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REPORT No. 53/20
PETITION 1830-10
REPORT ON ADMISSIBILITY

RELATIVES OF EDUARDO EMLIO TORO VELEZ
CHILE

Approved electronically by the Commission on April 20, 2020.

Cite as: IACHR, Report No. 53/20, Petition 1830-10. Admissibility. Relatives of Eduardo Emilio Toro Vélez. Chile. April 20, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Nelson Caucoto Pereira ¹
Alleged victim	Relatives of Eduardo Emilio Toro Vélez ²
Respondent State	Chile ³
Rights invoked	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (right to a 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 (obligation to adopt provisions of domestic law)

II. PROCEEDINGS BEFORE THE IACHR⁵

Date of filing	December 22, 2010
Notification of the petition	May 4, 2016
State's first response	August 25, 2016
Additional observations from the petitioner	April 9, 2018

III. COMPETENCE

<i>Ratione personae</i>	Yes
<i>Ratione loci</i>	Yes
<i>Ratione temporis</i>	Yes
<i>Ratione materiae</i>	Yes, American Declaration of the Rights and Duties of Man ⁶ (OAS Charter ratified June 5, 1953); American Convention (instrument deposited August 21, 1990); Inter-American Convention to Prevent and Punish Torture ⁷ (instrument deposited September 30, 1988); and Inter-American Convention on Forced Disappearance of Persons (instrument deposited 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 I (life, liberty, and personal security), XVII (recognition of juridical personality and civil rights), XVIII (fair trial) and XXV (protection from arbitrary arrest) of the American Declaration; Articles 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (right to a fair trial) and 25 (judicial protection) of the American Convention in relation to its Articles 1(1) (obligation to respect rights) and 2 (obligation to adopt provisions of domestic law); Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture; and Article I of the Inter-American Convention on Forced Disappearance of Persons
Exhaustion or exception to the exhaustion of remedies	Yes, under the terms of section VI
Timeliness of the petition	Yes, under the terms of section VI

¹ The petition was initially submitted by Franz Moller Morris as well, but by communication of September 26, 2017, he indicated that he was renouncing his role as petitioner.

² Esmeralda Toro Vélez, Tegualda Toro Vélez, Emilio Toro Vélez, Eloisa Toro Vélez, and Georgina Toro Vélez, siblings of the alleged victim.

³ In conformity with the provisions of Article 17.2.a of the IACHR Rules of Procedure, Commissioner Antonia Urrejola Noguera, a Chilean national did not partake in the discussion or the decision on this matter.

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

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

⁶ Hereinafter "Declaration" or "American Declaration."

⁷ Hereinafter "Inter-American Convention to Prevent and Punish Torture."

V. SUMMARY OF FACTS ALLEGED

1. The petitioner alleges the extrajudicial detention and subsequent forced disappearance of Eduardo Emilio Toro Vélez (hereinafter “alleged victim”) during the military coup in Chile, as well as the lack of reparations for his family members for damages caused, and the violation of the rights to a fair trial and to judicial protection, resulting in a denial of justice.

2. The petitioner alleges⁸ that on October 6, 1973, the alleged victim, who was a member of the Partido Radical, went out to walk his dog in the vicinity of Plaza Italia, where his home was located. Since he was not coming back, his spouse’s son went out in search of him. He came upon a group of soldiers guarding the area and asked them about the alleged victim. During this conversation the dog appeared, but nothing more was learned as to the whereabouts of Eduardo Emilio Toro Vélez. The family made several unsuccessful attempts to locate him, including with the Forensic Medical Service (SML), the Santiago Penitentiary, the Chile Stadium, and the National Stadium, which were detention centers at the time. Eyewitnesses noted that soldiers arrested the alleged victim, hit him with the butts of their weapons, and dragged him to the Embassy of Argentina, where a police van and military jeep were stationed.

3. The petitioner adds that the alleged victim’s anthropomorphic records were added to case 4449-AF of the 22nd Criminal Court of Santiago for the crime of illegal burial, in Plot 29 of the General Cemetery, of unidentified persons deceased between September to December 1973. In September 1991, the investigative judge in the case ordered that 108 graves be excavated, from which 125 corpses were exhumed and sent to the SML; expert reports identifying the deceased remain pending. On May 7, 1991, Fresia Toro Vélez, the alleged victim’s sister, filed a complaint for kidnapping against whoever turns out to be responsible before the 16th Criminal Court of Santiago. The court made official requests to various institutions for information and ultimately the judge dismissed the case. This decision was upheld by the Court of Appeals in April 1992.

4. On August 9, 1999, the civil trial began before the 18th Civil Court of Santiago, which issued its judgment on March 31, 2003, granting compensation for damages to the alleged victim’s family members. However, on May 7, 2008, the Court of Appeals of Santiago granted the appeal filed by the State Defense Council, concluding that the statute of limitations on reparations applied. Following this decision, the plaintiff filed a motion for cassation before the Supreme Court, and on May 31, 2010, said Court denied the motion, citing the State’s argument that the statute of limitations on civil matters had lapsed. On June 22, 2010, the civil court of first instance issued an order of *cúmplase* in relation to the decision of the Supreme Court.

