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REPORT No. 162/20
PETITION 1832-11
REPORT ON ADMISSIBILITY

RELATIVES OF JOSÉ ORLANDO FLORES ARAYA
CHILE

Approved electronically by the Commission on June 9, 2020.

Cite as: IACHR, Report No. 162/20, Petition 1832-11. Admissibility. Relatives of José Orlando Flores Araya. Chile. June 9, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Nelson Caucoto Pereira ¹
Alleged victim:	Familiares de José Orlando Flores Araya ²
Respondent State:	Chile
Rights invoked:	Articles 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights ³ in relation to its articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)

II. PROCEEDINGS BEFORE THE IACHR⁴

Filing of the petition:	November 19, 2011
Notification of the petition to the State:	Jun 28, 2017
State's first response:	April 13, 2018
Additional observations from the petitioner:	August 28, 2018
Notification of the possible archiving of the petition:	April 19, 2017
Petitioner's response to the notification regarding the possible archiving of the petition:	April 20, 2017

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 made on August 21 st 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 17, 2011
Timeliness of the petition:	Yes, on November 19, 2011

V. FACTS ALLEGED

1. The petitioner claims lack of reparation for the relatives of José Orlando Flores Araya (or hereinafter the "alleged victim") for the damages caused from his extrajudicial detention and further forced

¹ The petition was initially filed also by Franz Moller Morris, but through a communication dated September 26th 2017, he resigned to being the petitioner.

² Claudio Flores Araya, Clara Flores Araya and Orlando Flores Quijonea, siblings of the alleged victim.

³ Hereinafter "the American Convention".

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

disappearance, as well as violation of judicial guarantees and his right to judicial protection within the context of civil proceedings, constituting denial of justice.

2. The petitioner claims⁵ that the alleged victim, high school student and member of the Communist Party, was arrested on August 23, 1974, by a military patrol at the Industrial School “Cuatro Álamos” of Maipú, led by Lieutenant Haroldo Latorre. It is recorded by the school principal that the alleged victim was taken away in order to be interrogated. The alleged victim was transported to the Escuela de Suboficiales del Ejército [Non-Commissioned Army Officers Academy], where he was interrogated and subjected to illegal constraint by Lieutenant Hernán Ramírez. Meanwhile his home was being searched and his mother was told her son was under arrest. That same night he was turned over to National Intelligence Direction (DINA), who took him to the Villa Grimaldi detention center. He was last seen there, by a teacher who was also detained at the school and that on August 29, 1974, was moved from Villa Grimaldi to Tres Álamos and set free later on.

3. On August 27, 1974 his mother filed a writ for amparo she further desisted from on November 11 that same year, and the following day she filed a denunciation for presumed disappearance before the Seventh Court of Crime, cause in which both the Executive Secretary for the Detained and the Ministry of the Interior were interrogated, both of which informed the Tribunal they had no track record of the alleged victim. On October 4, 1976, the case was declared closed and the proceedings dismissed since no crime had been proven, resolution which was approved by the Court of Appeals. On January 10, 1979, the case was put back on summary procedure and the dismissal revoked. On July 20, 1979, the cause was approved to carry on in charge of a Ministro en Visita. On November 2, 1979, he determined that José Flores Araya had been detained by Lieutenant Latorre and driven to the Escuela de Suboficiales del Ejército and that there was no concrete record of his further release. Because militaries were involved, the cause was forwarded to the Military Justice, which ordered to prosecute. On May 8, 1982, the Prosecutor confirmed that José Flores Araya had been detained by Lieutenant Latorre, but it had not been possible to certify participation from any soldier or DINA member in his alleged disappearance, so that the perpetration of a crime was not demonstrated. The cause was temporarily dismissed. Such resolution was approved by the Military Judge and confirmed by the Martial Court. A complaint was also filed against the Primera Fiscalía Militar [First Military Prosecutor] of Santiago before the Supreme Court, which overruled the request.

