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REPORT No. 339/20
PETITION 1676-09
REPORT ON ADMISSIBILITY

RELATIVES OF MIGUEL ANGEL RODRIGUEZ GALLARDO
CHILE

Approved electronically by the Commission on November 22, 2020.

Cite as: IACHR, Report No. 339/20. Petition 1676-09. Admissibility. Relatives of Miguel Ángel Rodríguez Gallardo. Chile. November 22, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Nelson Caucoto Pereira ¹
Alleged victim:	Relatives of Miguel Ángel Rodríguez Gallardo ²
Respondent State:	Chile ³
Rights invoked:	Articles 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights ⁴ , in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)

II. PROCEEDINGS BEFORE THE IACHR⁵

Filing of the petition:	December 24, 2009
Notification of the petition to the State:	May 9, 2014
State's first response:	July 3, 2014
Additional observations from the petitioner:	August 22, 2014 and May 8, 2018

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 (deposit of the instrument of ratification done 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 its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, on June 24, 2009
Timeliness of the petition:	Yes, on December 24, 2009

V. FACTS ALLEGED

1. The petitioner denounces the lack of reparation to the relatives of Miguel Ángel Rodríguez Gallardo (or, hereinafter “the alleged victim”) for harms caused due to his extrajudicial arrest and subsequent forced disappearance, as well as the violation to the right to fair trial and to judicial protection in the frame of civil procedures, constituting denegation of justice. The petitioner holds that all the domestic remedies were exhausted after the enactment of the American Convention and that the reserves invoked by the State to restrict the reach of it have no value whatsoever and seek to leave the judicial norms of *ius cogens* purposeless.

¹ The petition was initially presented by Franz Moller Morris as well, but through communication of September 26, 2017, he indicated that he refused to be the petitioner.

² Víctor Manuel Rodríguez Gallardo, brother of the alleged victim, Rosalba del Carmen Mendoza Morales, spouse of the alleged victim.

³ According to what is decreed in article 17.2.a of the Regulations of the Commission, Commissioner Antonia Urrejola Noguera, of Chilean nationality, did not participate neither on the debate, nor in the decision of the present subject.

⁴ Hereinafter “the American Convention” or “The Convention.”

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

2. The petitioner claims⁶⁶ that the alleged victim was arrested on August 28, 1975 by troops of the Intelligence Services of the Government belonging to the Joint Command, but the circumstances of his arrest are unknown. One week before, while going back to his home, he had told his spouse that during his route, he had been followed by unknown people that, with certainty, belonged to the Security Services. After his disappearance, on September 13 of the same year, four individuals heavily armed burst in his domicile and identified themselves as “police officers,” one of them was wearing the uniform of the Military of Chile (FACH). Without showing a search warrant, they proceeded to search the house. Before leaving the property, they assured the spouse of the alleged victim that “they would send her husband back.” The presence of the alleged victim in the detention center known as “Nido 18” under the care of FACH, and then, in the Airbase of Colina, was confirmed through testimonies and recognized on the Rettig Report. The petitioner claims that all the detainees would have been assassinated in the military lands of Peldehue, then burnt and clandestinely buried in that place.

3. On September 2, 1975, a writ of amparo was filed before the Court of Appeals of Santiago in favor of the alleged victim, but it was rejected. On November 13 of the same year, the spouse of the alleged victim filed a lawsuit for the crimes of illegal arrest and abusive isolation against those who turned out to be responsible for this before the Third Court of Crime of Santiago. The court declared itself incompetent and sent the records to the Fourth Tribunal of Crime of San Miguel, which accepted the competence. On February 4, 1977 the indictment was declared closed and the cause was temporarily dismissed, taking into account that the perpetration of the denounced fact had not been justified. The resolution was approved by the Court of Appeals of Santiago on August 8, 1977. On September 27, 1985, the process was sent to the Minister in Extraordinary Visit, who provided new records, so the Fourth Tribunal of Crime would quash the temporary dismissal that had been issued, in order to continue with the investigation. There is no evidence that this has occurred.