5. The State notes that it has no objections regarding compliance with the formal requirements in terms of the alleged failure to provide civil reparations, without prejudice to observations on the merits it may formulate in due time. Additionally, in the criminal matter, the State notes that the “Plot 29” case is in the preliminary phase before the Court of Appeals.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

6. The Commission recalls that in the case of an offense subject to prosecution *ex officio*, the State is obligated to institute and pursue criminal proceedings and that, in such cases, this is the appropriate means to clarify the facts, prosecute the parties responsible and impose the applicable penalties⁹. The Commission observes that on May 7, 1991, a complaint was filed for kidnapping against those responsible before the 16th Criminal Court of Santiago, and that after giving official notice to various institutions to no avail, the case was dismissed. This decision was upheld by the Court of Appeals in April 1992. The Commission observes that, after more than 40 years, the facts surrounding the arrest and disappearance of the alleged victim have not yet been clarified, nor have those responsible been punished. Bearing this in mind, the Commission concludes that in the instant case the exception to the requirement to exhaust domestic remedies set forth in Article 46(2)(c) of the Convention applies. In light of the context and the characteristics of the

⁸ The petitioner based his account and the facts alleged in this petition on the Report of the National Commission on Truth and Reconciliation.

⁹ See IACHR, Report No. 105/17. Petition 798-07. Admissibility. David Valderrama Opazo et al. Chile. September 7, 2017; IACHR, Report No. 78/16, Petition 1170-09. Admissibility. Almir Muniz Da Silva. Brazil. December 30, 2016

petition included in this report, the Commission considers that it was lodged within a reasonable period of time, and that it satisfies the admissibility requirement regarding timeliness.

7. In terms of proceedings for reparations before the contentious-administrative jurisdiction, the Commission has repeatedly maintained that it is not the appropriate arena for analyzing the admissibility of a complaint of this nature, given that it is not adequate to provide comprehensive reparations, including clarification of the facts and justice for the family members. Without prejudice to the aforementioned, while in the present case a criminal proceeding is the appropriate avenue for investigating the facts, the petitioners allege further concrete violations in the proceedings for direct reparations. Given the relationship between the two cases, the Commission bears in mind that in the contentious-administrative jurisdiction, domestic remedies were exhausted when the trial judge issued an order of *cumplase*, on June 22, 2010, in connection with the Supreme Court's decision of May 31, 2010. Therefore, the Commission concludes that the instant petition complies with the requirement set forth in Article 46(1)(a) of the Convention. Furthermore, the petition was lodged before the IACHR on December 22, 2010, in keeping with the requirement set forth in Articles 46(1)(b) of the Convention and 32(1) of the Rules of Procedure.

VII. COLORABLE CLAIM AND COMPETENCE

8. As regards competence *ratione temporis* and *ratione materiae*, the Commission shall analyze the facts in the present case in light of the obligations set forth in the American Convention, the Inter-American Convention on Forced Disappearance of Persons, and the Inter-American Convention to Prevent and Punish Torture, with respect to events subsequent to or which continued following the entry into force of those instruments for the State of Chile. The Commission will analyze events prior to the entry into force of the American Convention for said State in light of the obligations set forth in the American Declaration.

9. The Commission observes that the instant petition includes allegations regarding the arrest and forced disappearance of the alleged victim. In view of these considerations and after examining the factual and legal elements presented by the parties, the Commission considers that the claims of the petitioner are not manifestly unfounded and require a substantive study since the alleged facts, if corroborated as true, could characterize violations of articles I (life, liberty, and personal security), XVII (recognition of juridical personality and civil rights), XVIII (fair trial), and XXV (protection from arbitrary arrest) of the American Declaration. Moreover, the Commission observes that the instant petition includes allegations regarding the ongoing crime of forced disappearance and the alleged ineffectiveness of the criminal proceedings to establish the facts and punish those responsible, and the failure to clarify said crimes, as well as the failure to provide compensation for the facts, by judicial application of the statute of limitations in civil matters. As regards the civil actions for reparations in matters such as the instant one, both the Commission and the Inter-American Court of Human Rights have found the application of the statute of limitations is an obstacle to effective access to justice for victims seeking reparations¹⁰. Bearing this in mind, 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 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), and 25 (judicial protection) of the American Convention in connection with Articles 1(1) (obligation to respect rights) and 2 (obligation to adopt provisions of domestic law) of the same instrument, as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, and Article I of the Inter-American Convention on Forced Disappearance of Persons.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 3, 4, 5, 7, 8, and 25 of the American Convention in connection with Articles 1(1) and 2 of said instrument; Articles 1, 6, and 8 of the Convention against Torture; and Article I of the Inter-American Convention on Forced Disappearance of Persons, regarding events subsequent to or which continued following the entry into force of said instruments for the State of Chile; and Articles I, XVII, XVIII, and XXV of the American Declaration; and

¹⁰ IACHR, Report No. 52/16, Case 12.521. Merits. Maria Laura Órdenes Guerra et al. Chile. November 30, 2016; IACHR, Report No. 5/19. Petition 1560-08. Admissibility. Juan Paredes Barrientos and Family. Chile. January 31, 2019; I/A Court H.R., Case of Órdenes Guerra et al. v. Chile. Merits, Reparations and Costs. Judgment of November 29, 2018.

2. To notify the parties of this decision; to proceed 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 20th day of the month of April, 2020. (Signed): Joel Hernández, President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Margarete May Macaulay, and Julissa Mantilla Falcón, Commissioners.