4. On March 3, 2000, a civil case was initiated in the Second Civil Court of Santiago, sentence of which came on July 22, 2004, denying the pretention of the relatives of the alleged victim to an indemnity for the damage caused, on the ground of the statute of limitations. The Court of Appeals of Santiago revoked the first instance sentence, forcing the State to indemnify. Against this ruling, the Treasury of Chile presented a cassation remedy before the Supreme Court and on May 25, 2011, such action was admitted by the Court, revoking the ruling granting an indemnity. On June 17, 2011, the First Instance Civil Court dictated the order to “comply”.

5. For its part, the State submits that the petition lacks a clear and coherent narration that allows proper understanding of the alleged transgressions. However, in pursuit of good faith and having in mind that the claims of the petitioners are limited to the civil remedies, it has no objection to raise regarding compliance of requirements of form, notwithstanding the observations on the merits it may invoke when appropriate. As for the claims regarding the facts that occurred in 1974, consistent in the breach of the rights to life, personal integrity and personal liberty of the alleged victim, the State recalls its reservations to the American Convention, in virtue of which it stated that the acknowledgements of competence conferred by the State is limited to facts that occurred after the deposit of the ratification instrument, or, in any case, facts which commenced after March 11th 1990. Therefore, the Commission would have no competence to rule on them due to *ex ratione temporis* restrictions.

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 claiming a civil reparation for the alleged victims arising from the disappearance of José Orlando Flores Araya, and whose civil

⁵ The petitioner based its narration and the facts alleged in this petition on the report of the Comisión Nacional de Verdad y Reconciliación [National Truth and Reconciliation Commission] (Rettig Report).

claim was rejected on the grounds of the statute of limitations. The Commission observes that a cause for indemnity was initiated on March 3, 2000, before the Second Civil Court of Santiago and that on June 17, 2011, the first instance judge issued a “comply” order, regarding the decision by the Supreme Court of May 25, 2011, rejecting the petitioners’ demands. As a result, the Commission concludes that the domestic remedies were exhausted and that the present petition complies with the requirement set forth in article 46.1.a of the Convention.

7. Likewise, the petition was filed to the IACHR on November 19, 2011, complying with the deadline requirement to file petitions set forth in articles 46.1.b of the Convention and 32.1 of the IACHR’s regulations.

VII. ANALYSIS OF COLORABLE CLAIM

8. The Commission observes that the relatives of the alleged victim had access to the remedies provided in the Chilean law and that the matter was analyzed and resolved internally, including by the Supreme Court, the highest judicial instance. However, the petition includes claims regarding the lack of compensation to the relatives of the alleged victim for his kidnapping and forced disappearance, in judicial application of the statute of limitations in civil matters. Regarding civil actions for reparation for crimes against humanity, as in the present petition, both the Commission and the Inter-American Court have said that the application of the statute of limitations constitutes an obstacle to effective access to justice to guarantee the right of the victims to be repaired, and therefore should not be applied in such circumstances⁶. Therefore, the Inter-American Commission considers that it is incumbent on it to exercise its complementary competence in this matter and to analyze in the merits stage whether the domestic system offered the petitioners the adequate channels to seek due reparation and guarantee the right to an effective judicial protection. Taking into account 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, with regard to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects), in conformity with similar cases already decided upon by the IACHR.⁷

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 9th day of the month of June, 2020.
(Signed): Joel Hernández, President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.

⁶ IACHR, Report No. 52/16, Case 12.521. Background. Maria Laura Ordenes Guerra and others. Chile. November 30, 2016, para. 134; See also IACHR, Report No. 5/19, Petition 1560-08. Admissibility. Juan Paredes Barrientos and Family. Chile. January 31, 2019; 1/A Court HR, Case of Ordenes Guerra and others vs. Chile, Judgment of November 29, 2018 (Merits, Reparations and Costs), para. 89.

⁷ 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.