4. On October 2, 2000, a civil cause was initiated in the 28th Civil Court of Santiago, which sentence was given on September 24, 2001 denying the plaintiff’s demand of a compensation for the harm suffered. The Court of Appeals of Santiago confirmed said sentence on August 16, 2007. Against this last verdict, a cassation appeal was filed before the Supreme Court, and on June 1, 2009, the Supreme Court ruled in favor of the State, deciding the statute of limitations applied to the alleged facts, according to the Chilean civil law. On June 24, 2009, the Civil Court of first instance issued a *cúmplase* order.

5. For its part, the State indicates that, as for the allegation of lack of civil reparation, it does not have objections to set out relative to the compliance of the requirements of form, without prejudice to the observations on the merits that it could present when appropriate. Regarding the allegations of facts that would have taken place in August 1984, consistent of the violation of the rights to life, personal integrity, and personal freedom of the alleged victim, the State recalls its reserves to the American Convention, in virtue of which it expressed that the acknowledgement of competence conferred by the States refers to facts subsequent to the date of the deposit of the instrument of ratification, or, in any event, to facts which principle of execution will be after March 11, 1990. Therefore, the Commission would not have jurisdiction to make pronouncements on said facts due to a restriction *ex ratione temporis*.

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

6. The IACHR notes that the petitioner affirms that the petition is limited to denounce the lack of access to civil reparation for the relatives of Mr. Rodríguez Gallardo, derived from its forced disappearance, and which civil claim was rejected on the grounds of the application of the statute of limitations. The Commission observes that in the civil jurisdiction, the cause was initiated on October 2, 2000 in the 28th Civil Court of Santiago. Additionally, it observes that the domestic remedies were exhausted with the order of *cúmplase* issued by the judge of first instance on June 24, 2009, regarding the decision of the Supreme Court of June 10, 2009, rejecting the claims of the petitioners. Based on this, the Commission concludes that the present petition meets the requirement established in article 46.1.a of the Convention.

⁶⁶ The petition is based on what is written on the Report of the National Commission for Truth and Reconciliation (Rettig Report).

7. Additionally, the petition was presented before the IACHR on December 24, 2009, having therefore met the filing deadline requirement established in articles 46.1.b of the Convention and 32.1 of the Regulations of the IACHR.

VII. ANALYSIS OF COLORABLE CLAIM

8. The Commission observes that the present petition includes claims regarding lack of indemnity to relatives of the alleged victim due to his forced disappearance, in judicial application of the statute of limitations in civil matter. Regarding the civil actions for reparation filed in matters such as this one, both the Commission and the Inter-American Court have ruled that the application of the statute of limitations constitutes an obstacle to effective access to justice for victims to be repaired⁷. Considering the foregoing, the IACHR considers that the allegations of the petitioners are not manifestly groundless and require an analysis on the merits, since the alleged facts, if proven, could characterize violations of Articles 8 (fair trial) and 25 (judicial protection) of the American Convention in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects), in accordance with other similar cases already decided by the IACHR⁸.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8 and 25 of the American Convention in relation to its 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 22nd day of the month of November, 2020. (Signed): Joel Hernández, President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.

⁷ IACHR, Report No. 52/16, Case 12.521. Merits. Maria Laura Ordenes Guerra and others. Chile. November 30, 2016; IACHR, Report No. 5/19, Petition 1560-08. Admissibility. Juan Paredes Barrientos and family. Chile. January 31, 2019; IHR Court, Case Órdenes Guerra and others vs. Chile, Sentence November 29, 2018, (Merits, Damages and Costs).

⁸ See IACHR, Report No. 152/17. Admissibility. Hugo Tomás Martínez Guillén and Others. Chile. November 30, 2017; and IACHR, Report No. 5/19, Petition 1560-08. Admissibility. Juan Paredes Barrientos and Family. Chile. January 31, 2019