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**REPORT No. 180/19**

**PETITION 1468-09**

REPORT ON ADMISSIBILITY

PABLO GAC ESPINOZA AND FAMILY  
CHILE

Approved electronically by the Commission on September 11, 2019.

**Cite as:** IACHR, Report No.180/19, Petition P-1468-09. Admissibility. Pablo Gac Espinoza and family. Chile. September 11, 2019.

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Nelson Caucoto Pereira <sup>1</sup>
<b>Alleged victim:</b>	Pablo Gac Espinoza and family <sup>2</sup>
<b>Respondent State:</b>	Chile <sup>3</sup>
<b>Rights invoked:</b>	Articles 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 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>**

<b>Filing of the petition:</b>	November 14, 2009
<b>Notification of the petition to the State:</b>	September 2, 2014
<b>State's first response:</b>	August 4, 2017
<b>Additional observations from the petitioner:</b>	February 12, 2018

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Declaration of the Rights and Duties of Man <sup>6</sup> (ratification of the OAS Charter on June 5, 1953); American Convention (deposit of instrument made on August 21, 1990); Inter-American Convention to Prevent and Punish Torture <sup>7</sup> (deposit of instrument made on September 30, 1988); and Inter-American Convention on Forced Disappearance of Persons (deposit of instrument made on January 26, 2010)

**IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
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<sup>1</sup> The petition was initially also filed by Franz Moller Morris, but he indicated that he had withdrawn as a petitioner via a memo dated September 26, 2017.

<sup>2</sup> Rosa Eliana Becerra Flores, the alleged victim's widow; Pedro Pablo Gac Becerra and Juan Carlos Bac Becerra, sons of the alleged victim.

<sup>3</sup> In accordance with the provisions of Article 17.2.a of the Commission's Rules of Procedure, Commissioner Antonia Urrejola Noguera, of Chilean nationality, did not participate in either the discussions or the decision in the present case.

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

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

<sup>6</sup> Hereinafter "the Declaration" or "the American Declaration".

<sup>7</sup> Hereinafter "the Convention against Torture".

<b>Rights declared admissible</b>	Articles 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention in conjunction with its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects); 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 1, 6 and 8 of the Convention against Torture; and Article I of the Inter-American Convention on Forced Disappearance of Persons
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, in the terms of Section VI
<b>Timeliness of the petition:</b>	Yes, in the terms of Section VI

## V. FACTS ALLEGED

1. The petitioner alleges the extrajudicial detention and subsequent forced disappearance of the alderman and Mayor of Quillota and socialist activist Pablo Gac Espinoza (or, hereinafter the “alleged victim”) in the context of the military coup in Chile, as well as the lack of reparations for violations of judicial guarantees and the right to judicial protection of his family members for the damages caused.

2. The petitioner alleges that on January 17, 1974, Mr. Pablo Gac Espinoza was detained at his home by a civilian with the aim of “having a little interrogation” to take place in the Regiment of Engineers No. 2 of Quillota. However, the civilian said that he would return later because he had to go and look for others. He eventually went back and took the alleged victim along with four unidentified detainees. The next day, when the alleged victim failed to return home, his wife went to the Regiment of Engineers No. 2 of Quillota, and to the Headquarters of Quillota, where she managed to speak with the Commander, Colonel Angel Custodio Torres Rivera, who told her that her husband was missing and they were looking for him. The petitioner argues that his family subsequently became aware of official information delivered to the press by the Commander, Army Colonel Angel Custodio Torres Rivera, indicating the alleged victim’s name together with another individual appeared on posters with the words “Missing”, attached to the trees of the Plaza de Armas in Quillota. The petitioner alleges that on January 19, an “official version” of the events signed by Colonel Ángel Custodio Torres was published, indicating that while eight detainees were being transferred from the Engineers Regiment to the Cavalry School, the military patrol taking them was “subject to a surprise attack by extremist elements.” In the confusion, the alleged victim and another individual fled, with Captain Francisco Pérez E., Commander of the patrol, being wounded. In addition, the petitioner alleges that on January 20, the alleged victim’s spouse talked with a detainee who had left the Police Station, and informed her that he had seen the alleged victim in the police precinct on January 17, entering the interrogation wing and leaving at midnight, supported between two people, in a very bad physical condition. The alleged victim remains disappeared to date.

