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REPORT No. 251/20
PETITION 1422-09
REPORT ON ADMISSIBILITY

RELATIVES OF RENÉ ROBERTO ACUÑA REYES
CHILE

Electronically approved by the Commission on September 21, 2020.

Cite as: IACHR, Report No. 251/20. Petition 1422-09. Admissibility. Relatives of René Roberto Acuña Reyes. Chile. 21 septiembre 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Nelson Caucoto Pereira ¹
Alleged victim	Relatives of René Roberto Acuña Reyes ²
Respondent State	Chile ³
Rights invoked	Articles 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights, ⁴ along with its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)

II. PROCEEDINGS BEFORE THE IACHR⁵

Date of filing	November 8, 2009
Notification of the petition	May 9, 2014
State's first response	July 3, 2014
Additional information by the petitioner	August 19, 2019
Notification of the possible archiving of the petition	November 30, 2017
Petitioner's response to the notification on the possible archiving of the petition	December 1, 2017

III. COMPETENCE

<i>Ratione personae</i>	Yes
<i>Ratione loci</i>	Yes
<i>Ratione temporis</i>	Yes
<i>Ratione materiae</i>	Yes, American Convention (deposit of ratification instrument 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 with its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
Exhaustion or exception to the exhaustion of remedies	Yes, on May 8, 2009
Timeliness of the petition	Yes, on November 8, 2009

V. SUMMARY OF ALLEGED FACTS

1. The petitioner claims lack of reparations to the relatives of René Roberto Acuña Reyes (or hereinafter "the alleged victim") for damage resulting from the alleged victim's illegal detention and subsequent forced disappearance. It states that it does not request that the Commission rule on the detention and subsequent disappearance of the alleged victim, but on the denial of justice by the civil courts.

2. According to the petitioner, the alleged victim, a leader of the Revolutionary Left Movement (*Movimiento de Izquierda Revolucionaria*), was arrested by agents of the Directorate of National Intelligence (*Dirección de Inteligencia Nacional*, "DINA"), at his domicile on February 14, 1975. The petitioner indicates that

¹ The petition was initially filed also by Franz Moller Morris. However, by a notification dated September 26, 2017, he informed his withdrawal from representation.

² María Erma Reyes Gallardo, the alleged victim's mother; and María Yolanda Acuña Reyes and Jorge Antonio Acuña Reyes, the alleged victim's siblings.

³ Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner Antonia Urrejola Noguera, a Chilean national, did not participate in the debate or the decision on this matter.

⁴ Hereinafter "American Convention" or "Convention."

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

the alleged victim was seriously wounded when the agents shot him as he tried to escape and was left bleeding on the ground for an hour. He submits that, afterward, the alleged victim was taken to Villa Grimaldi, DINA secret premises then, where he was interrogated and tortured. According to the petition, the alleged victim was taken to Santa Lucía private hospital and operated on to remove a projectile as the gunshot wound had caused him an infection in his left ear. The petitioner argues that the alleged victim was returned to Villa Grimaldi and held in the area called “La Torre” despite his fragile condition.⁶ According to the petition, on February 28, 1975, the alleged victim, along with a group of detainees, was taken from Villa Grimaldi to be held in Osorno,⁷ yet his whereabouts remain unknown to date.⁸

3. The petitioner claims that on March 7, 1975, a complaint was filed before the First Criminal Court for kidnap and wounds. Due to the adverse reports regarding the alleged victim’s detention, a temporary stay of proceedings was ruled on May 19, 1975, based on the lack of evidence of the reported crime. The Court of Appeals upheld that judgment on July 21, 1975. On July 16, 1980, a complaint was filed against DINA for kidnap. On June 18, it was sent to the 2nd Military Attorney General’s Office to join it with proceedings held because of a claim against a general and other DINA agents. On November 20, 1989—after four years’ procedural inactivity—, the Military Attorney General requested the application of the Amnesty Decree-Law because in the 10-year-long proceedings no one had been found guilty. On November 30, 1989, the 2nd Military Court found the request admissible and its judge ruled to permanently dismiss the case because “the criminal responsibility of the persons allegedly responsible for the reported facts was extinguished.” An appeal was filed. According to the petitioner, by December 1992 the appeal was still pending. Likewise, he submits that several DINA agents named in the abovementioned complaint were later prosecuted and detained based on other complaints.

4. As to the reparation proceedings, the petitioner indicates that on June 12, 2000, a compensation claim was lodged before the 24th Civil Court of Santiago. On March 13, 2002, the court rejected the claim on considering it barred by the statute of limitations. That decision was appealed before the Court of Appeals of Santiago, which found it admissible. On May 11, 2007, the said court sentenced the State to pay compensation on account that a civil action may not be extinguished when it stems from a human rights violation. However, the State lodged an appeal for annulment, and on March 30, 2009, the Supreme Court revoked the judgment by the Court of Appeals on considering that there are no rules establishing the non-extinguishable nature of actions aimed at obtaining recognition of the State’s extracontractual liability. On May 8, 2009, the trial court’s judge issued an enforcement order, rendering the Supreme Court’s decision a final judgment. According to the petitioner, that decision exhausted the domestic proceedings.

5. The State indicates that regarding the prosecution of criminal responsibility, the national legal framework includes an adequate procedure—under file no. 2182-98 Villa Grimaldi—, currently underway. Accordingly, it deems that domestic remedies have not been exhausted and that the Commission lacks jurisdiction on this matter. As for the alleged lack of civil reparation, it indicates that it has no observations on the fulfillment of formal requirements. Additionally, it contends that the petition is inadmissible in that the alleged facts took place before Chile ratified the American Convention on March 11, 1990. Consequently, it claims that the Commission cannot rule on them for lack of jurisdiction *ratione temporis*.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

6. The IACHR notes that the petitioner affirms that the petition is limited to denouncing the lack of access to civil reparation for the alleged victims arising from the disappearance of Mr. Acuña Reyes, whose civil lawsuit was rejected based on the grounds of the statute of limitations. The Commission observes that in the administrative contentious jurisdiction, domestic remedies were exhausted with the trial court’s enforcement order, dated May 8, 2009, regarding the Supreme Court’s decision of March 30, 2009. Therefore, the Commission finds that the petition meets the requirement set forth in Article 46.1.a of the Convention.

⁶ The petitioner claims that, in general, detainees held in that area were eventually disappeared.

⁷ The petitioner indicates that according to the report by the Commission of Inquiry on Human Rights, detainee destinations were key words indicating the future awaiting detainees.

⁸ The petitioner indicates that the alleged victim’s name appears on a list of 119 people allegedly killed abroad in clashes between far-left groups, published in magazine issues from Argentina and Brazil. According to him, however, the 119 names seem to belong to people allegedly arrested between June 1974 and February 1975—whom witnesses saw at the secret premises of the DINA—, all of whom remain missing to date.

7. The petition was filed to the IACHR on November 8, 2009; thus, it meets the requirement in Articles 46.1.b of the Convention and 32.1 of the IACHR Rules of Procedure.

VII. COLORABLE CLAIM

8. The Commission notes that this petition includes allegations regarding the lack of compensation for the detention and forced disappearance as a result of the application of the statute of limitations. 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 reparations⁹. 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 (fair trial) and 25 (judicial protection) of the American Convention, in connection with its articles 1.1 (obligation to respect rights) and 2 (domestic legal effects).

VIII. DECISION

1. To declare 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 21st day of the month of September, 2020. (Signed): Joel Hernández, President; Flávia Piovesan, Second Vice-President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, Commissioners.

⁹ 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.