

OEA/Ser.L/V/II.
Doc. 66
22 April 2020
Original: Spanish

REPORT No. 56/20
PETITION 591-11
REPORT ON ADMISSIBILITY

RELATIVES OF JUAN HUMBERTO ALBORNOZ PRADO
CHILE

Approved electronically by the Commission on April 22, 2020.

Cite as: IACHR, Report No. 56/20, Petition 591-11. Admissibility. Relatives of Juan Humberto Albornoz Prado. Chile. April 22, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Nelson Caucoto Pereira ¹
Alleged victim:	Relatives of Juan Humberto Albornoz Prado ²
State denounced:	Chile ³
Rights invoked:	Articles 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights, ⁴ in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)

II. PROCEEDINGS BEFORE THE IACHR⁵

Filing of the petition:	May 3, 2011
Notification of the petition to the State:	June 14, 2017
State's first response:	December 20, 2017
Additional observations from the petitioner:	February 26, 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 (instrument of ratification deposited 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, in relation to 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, November 3, 2010
Timeliness of the petition:	Yes, May 3, 2011

V. ALLEGED FACTS

1. The petitioner denounces that the family of Juan Humberto Albornoz Prado (hereinafter, the "alleged victim") has not received reparations for the damages caused by his extrajudicial detention and subsequent forced disappearance, as well as the violation of the right to a fair trial and to judicial protection in civil proceedings, amounting to a denial of justice.

¹ The petition was initially filed by Franz Moller Morris as well, but through a communication sent on September 26, 2017, he indicated that he was withdrawing as a petitioner.

² Olga Rosa Lizama Calderón, widow of the alleged victim.

³ In accordance with Article 17.2(a) of the Commission's Rules of Procedure, Commissioner Antonia Urrejola Noguera, of Chilean nationality, did not participate in the discussion or decision regarding this case.

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 states⁶ that on September 15, 1973, the alleged victim was detained along with his brother and four farmers in La Estrella settlement in the town of Huelquén, Paine, by national police officers (Carabineros) from the Paine substation and a group of armed civilians, without any official documents legitimizing the arrest. At the substation, they were forced to strip and were interrogated while being beaten and insulted, as corroborated by other detainees who were released at 9:30 p.m. that same day, contrary to the Albornoz Prado brothers. Family members of the alleged victim went to different detention centers and questioned representatives of the Ministry of the Interior and Ministry of Defense to no avail.

3. The mother of the alleged victim filed a request for a writ of amparo, which was denied by the Rancagua Court of Appeals. The father of the alleged victim, for his part, filed a criminal complaint for the purported crime of illegal imprisonment. The judge dismissed the complaint and closed the case on June 25, 1975, after which the Rancagua Court of Appeals upheld the decision and, likewise, ordered the case's closure. On March 2, 1979, a complaint was filed for the kidnapping of the alleged victim and his brother, but the investigation did not move forward. On January 19, 1985, the father of the alleged victim lodged a request for a writ of amparo with the Santiago Court of Appeals, which was denied after the National Information Center (CNI) and Ministry of the Interior submitted reports rejecting the allegations. An order was issued to notify the competent criminal court that it should investigate the commission of a crime. On February 13 of the same year, the father of the alleged victim filed for a second writ of amparo with the same court accompanied by statements from the abovementioned witnesses. Once again, both the CNI and the Ministry of the Interior reported that the alleged victim had not been detained, nor was there an order to do so. Consequently, the court denied the writ of amparo and sent the background information to the Santiago Criminal Court, where a missing person case was opened on March 14, 1985. On November 5, the spouse of the alleged victim filed a kidnapping complaint against whatever parties were responsible. The complaint was taken up by the court and joined with the missing person case. Between 1985 and 1988, the Office of the Military Prosecutor was sent official notice on countless occasions to turn over the names of the CNI agents who had arrested the witnesses of the alleged victim's detention, but such attempts were unsuccessful.

4. On September 13, 2001, civil proceedings began in the 26th Civil Court of Santiago, which, on May 4, 2004, denied the claim for damages filed by the family of the alleged victim on the grounds that the civil action was barred by the statute of limitations. In a decision handed down on June 18, 2008, the Santiago Appeals Court upheld the Civil Court's finding. That decision was then challenged before the Supreme Court, which, on October 18, 2010, upheld the finding that denied the claim for damages due to the statute of limitations on the civil action. On November 3, 2010, the Civil Court issued a *cumplase* order in relation to the Supreme Court's decision.

5. For its part, the State indicates that the petition lacks a clear and consistent account of the alleged violations; however, in the interest of good faith and understanding that the family's claim is in regard of the civil litigation process, it has no reservations about the related procedural requirements, notwithstanding any observations on the merits it may make at the appropriate time. Regarding the allegations about events that purportedly took place in September 1973 consisting of crimes committed against Juan Humberto Albornoz Prado, the State holds that proceedings are ongoing in the "Paine" criminal case, and that on February 21, 2017, an information charging aggravated kidnapping was filed against Nelson Bravo Espinoza. The State also alludes to its reservations to the American Convention, by virtue of which it placed on record that its recognition of competence and jurisdiction applied to events that took place subsequent to the date of deposit of the instrument of ratification, or in any case, to events that began subsequent to March 11, 1990. Accordingly, the Commission would not be competent to make pronouncements on the events at hand due to a *ratione temporis* restriction.

⁶ The petitioner based its account on the events denounced in this petition and the report by the National Truth and Reconciliation Commission (Rettig Report).

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

6. The IACHR notes the petitioner's position that the petition is limited to the alleged victims' lack of access to civil reparations for the disappearance of Juan Humberto Albornoz Prado, as their civil suit was dismissed on the grounds of the statute of limitations. The Commission also notes that, in the civil jurisdiction, a case was opened on September 13, 2001, before the 26th Civil Court of Santiago, and that on November 3, 2010, the judge in that case issued a *cúmplase* order in relation to the Supreme Court ruling of October 18, 2010, denying the family's claim. On that basis, the Commission finds that all domestic remedies have been exhausted, and that the instant petition fulfills the requirements set forth in Article 46.1(a) of the Convention.

7. Furthermore, the petition was filed with the IACHR on May 3, 2011, thus fulfilling the timeliness requirement established in Articles 46.1(b) of the Convention and 32.1 of the Commission's Rules of Procedure.

VII. ANALYSIS OF COLORABLE CLAIM

8. The Commission notes that the instant petition includes allegations that the family of the alleged victim has not received reparations for his kidnapping and forced disappearance, due to the application of the statute of limitations in their civil claim. 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 that the application of the statute of limitations is an obstacle to effective access to justice for victims seeking reparations⁷. 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 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention, in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects), and consistent with other similar cases previously decided by the IACHR.⁸

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8 and 25 of the American Convention, in relation to 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 April, 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 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.

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.