3. The petitioner also refers to events occurring before the alleged victim’s last kidnapping. He argues that in September 1973, his home was searched by Quillota Investigations personnel, who arrested him and drove him to the Investigations buildings. He remained there one day, and was then transferred to the city Police Station, where he was mistreated and interrogated, being released the same day. The petitioner alleges that on this occasion he was obliged to appear at said building once a week and was ordered not to leave the city. This situation was repeated several times, and he always showed signs of abuse upon his release.

4. The petitioner alleges that in 1990, an investigation was initiated for the offense of illegal burial on the grounds of the Quillota Cavalry School in the Second Court of Quillota. According to the petitioner, during the proceedings in this investigation, on December 21, 1991, Judge Raúl Beltrami prevented from entering said premises, and therefore he began proceedings for the obstruction of justice. The Commander of the Regiment questioned the jurisdiction of the court before the Court of Appeals of

Valparaíso and maintained that the alleged offense was governed by the Amnesty Law of 1978. The petitioner alleges that the Supreme Court decided to refer both proceedings to the Military Prosecutor's Office of Valparaíso and that this tribunal dismissed the case for obstruction of justice. There has been no progress made with respect to the proceedings for illegal burial, and no further details have been presented.

5. As regards civil proceedings, the petitioner indicates that a civil suit was initiated on July 29, 2002, with the 13<sup>th</sup> Civil Court of Santiago. A judgment of September 20, 2004, denied the applicants' claim to an award of compensation to repair the damages caused. An appeal lodged with the Court of Appeals of Santiago was dismissed on December 1, 2008, in a divided opinion, upholding the judgment denying compensation. According to the petitioner, an appeal was filed with the Supreme Court against the second instance judgment on December 18, 2008, that failed due to the omission of certain procedural formalities, that is, to pay the cost of the photocopies of the file to be referred to the Supreme Court. On May 14, 2009, the civil court of first instance issued a compliance order, whereby the judgment of the Court of Appeals became "absolute and enforceable", and the civil proceedings became "res judicata".

6. For its part, the State indicates that it has no objections with respect to the civil aspect of the petition, without prejudice to the observations on the merits that could be made at the appropriate time. Additionally, it states that the complaint refers obliquely to violations, which took place in January 1974, consisting of the violation of the rights to life, humane treatment and individual freedom. With respect to the last allegations, the State recalls its reservations made to the American Convention, that the acknowledgments of competence conferred by the State refer to events subsequent to the date of deposit of the instrument of ratification or, in any case, to events occurring after March 11, 1990.

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

7. The IACHR recalls that whenever an alleged offense prosecutable ex officio is committed, the State is obliged to promote the criminal proceedings<sup>8</sup> and that in such cases, this constitutes the appropriate avenue to clarify the facts, prosecute the perpetrators and impose the appropriate criminal punishments. The Commission observes that after the alleged victim's arrests, an investigation was initiated for the offense of illegal burial, and that the Supreme Court decided to refer the proceedings to the Military Prosecutor's Office of Valparaíso. In this regard, the Commission has repeatedly observed that military courts does not constitute an appropriate forum and therefore fail to provide an adequate remedy for the investigation, prosecution and punishment of the alleged human rights violations enshrined in the American Convention, allegedly committed by members of the Security Forces, or with their collaboration or acquiescence.<sup>9</sup> The Commission observes that, after more than 40 years, the events surrounding the detention, torture and disappearance have not been clarified, nor have those responsible been punished. In this regard, the Commission concludes that in this case the exception to the exhaustion of domestic remedies provided for in Article 46.2.c of the Convention applies. In view of the context and the characteristics of the petition included in this report, the Commission considers that it was presented within a reasonable period of time and that the admissibility requirement regarding timeliness must be considered satisfied.

