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REPORT No. 48/20

PETITION 1587-10

REPORT ON ADMISSIBILITY

RELATIVES OF JOSE MANUEL DIAS HINOSTROZA
CHILE

Approved electronically by the Commission on April 20, 2020.

Cite as: IACHR, Report No. 58/20, Petition 1587-10. Admissibility. Relatives of José Manuel Díaz Hinostrroza. Chile. April 20, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Nelson Caucoto Pereira ¹
Alleged victim	Relatives of José Manuel Díaz Hinostroza 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 connection with articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof

II. PROCEEDINGS BEFORE THE IACHR⁵

Date of filing	November 7, 2010
Notification of the petition	May 5, 2016
State's first response	August 18, 2016
Additional observations from the petitioner	September 8, 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 (instrument deposited 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, May 7, 2010
Timeliness of the petition	Yes, November 7, 2010

V. SUMMARY OF FACTS ALLEGED

1. The petitioner alleges failure to make reparation to the relatives of José Manuel Díaz Hinostroza (or, hereinafter, the “alleged victim”) for the harm caused by his extrajudicial detention, torture, and subsequent extrajudicial execution, as well as the violation of judicial guarantees and the right to judicial protection in the context of civil proceedings, constituting a denial of justice.

2. The petitioner contends⁶ that the alleged victim was detained in the settlement of Patagual the morning of November 13, 1973 by a military contingent and members of the Carabineros, who had with them a list of names and personal data, including his. From that moment the relatives of the alleged victim never heard of him again. They went to various detention centers, but were not able to get any information on his whereabouts. Eyewitnesses said that the detainees were taken to the Cuesta Cepillos, then to the locality of Pintué, specifically to the “La Aguachera” sports field, then transferred to the Cerro Chena detention center, where they were subjected to torture and interrogations. Subsequently, they were detained for one week at the

¹ The petition was initially filed by Franz Moller Morris, but by communication of September 26, 2017, he indicated that he was no longer going to be a petitioner.

² Georgina Rubí Salas Farías, the alleged victim's spouse.

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 this matter.

⁴ Hereinafter “American Convention” or “Convention.”

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

⁶ The petitioner based his account and the facts alleged in this petition on the Report of the National Commission on Truth and Reconciliation.

San Bernardo Infantry Regiment. According to them, on November 13, 1973 a peasant farmer discovered clothing and human remains at the settlement Lo Arcaya de Paine. Members of the military transferred the remains to the Forensic Medical Service, where they were identified, among them the alleged victim. The petitioner indicates that the cause of death was gunshot wounds.

3. On October 25, 2001 a civil case began before the 24th Civil Court of Santiago, which on May 12, 2004 handed down a judgment rejecting the claims of the plaintiff with respect to reparation for the harm caused. On April 24, 2008 the Court of Appeals of Santiago upheld the judgment of first instance. On April 5, 2010 the Supreme Court rejected the motion for cassation filed by the plaintiff, in application of the statute of limitations, and denied the corresponding compensation. On May 7, the court of first instance issued a *cumplase*, ordering that the Supreme Court judgment be carried out.

4. The State indicated that it has no objections with regard to meeting the formal requirements in relation with the lack of civil reparation, without prejudice to the observations on the merits that it may make at the appropriate time. In addition, it recalls its reservations to the American Convention, pursuant to which it was noted that the recognition of 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 that did not begin until after March 11, 1990. Therefore, the Commission would not be competent to rule on them, as it would not be competent *ratione temporis*.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

5. The IACHR notes that the petitioner asserts that the petition is limited to denouncing the lack of access to civil reparation for the relatives of José Manuel Díaz Hinojosa, stemming from his detention, torture, and death, since the civil action for damages was rejected in application of the statute of limitations. The Commission observes that in the civil jurisdiction a case began on October 25, 2001 before the 24th Civil Court of Santiago, and that on May 7, 2010 the judge of first instance issued an order *cumplase* in relation to the Supreme Court's decision of April 5, 2010 rejecting the petitioners' claims. On that basis, the Commission concludes that the domestic remedies were exhausted and that the instant petition meets the requirement established in Article 46(1)(a) of the Convention.

6. In addition, the petition was submitted to the IACHR on November 7, 2010, complying with the requirement of timely filing established in Article 46(1)(b) of the Convention and Article 32(1) of the Commission's Rules of Procedure.

VII. COLORABLE CLAIM AND COMPETENCE

7. The Commission observes that this petition includes allegations regarding the lack of compensation to the alleged victim's relatives for his extrajudicial detention, torture and forced disappearance, given the application of the statute of limitations to civil proceedings. 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 reparations⁷. 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 (right to a fair trial) and 25 (judicial protection) of the American Convention, in relation to its Articles 1(1) (obligation to respect rights) and 2 (obligation to adopt provisions of domestic law), in keeping with other similar cases already decided by the IACHR.⁸

VIII. DECISION

1. To declare 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

⁷ 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.

⁸ 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

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, and Julissa Mantilla Falcón, Commissioners.