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## **REPORT No. 46/20**

### **PETITION 20-10**

#### **REPORT ON ADMISSIBILITY**

**RELATIVES OF SERGIO FERNANDO RUIZ LAZO  
CHILE**

Approved electronically by the Commission on April 20, 2020.

**Cite as:** IACHR, Report No. 46/20, Petition 20-10. Admissibility. Relatives of Sergio Fernando Ruiz Lazo. Chile. April 20, 2020.

**I. INFORMATION ABOUT THE PETITION**

Petitioner	Nelson Caucoto Pereira <sup>1</sup>
Alleged victim	Relatives of Sergio Fernando Ruiz Lazo <sup>2</sup>
Respondent State	Chile <sup>3</sup>
Rights invoked	Articles 8 (right to a 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>**

Date of filing	January 5, 2010
Notification of the petition	April 19, 2016
State's first response	August 3, 2017
Additional observations from the petitioner	February 12, 2018

**III. COMPETENCE**

<i>Ratione personae</i>	Yes
<i>Ratione loci</i>	Yes
<i>Ratione temporis</i>	Yes
<i>Ratione materiae</i>	Yes, American Convention (deposited instrument of ratification 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 (right to a 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 or exception to the exhaustion of remedies	Yes, July 6, 2009
Timeliness of the petition	Yes, January 5, 2010

**V. SUMMARY OF FACTS ALLEGED**

1. The petitioner denounces a failure to provide reparations to the family members of Sergio Fernando Ruiz Lazo (hereinafter the "alleged victim") for damages caused by his extrajudicial detention, torture, and subsequent forced disappearance, as well as violations of the rights to a fair trial and to judicial protection in the civil proceedings, resulting in a denial of justice.

2. The petitioner argues<sup>6</sup> that the alleged victim was detained on two occasions: first from September 17 to October 4, 1973 at the National Stadium, and again in early November 1975, when he was held in incommunicado detention for two months at Villa Grimaldi and interrogated under torture, and then transferred to the Tres Álamos Prison Camp until his release on November 17, 1976. In 1977, he emigrated with his spouse and children to France as a political exile. In late 1983, he returned to Chile with a different identity, due to an administrative order barring him from returning to the country. Once back in the country, he lived under the identity of Roberto Fernández Amollado. On December 21, 1984, agents from the National

<sup>1</sup> The petition was initially submitted by Franz Moller Morris as well, but by communication of September 26, 2017, he indicated that he was renouncing his role as petitioner.

<sup>2</sup> Blanca de las Nieves Carrasco Oñate, the widow of the alleged victim, Karina Beatriz Ruiz Carrasco, and Pablo Alejandro Ruiz Carrasco, the children of the alleged victim.

<sup>3</sup> In keeping with Article 17(2)(a) of the Commission's Rules of Procedure, Commissioner Antonia Urrejola Noguera, of Chilean nationality, did not participate in the deliberations or decision in the instant matter.

<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> The petitioner based his account and the facts set forth in this petition on the Rettig report.

Information Center (hereinafter “CNI”: *Centro Nacional de Informaciones*) detained the alleged victim and took him to their headquarters on calle Borgoño, where he was subjected to torture. Clemente Maldonado and Omar Moncado testified to having saw him there; both agreeing that the alleged victim was in very poor physical condition.

3. On January 19, 1985, the alleged victim’s father filed a motion of *amparo* before the Court of Appeals of Santiago, which was denied after negative reports were received from the CNI and the Ministry of the Interior. An order was issued to have the corresponding Criminal Court investigate whether a crime had been committed, as the alleged victim was prohibited from entering the country. On February 13, 1985, the alleged victim’s father filed a second motion for *amparo* with the same court, which was accompanied by statements by the aforementioned witnesses; again, both the CNI and the Ministry of the Interior reported that the alleged victim had not been detained and that no order existed to that effect. Consequently, the Court denied the motion and forwarded the criminal record to the Criminal Court of Santiago, and a case for alleged disappearance (*presunta desgracia*) was subsequently filed on March 14, 1985. On November 5, the alleged victim’s spouse filed a complaint for kidnapping against those involved, which was accepted by the court and joined to the case for alleged disappearance (*presunta desgracia*). Additionally, from 1985 to 1988, the Office of the Military Prosecutor was notified on countless occasions to reveal the names of the CNI agents who had detained the witnesses to the alleged victim’s imprisonment, to no avail.

