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**REPORT No. 258/20**  
**PETITION 2252-12**  
REPORT ON ADMISSIBILITY

RELATIVES OF GUILLERMO JORQUERA GUTIÉRREZ  
CHILE

Approved electronically by the Commission on September 28, 2020.

**Cite as:** IACHR, Report No. 258/20, Petition 2252-12. Admissibility. Relatives of Guillermo Jorquera Gutiérrez. Chile. September 28, 2020.

**I. INFORMATION ABOUT THE PETITION**

Petitioner:	Nelson Caucoto Pereira <sup>1</sup>
Alleged victim:	Relatives of Guillermo Jorquera Gutiérrez <sup>2</sup>
Respondent State:	Chile <sup>3</sup>
Rights invoked:	Articles 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights <sup>4</sup> , in relation to its articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)

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

Filing of the petition:	December 6, 2012
Notification of the petition to the State:	September 11, 2017
State's first response:	November 29, 2017
Additional observations by Petitioners:	June 8, 2018
Advisement of possible archival:	April 27, 2017
Petitioning Party's Response to Advising of Possible Archiving	April 28, 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, 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 6, 2012
Timeliness of the petition:	Yes, on December 6, 2012

**V. FACTS ALLEGED**

1. The petitioner denounces the lack of reparation to the relatives of Guillermo Jorquera Gutiérrez (or hereinafter, the "alleged victim") for the damage caused by his extrajudicial detention and

<sup>1</sup> The petition was also initially presented by Franz Moller Morris, but by communication dated September 26, 2017, he indicated that he was resigning as a petitioner.

<sup>2</sup> Herminia del Carmen Codocedo Gómez, widow of the alleged victim, Marta Ivonne Jorquera Codocedo, Victoria Elizabeth Jorquera Codocedo, Ingrid del Carmen Jorquera Codocedo, Sonia Ester Jorquera Codocedo, daughters of the alleged victim.

<sup>3</sup> Pursuant to the provisions of Article 17.2.a of the Commission's Regulations, Commissioner Antonia Urrejola Noguera, a Chilean national, did not participate in the debate or decision on this matter.

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

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

subsequent forced disappearance, as well as violation of judicial guarantees and the right to judicial protection in the course of the civil proceedings, constituting denial of justice.

2. The petitioner submits<sup>6</sup> that the alleged victim, an Army noncommissioned officer and Intelligence Assistant of the Army Intelligence Directorate (DINE), was arrested on January 23, 1978, when he was trying to seek asylum at the Venezuelan Embassy; said action was thwarted by the police officer who was stationed in the diplomatic compound, who then transferred him to the 14th Police Station. At the police station, when they saw that he was a military man, they put him at the disposal of the DINE Army Captain, who took him to the offices of the Director of the Institution, where he was discharged due to service needs (alcoholism) according to information from the DINE. Although there is information relating to the two months prior to his request for asylum that shows a deterioration in his mental health, this version of facts is contradicted by other versions. The petitioner alleges that the Army Colonel, Undersecretary of Foreign Relations, had assessed the excellence of the work carried out by the alleged victim under his services to the Director of the DINE. Likewise, the DINE requested that he be discharged on December 22, 1977, a request that was repeated on January 6, 1978. Additionally, the Deputy Director of the Armored School stated that he had notified the alleged victim of his discharge in December 1977 and told the alleged victim's spouse, in June 1978, that her husband had been marginalized from the Army because he lost some documents from the Ministry of Foreign Affairs, related to the "Letelier Case." The alleged victim has been missing since January 23, 1978.

3. In March 1978, the alleged victim's spouse, who worked for the Armory of the Armed Forces (FAMAE), was fired. In May of the same year, one of her sisters was kidnapped for a short period by civilians who put her in a vehicle and threatened her and other members of the family so as not to take actions of any kind to find out about the alleged victim whereabouts. In June 1978, her spouse had an interview with the Director of FAMAE and told her that he knew that her husband had died, but did not know details, and in May 1979, she was visited by a DINA collaborator who told her that her husband was taken to a neighboring town in the city of Arica, where he was assassinated inside a military compound. In July 1978, a soldier from the Armored School No. 2, of which the alleged victim was a member, returned the belongings of the alleged victim to her spouse, including the jacket he was wearing at the time of the arrest.

