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REPORT No. 47/20
PETITION 610-10
REPORT ON ADMISSIBILITY

RELATIVES OF BARNABE DEL CARMEN LOPEZ LOPEZ
CHILE

Approved electronically by the Commission on April 20, 2020.

Cite as: IACHR, Report No. 47/20. Petition 610-10. Admissibility. Relatives of Barnabé del Carmen López López. Chile. April 20, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Nelson Caucoto Pereira ¹
Alleged victim	Relatives of Barnabé del Carmen López López ²
Respondent State	Chile ³
Rights invoked	Articles 8 (right to a fair trial) and 25 (judicial protection) of the American Convention on Human Rights ⁴ , in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)

II. PROCEEDINGS BEFORE THE IACHR⁵

Date of filing	April 26, 2010
Notification of the petition	May 3, 2016
State's first response	August 25, 2016
Additional observations from the petitioner	September 8, 2017
	June 8, 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, October 26, 2009
Timeliness of the petition	Yes, April 26, 2010

V. SUMMARY OF FACTS ALLEGED

1. The petitioner denounces the failure from the State to provide reparation to the family members of the alleged victim, Mr. Barnabé del Carmen López López, for damages caused by his extrajudicial detention and subsequent forced disappearance during the military dictatorship of Augusto Pinochet in Chile. The petitioner alleges violations of the rights to a fair trial and judicial protection in the civil proceedings. The petitioner specifies that he is not requesting the Commission to rule on the kidnapping and subsequent disappearance of the alleged victim, but rather on the denial of justice by the civil courts.

2. The petitioner alleges that on October 3, 1973, 13 agricultural workers from the locality of Paine were detained during an operation. The petitioner claims that troops wearing black face paint belonging to the San Bernardo Infantry Regiment and travelling in a red truck entered several homes from which they took the detained persons, including the alleged victim. These were taken to San Bernardo and then to the Cerro Chena Detention Center. Witnesses also held at said facility confirmed the alleged victim's detention. According

¹ 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.

² Manuel Antonio López, Margarita Jesus López López and Jose de la Cruz López López, siblings of the alleged victim.

³ 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.

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

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

to a report by the National Truth and Reconciliation Commission (Rettig Report), prisoners held there were generally blindfolded and subjected to torture and interrogations.

3. In December 1974 the alleged victim's family members were told at the Forensic Medical Service that there existed a record of the reception of the remains of the agricultural workers who were detained October 3, 1973, including the alleged victim, which were buried in Plot 29 of the General Cemetery. In September 1990 the judge from the Court of Appeals visited the Forensic Medical Service to identify the remains that had gone unidentified since 1974. On this occasion, the identity of the alleged victim's remains was confirmed. According to the Rettig Report, records show the direct responsibility of State agents and civil authorities of the locality of Paine in the arrest and murder of those detained on October 3, 1973. The Rettig Commission therefore concluded that the right to life of these victims had been violated.

4. The petitioner indicates that three of the alleged victim's siblings filed a civil action for moral damages before the 18th Civil Court of Santiago on March 2, 2000. In its March 19, 2002 judgment the court ruled in favor of the plaintiffs and ordered the Chilean State to pay them compensation for the damages caused. However, on August 21, 2007, the Court of Appeals of Santiago granted the appeal filed by the Treasury of Chile, which overturned the earlier judgment, citing the statute of limitations in civil matters. The Supreme Court upheld said judgment on October 14, 2009, as a result of the cassation remedy filed by the plaintiffs. The petitioner notes that on June 18, 2009, the Court called for a mediation process between both parties; the State however rejected the offer. On October 26, 2009, the Court of Appeals of Santiago issued an order of *cumplase*, granting executory status to the Supreme Court's judgment.

5. The State indicates that it has no objections regarding the civil aspect of the petition, without prejudice to observations on the merits it may formulate in due time. Moreover, the State notes that a criminal case regarding the situation of the alleged victim (No. 04-02-F "Paine") was assigned to the chief judge (*Ministra de Fuego*) of the Court of Appeals of San Miguel and is in the preliminary phase.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

6. The IACHR notes that the petitioner affirms the petition is limited to alleging a lack of access to civil reparations for the family members of Mr. López López in relation to his disappearance and subsequent extrajudicial execution, when their civil suit was rejected following the statute of limitations. The Commission observes that the alleged victim's family members filed a civil action seeking damages before the 18th Civil Court of Santiago on March 2, 2000, and that domestic remedies were exhausted when the appellate judge upheld that court's earlier ruling (with an order of *cumplase*) on October 26, 2009, in connection with the Supreme Court's October 14, 2009 decision denying the petitioners' claims. Based on this, the Commission concludes that the instant petition meets the requirement set forth in Article 46(1)(a) of the Convention.

7. Furthermore, the petition was lodged with the IACHR on April 26, 2010, and the order of *cumplase* was issued on October 26, 2009, in compliance with the timeliness requirement set forth in Articles 46(1)(b) of the Convention and 32(1) of the IACHR's Rules of Procedure.

VII. COLORABLE CLAIM AND COMPETENCE

8. The Commission observes that the instant petition includes allegations regarding the failure to pay compensation for the kidnapping and subsequent forced disappearance of the alleged victim, based on the 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 that the application of the statute of limitations is an obstacle to effective access to justice for victims seeking reparations⁶. 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 instrument.⁷

⁶ 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.

⁷ 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.

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 thereof; 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 20th 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.