4. On January 13, 2000, the civil case was filed with the Seventh Civil Court of Santiago, which issued a judgment on July 12, 2002, denying the compensation sought by the alleged victim’s relatives for damages, citing the statute of limitations on civil actions. In a judgment issued July 10, 2007, the Court of Appeals of Santiago overturned the judgment of the trial court, obligating the State to pay compensation. Following this decision, the State Defense Council filed a motion for cassation before the Supreme Court, which was granted on June 10, 2009, thus overturning the decision to award compensation. On July 6, 2009, the Civil Court of first instance issued an order of *cúmplase* in relation to the Supreme Court’s judgement.

5. For its part, the State indicates it has no objections regarding compliance with the formal requirements in relation with the allegation of a failure to provide civil reparations, without prejudice to any observations on the merits it may have in due course. With regard to facts alleged to have occurred in December 1985 consistent with violations of the alleged victim’s rights to life, humane treatment, and personal liberty, the State notes that Álvaro Corbalán Castilla and Aquiles González Cortés were convicted of kidnapping Sergio Ruiz Lazo and sentenced to eight years in prison. Additionally, the State notes its reservations to the American Convention, by virtue of which the recognition of the competence conferred by the State is limited to facts subsequent to the date of deposit of the instrument of ratification, or, in any case, to facts which began subsequent to March 11, 1990. Therefore, the Commission would not be competent to rule on these events for lack of competence *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 a lack of civil reparations for the relatives of Mr. Ruiz Lazo, following his disappearance, and whose civil action was rejected on the basis of the statute of limitation. The Commission observes that in the civil jurisdiction the trial began on January 13, 2000, before the Seventh Civil Court of Santiago, and that on July 6, 2009, the trial judge issued an order of *cúmplase* with respect to the Supreme Court’s June 10, 2009 decision denying the petitioners claims. Bearing this in mind, the Commission considers that domestic remedies were exhausted and that the present petition meets the requirement set forth in Article 46(1)(a) of the Convention.

7. Furthermore, the petition was lodged before the IACHR on January 5, 2010, in compliance with the timeliness requirement set forth in Articles 46(1)(b) of the Convention and 32(1) of the IACHR Rules of Procedure.

## **VII. COLORABLE CLAIM AND COMPETENCE**

8. The Commission observes that the instant petition includes allegations regarding the failure to pay compensation to the relatives of the alleged victim for his kidnapping, forced disappearance, and torture, in judicial application of the statute of limitations in civil matters. 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 the application of the statute of limitations is an obstacle to effective access to justice for victims seeking

reparations<sup>7</sup>. 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 Articles 1(1) (obligation to respect rights) and 2 (domestic legal effects) of said treaty, consistent with similar cases previously decided by the IACHR.<sup>8</sup>

#### **VIII. DECISION**

1. To declare the instant petition admissible in relation to Articles 8 and 25 of the American Convention; and

2. To notify the parties of this decision; to proceed 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 20<sup>th</sup> day of the month of April, 2020. (Signed): Joel Hernández, President; Flávia Piovesan, Second Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Margarete May Macaulay, and Julissa Mantilla Falcón, Commissioners.

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<sup>7</sup> 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; 1/A Court H.R., Case of Órdenes Guerra et al. v. Chile. Merits, Reparations and Costs. Judgment of November 29, 2018.

<sup>8</sup> See IACHR, Report No. 152/17. Admissibility. Hugo Tomás Martínez Guillén et al. Chile. November 30, 2017; and IACHR, Report No. 5/19, Petition 1560-08. Admissibility. Juan Paredes Barrientos and family. Chile. January 31, 2019