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REPORT No. 87/20
PETITION 385-10
REPORT ON ADMISSIBILITY

RELATIVES OF ASRAEL LEONARDO RETAMALES BRICEÑO
CHILE

Approved electronically by the Commission on May 13, 2020.

Cite as: IACHR, Report No. 87/20, Petition 385-10. Admissibility. Relatives of Asrael Leonardo Retamales Briceño. Chile. May 13, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Nelson Caucoto Pereira ¹
Alleged victim	Relatives of Asrael Leonardo Retamales Briceño ²
Respondent State	Chile ³
Rights invoked	Articles 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights, ⁴ with regard to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof

II. PROCEEDINGS BEFORE THE IACHR⁵

Date of filing	March 15, 2010
Notification of the petition	April 19, 2016
State's first response	June 28, 2016
Additional observations from the petitioner	September 12, 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 instrument of ratification 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, with regard to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof
Exhaustion or exception to the exhaustion of remedies	Yes, on September 15, 2009
Timeliness of the petition	Yes, on March 15, 2010

V. SUMMARY OF FACTS ALLEGED

1. The petitioner claims a lack of reparation to the relatives of Asrael Leonardo Retamales Briceño (hereinafter "alleged victim") for the damage caused by the latter's extrajudicial detention, torture and forced disappearance, as well as violations of judicial guarantees and judicial protection in civil proceedings. He explains that he does not seek that the Commission decides on the alleged victim's detention and forced disappearance but rather on the civil courts' denial of justice in the respective judicial proceeding for reparation.

2. The petitioner submits that on September 7, 1974, the alleged victim was arrested by two civilians at the farmers market in Maipú. According to the report of the National Commission for Truth and Reconciliation (Rettig Commission), the alleged victim was taken to the 4 Alamos prison, which was run by the National Directorate of Intelligence (DINA). The petitioner states that according to the alleged victim's mother, on the same day, another person had been arrested and taken to 4 Alamos prison to recognize the alleged

¹ This petition was also submitted by Franz Moller Morris. However, by a communication dated September 26, 2017, he announced his decision to withdraw as a petitioner.

² Luisa Briceño Pérez, mother of the alleged victim; Mercedes Olivares Olivares, spouse of the alleged victim; Marco Iván Retamales Olivares, Erica Yolanda Retamales Olivares, Valeria Irma Retamales Olivares, David Alfonso Retamales Olivares and Leonardo Azrael Retamales Olivares, children of the alleged victim.

³ Pursuant to the provision of Article 17.2 (a) of the IACHR Rules of Procedure, Commissioner Antonia Urrejola Noguera, a Chilean national, did not partake in the discussion or the voting on this matter.

⁴ Hereinafter "the American Convention," or "the Convention."

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

victim—having been tortured, the alleged victim was unconscious. The mother also recounted that on December 6, 1974, someone came to see her, saying that the alleged victim had died on November 2 early in the morning. She heard that the alleged victim⁶ had been found stabbed to death, but she could not obtain confirmation. The petitioner submits that the alleged victim's name is on the list of 119 Chileans that allegedly died abroad— all 119 people on this list would have been arrested by the DINA.

3. According to the petition, the alleged victim's relatives unsuccessfully filed countless proceedings and inquiries to determine his whereabouts. On September 17, 1974, they filed an amparo action to the Court of Appeals of Santiago, on behalf of the alleged victim. In the amparo proceeding, the court demanded information on his detention but only received response denying said detention. Therefore, on November 21st, it declared the action unfounded, sending the case record to the 7th Criminal Court of Santiago. On November 27, the Supreme Court of Justice upheld the resolution. On December 19, 1974, the 7th Criminal Court of Santiago opened a casefile. On May 3, 1975, the alleged victim's mother lodged with the same court a complaint on the charge of kidnapping, and it was processed within the case. On April 13, 1976, the case was suspended on a temporary basis, and on June 14, the Court of Appeals of Santiago upheld the stay.

4. As for civil proceedings, the petitioner says that a complaint was filed on October 6, 2000, and that, on June 28, 2002, the 12th Civil Court of Santiago rejected the claimants' claim for damages in application of the statute of limitations. The Court of Appeals of Santiago upheld the denial on July 26, 2007. The petitioners submitted an appeal for annulment; however, the supreme court dismissed it on July 13, 2009, and the 12th Civil Court of Santiago enforced the denial by an order dated September 15, 2009. The petitioner adds that on April 20, 2009, and May 11, 2009, the Supreme Court of Justice called for the parties to enter a settlement agreement but that the Chilean Attorney General's Office refused.

5. For its part, the State says that it has no objections regarding the civil claims aspects of the petition, without prejudice to the observations that it may submit in due course on the merits. As for the prosecution of criminal responsibility, it contends that a case has been filed to this end and that after a guilty judgment by the trial court and an appeal by the convicts, it has been forwarded to the Court of Appeals. It argues that, hence, the Commission is not competent to hear this petition regarding the alleged violation in the criminal proceeding, due to the non-exhaustion of domestic remedies. Moreover, as for the allegations concerning the rights to life, humane treatment, and personal liberty, the State reiterates its reservations to the American Convention on Human Rights. Chile's recognition of competence explicitly excludes situations starting before March 11, 1990. The State contends that the facts brought in this petition are prior to the treaty as the purported violation of rights originated in the detention of the alleged victim on September 7, 1974. It believes that, accordingly, the Commission is not competent to hear this complaint.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

6. The IACHR notes the petitioner's assertion that his petition is confined to denouncing a lack of civil reparation to de relatives of the alleged victim for the damages deriving from Mr. Retamales Briceño's detention, torture and forced disappearance, for the civil complaint was dismissed because of the statute of limitations. In this respect, the Commission observes that in the civil jurisdiction, a civil lawsuit was filed before the 12th Civil Court of Santiago on October 6, 2000, and that domestic remedies were exhausted on September 15, 2009, with the trial judge's order to enforce the supreme court's denial of the claimants' claims decided on June 13, 2009. Thus, the Commission finds that the instant petition meets the requirement established in Article 46.1.a of the Convention.

7. Likewise, as the petition was filed to the IACHR on March 15, 2010, it meets the requirement outlined in Articles 46.1.b of the Convention and 32.1 of the IACHR Rules of Procedure.

VII. COLORABLE CLAIM

8. The Commission observes that this petition includes allegations regarding the lack of compensation to the alleged victim's relatives for his extrajudicial detention and forced disappearance, given the application of the statute of limitations to civil proceedings. Regarding the civil actions for reparation filed

⁶ The petitioner says that someone on the radio once read "Rafael Retamales B.," and that the alleged victim's mother later checked with the radio newscaster that the right name was Asrael and not Rafael. In court, the radio newscaster said he did not recall the episode because of the large number of names he reads every day.

in matters such as this one, both the Commission and the Inter-American Court have ruled that the application of the statute of limitations constitutes an obstacle to effective access to justice for victims to be repaired.⁷ Taking into account the foregoing, 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) thereof, in relation to other similar cases already decided upon by the IACHR.⁸

VIII. DECISION

1. To declare this petition admissible regarding Articles 8 and 25 of the American Convention in accordance with Articles 1.1 and 2 thereof; 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 13th day of the month of May, 2020. (Signed): Joel Hernández, President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.

⁷IACHR, Report No. 52/16, Case 12.521. Background. María Laura Ordenes Guerra and others. 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 HR, Case of War Orders and others vs. Chile, Judgment of November 29, 2018 (Merits, Reparations and Costs).

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.