4. On May 9, 1978, the spouse of the alleged victim filed a complaint for alleged disappearance before the 6th Criminal Court. In April 1979, the case was transferred to an Inspecting Judge appointed by the Santiago Court of Appeals. After receiving a series of testimonies, on November 15, 1979, the indictment was closed and a temporary dismissal was declared, for the crime not having been proven. On March 30, 1980, the Court of Appeals confirmed this resolution. On December 3, 1980, the spouse of the alleged victim filed a complaint with the Inspecting Judge for aggravated kidnapping, prolonged incommunicado detention, unnecessary rigor, and arbitrary detention, against the responsible security personnel. The Minister declared himself incompetent and requested the reopening of the investigation due to new information, such as the information obtained by the spouse regarding her husband having been killed in a military compound in the north of the country or that he had been discharged because he was accused of the loss of some documents related to the "Letelier Case", the return of the jacket he was wearing at the time of his arrest, and the background of his work in the Ministry of Foreign Affairs. On July 7, 1981, the Court of Appeals confirmed the decision on the incompetence, and subsequently the Supreme Court rejected the appeal against it. On September 17, 1981, the 2nd Military Court accepted the jurisdiction and assigned the investigation to the Second Military Prosecutor's Office, and in August 1982 the first proceedings were carried out. On April 8, 1983, the Prosecutor closed the investigation and requested the temporary dismissal of the case because for the crime not having been proven. On June 30, 1983, the Military Judge accepted the submission of the Prosecutor and issued a temporary dismissal, a decision confirmed on October 11, 1983 by the Martial Court. On October 16, 1989, the Military Public Ministry became part of the process and requested the definitive dismissal, in application of the Amnesty Decree Law of 1978. On October 30 of the same year, the Military Judge accepted said request, but the resolution was rejected by the Second Chamber of the Martial Court. The Prosecutor appealed to the Supreme Court. The appeal was rejected and the court indicated that the amnesty was not applicable since the crime had not been proven. On March 24, 1993, a temporary dismissal was decreed. In a

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<sup>6</sup> The petitioner based the facts denounced in this petition on the Report of the National Truth and Reconciliation Commission (Rettig Report)

judgment dated September 16, 2009, the Supreme Court convicted Héctor Manuel Rubén Gutiérrez as the perpetrator of the crime of qualified kidnapping of the alleged victim, who was still disappeared at the time.

5. On April 6, 2000, a civil case was initiated in the 1st Civil Court of Santiago, the judgment of which was issued on April 18, 2007, denying the claim of the relatives of the alleged victim to compensation for the damage caused, in application of the statute of limitations to the civil actions. In a judgment dated August 21, 2009, the Santiago Appeals Court reversed the judgment of first instance, forcing the State to compensate. However, a cassation remedy was lodged against this ruling before the Supreme Court, and on June 6, 2012, said appeal was granted by the Court, revoking the ruling granting compensation.

6. For its part, the State indicates that, concerning the allegation of lack of civil reparation, it has no objections to raise regarding compliance with the formal requirements, without prejudice to the observations on the merits that it may make when appropriate. Regarding allegations about events that took place in January 1978, consisting of the violation of the rights to life, personal integrity and personal liberty of the alleged victim, the State indicates that there is a conviction against Héctor Orozco Sepúlveda for qualified kidnapping with the penalty of 4 years of prison at the maximum degree.

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

7. The IACHR notes that the petitioner affirms that the petition is limited to denouncing the lack of access to civil reparation derived from the arrest and disappearance of the alleged victim, because the civil claim was rejected based on the statute of limitations. The Commission observes that in the civil jurisdiction, the case was initiated on April 6, 2000, before the 1st Civil Court of Santiago and that on June 6, 2012, the Supreme Court issued a decision rejecting the claims of the relatives of the alleged victim. Based on this, the Commission concludes that domestic remedies have been exhausted and that the present petition meets the requirement established in Article 46.1.a of the Convention.

8. Likewise, the petition was presented to the IACHR on December 6, 2012, complying with the requirement for the deadline for presentation established in Articles 46.1.b of the Convention and 32.1 of the IACHR Rules of Procedure.

## **VII. ANALYSIS OF COLORABLE CLAIM**

9. The Commission observes that the present petition includes allegations regarding the lack of compensation to the relatives of the alleged victim for his abduction and forced disappearance by way of judicial application of the statute of limitations in civil matters. 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 circumstances<sup>7</sup>. 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 the foregoing into account, the IACHR considers that the petitioners' allegations are not manifestly unfounded and require an in-depth study since the alleged facts, if corroborated as true, could characterize violations of Articles 8 (fair trial) and 25 (judicial protection) of the American Convention, in

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<sup>7</sup> 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; I/A Court HR, Case of Ordenes Guerra and others vs. Chile, Judgment of November 29, 2018 (Merits, Reparations and Costs), para. 89.

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 IACHR<sup>8</sup>.

#### **VIII. DECISION**

1. To declare the present petition admissible in relation to Articles 8 and 25 of the American Convention, in relation to its Articles 1 (1) and 2; and

2. Notify the parties of this decision; continue with the analysis of the merits of the matter; and 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 28<sup>th</sup> day of the month of September, 2020. (Signed): Joel Hernández, President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.

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<sup>8</sup> 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. Jan 31, 2019