a punishable act was not proven. The process was reopened at the request of the offended party, and an *ex officio* statement was requested from the former Director of the San Bernardo Infantry Regiment. However, without providing new relevant background to the process, the case was once again dismissed. In 1994, within the framework of a process before the 22nd Santiago Criminal Court for the crime of illegal burial, it was established that the alleged victim had been tortured and killed. The petitioner argues that, in the report of the National Truth and Reconciliation Commission (hereinafter, the "Valech report"), it was declared that he had been a victim of human rights violations by State agents.

4. The sister of the alleged victim filed an appeal for reparation before the 4th Civil Court of Santiago, which was rejected by a judgment dated November 28, 2003, based on the fact that, although recognized as a victim in the Valech report, the responsibility of State agents did not appear proven by the evidence in the process. This judgment was confirmed by the Court of Appeals of Santiago on May 15, 2008. A cassation appeal was then filed, which was dismissed on August 12, 2010 by the Supreme Court. On September 6, 2010, the civil court of first instance issued an order to comply.

5. For its part, the State indicates that the petition lacks a clear and coherent account of the alleged violations and how they could entail the international responsibility of the State. In this context, the State indicates that it has no objections to make at the admissibility stage, without prejudice to the observations on the merits that it may make at the appropriate time.

6. Likewise, it states that regarding the violations of the rights to life, personal integrity and personal liberty, which would have taken place in September 1973, it is worth recalling the State's reservations to the American Convention, by virtue of which it was noted that the acknowledgments of competence conferred by the State refer to events subsequent to the date of deposit of the instrument of ratification, or, in any case, to events which origin took place after March 11, 1990. In this context, and in view of the fact that the petitioners have unequivocally stated that their complaint refers exclusively to the alleged lack of reparation in civil headquarters, the State requests that the petition be declared inadmissible in relation to the alleged violations of said rights.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

7. The IACHR notes that the petitioner affirms that the petition is only limited to denouncing the lack of access to civil reparation for the relatives of the alleged victim, derived from the disappearance of the alleged victim, whose civil claim was rejected by the 4th Civil Court of Santiago on November 28, 2003. The Commission observes that in the administrative contentious jurisdiction, domestic remedies were exhausted with the order to comply with the judge of first instance on September 6, 2010, regarding the decision of the Supreme Court of August 12, 2010. Based on this, the Commission concludes that this petition meets the requirement established in Article 46.1.a of the Convention. Likewise, the petition was presented to the IACHR on March 6, 2011, complying with the requirement established in Articles 46.1.b of the Convention and 32.1 of the Regulations.

VII. COLORABLE CLAIM

8. 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 alleged facts of a failure to compensate the alleged victims for the events related to the extrajudicial detention, torture and subsequent forced disappearance of the presumed victim could amount to possible violations of the rights protected in Articles 8

(fair trial) and 25 (judicial protection) of the American Convention, in relation to Articles 1.1 (obligation to respect rights) and 2 (duty to adopt domestic legislation) of said treaty.⁶

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8 and 25 of the American Convention, in accordance with Articles 1.1 and 2; 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 5th day of the month of December, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández García, First Vice President; Margarette May Macaulay, Francisco José Eguiguren Praeli, Luis Ernesto Vargas Silva and Flávia Piovesan, Commissioners.

⁶ See IACHR, Report N. 152/17. Admissibility. Hugo Tomás Martínez Guillén and others. Chile. November 30, 2017; and IACHR, Report N. 5/19, Petition 1560-08. Admissibility. Juan Paredes Barrientos and Family. Chile. January 31, 2019.