8. Additionally, as regards the reparation proceedings in the contentious administrative jurisdiction, the Commission has repeatedly observed that this avenue fails to constitute an adequate remedy for the purpose of analyzing the admissibility of a claim such as the present,<sup>10</sup> because it is inadequate to provide comprehensive reparation including clarification and justice to the family members. Notwithstanding this, although in the present case the criminal proceedings are the adequate remedy for the investigation of the events, the petitioners also allege specific violations within the framework of the claim for direct reparation. Therefore, given the link between the two proceedings, the Commission takes into account that in

<sup>8</sup> See IACHR, Report No. 105/17. Petition 798-07. Admissibility. David Valderrama Opazo and others. Chile. September 7, 2017.

<sup>9</sup> IACHR, Report No. 154/17. Petition 239-07. Admissibility. Nicanor Alfonso Terreros Londoño and Family. Colombia. November 30, 2017.

<sup>10</sup> See IACHR, Report No. 72/16. Petition 694-06. Admissibility. Onofre Antonio de La Hoz Montero and Family. Colombia. December 6, 2016, para. 32.; IACHR, Report No. 81/18. Petition 190-07. Admissibility. Edgar José Sánchez Duarte. Colombia. July 7, 2018.

the contentious administrative jurisdiction, domestic remedies were exhausted with the first instance judge's compliance order on May 14, 2009, with respect to the Court of Appeals' decision of December 1, 2008. Based on this, the Commission concludes that this petition meets the requirement established in Article 46.1.a of the Convention. Likewise, the petition was filed with the IACHR on November 14, 2009, thereby complying with the requirement established in Article 46.1.b of the Convention and Article 32.1 of the Rules of Procedure.

## VII. ANALYSIS OF COLORABLE CLAIM

9. In relation to its jurisdiction *ratione temporis* and *ratione materiae*, the Commission will analyze the facts of the present case in light of the obligations established in the American Convention, in the Inter-American Convention on Forced Disappearance of Persons ("IACFDP") and in the Convention against Torture ("IACPTT") with respect to those events occurring after their entry into force, or whose execution continued after the entry into force of said instruments for the State of Chile. The Commission will analyze the facts that occurred prior to the entry into force of the American Convention for that State, in the light of the obligations arising under the American Declaration.

10. Likewise, in view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, and of the context in which the complaints are framed, the IACHR considers that, if proven, the allegations of acts of detention, torture, forced disappearance and lack of due process, could characterize possible violations of the rights protected in Articles I (life, liberty, and personal security), XVII (recognition of juridical personality and civil rights), XVIII (fair trial) and XXV (f protection from arbitrary arrest) of the American Declaration. With regard to the alleged continuity and lack of clarification of these offenses, as well as the allegations regarding the lack of compensation for the events that occurred – by the Courts' application of the statute of limitations to the civil proceedings - the Commission considers that the alleged facts could characterize possible 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 relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects), as well as Articles 1, 6 and 8 of the Convention against Torture; and Article I of the Inter-American Convention on Forced Disappearance of Persons.

## VIII. DECISION

1. To find the instant petition admissible in relation to Articles 3, 4, 5, 7, 8 and 25 of the American Convention in relation to its Articles 1.1 and 2; Articles 1, 6 and 8 of the Convention against Torture; and Article I of the Inter-American Convention on Forced Disappearance of Persons regarding those events that occurred after their entry into force or whose execution continued after the entry into force of said instruments for the State of Chile; Articles I, XVII, XVIII and XXV of the American Declaration; 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 11<sup>th</sup> day of the month of September, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Joel Hernández, First Vice President; Margarette May Macaulay, Francisco José Eguiguren, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.