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REPORT No. 150/20
PETITION 1693-11
REPORT ON ADMISSIBILITY

RELATIVES OF JOSÉ SEGUNDO FLORES ROJAS
CHILE

Approved electronically by the Commission on June 9, 2020.

Cite as: IACHR, Report No. 150/20, Petition 1693-11. Admissibility. Relatives of José Segundo Flores Rojas. Chile. June 9, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Nelson Caucoto Pereira ¹
Alleged victim:	Relatives of José Segundo Flores Rojas ²
Respondent State:	Chile ³
Rights invoked:	Articles 8 (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

Filing of the petition:	November 26, 2011
Notification of the petition to the State:	July 5, 2017
State's first response:	October 31, 2017
Additional observations from the petitioner:	January 29, 2018
Notification of the possible archiving of the petition:	April 18, 2017
Petitioner's response to the notification regarding the possible archiving of the petition:	April 20, 2017

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <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 on Human Rights in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, May 26, 2011
Timeliness of the petition:	Yes, November 2011

V. FACTS ALLEGED

1. The petitioner denounces the lack of reparation to the relatives of José Segundo Flores Rojas (hereinafter "the alleged victim") for the harm caused due to his extrajudicial detention and subsequent forced disappearance, as well as the violation to his right to a fair trial and the right to judicial protection in the course of the civil procedures, constituting denegation of justice.

¹ The petition was initially filed in by Franz Moller Morris as well, but on September 26, 2017, he stated that he would no longer be a petitioner.

² Carlos Antonio Flores Gálvez, son of the alleged victim and Julia Eliana Gálvez Bascuñán, spouse of the alleged victim.

³ In accordance with the provisions of Article 17(2)(a).a of the Commission's Rules of Procedure, Commissioner Antonia Urrejola Noguera, of Chilean nationality, did not participate either in the discussions nor the decision in the present matter..

⁴ Hereinafter "the American Declaration" or "the Declaration".

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

2. The petitioner contends⁶ that the alleged victim, member of the Communist Party, was arrested in his domicile on August 22, 1974 by 10 army members, without a judicial search or arrest warrant. He was arrested with other neighbors and taken to the Military School. Since that day, his whereabouts are unknown. He adds that the government handed in a report to the International Red Cross attesting that the alleged victim lived in Antofagasta, but it was proven that the report referred to another person with the same name.

3. On September 26, 1974, a writ of protection was filed, but did not proceed before a negative report from the Ministry of Internal Affairs regarding the whereabouts of the alleged victim. The records were sent to the Sixth Criminal Court with the order to investigate presumed disappearance. However, the cause was temporarily dismissed on September 9, 1976. On October 11, 1977, the reopening of the summary and new procedures was requested. It was granted on October 21 of the same year, and records from the National Intelligence Centre and other institutions were ordered; all of them gave negative responses. Therefore in May 1978, the dismissal of the cause was ordered.

4. On September 11, 2002, the civil cause was initiated before the Seventh Civil Court of Santiago, which rendered a decision on May 31, 2004, in favor of the relatives of the alleged victim, thus ordering a compensation for the harm caused. On July 4, 2008, the Court of Appeals of Santiago confirmed the decision of first instance, forcing the State to compensate the plaintiffs. Against this decision, the State appealed for reversal before the Supreme Court and on May 9, 2011, the Court accepted its argument relative to the prescription of the actions, revoking the decision that had ordered the compensation. On May 26, 2011, the Civil Court of first instance issued an order of “cúmplase”.

5. For its part, the State points out that regarding the allegation of lack of civil repair, it has no objections to formulate regarding the compliance of the form requirements, without prejudice of the observations on the merits that it can make on the corresponding occasion. Notwithstanding, in criminal matter, the State points out that there is an existing cause in summary status and requests, according to the principle of subsidiarity or complementarity recognized in the Convention, that the petition be declared inadmissible due to the lack of exhaustion of domestic remedies.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

6. The Commission takes note that the petitioner affirms that the petition is limited to denouncing the lack of access to a civil compensation for the alleged victims derived from the disappearance of José Segundo Flores Rojas, whose civil lawsuit was rejected on the grounds of prescription. The Commission observes that in the civil jurisdiction, the cause was initiated on September 11, 2002 before the Seventh Civil Court of Santiago and that on May 26, 2011, the judge of first order issued an order of “cúmplase” in relation to the decision of the Supreme Court of May 9, 2011 rejecting the petitioners’ claim to a compensation. Based on that, the Commission concludes that the internal remedies were exhausted and that the present petition meets the requirement established in article 46.1 of the Convention.

7. Additionally, the petition was lodged before the IACHR on November 26, 2011, meeting the deadline requirement established in articles 46.1.b of the Convention and 32.1 of the regulation of the IACHR.

VII. ANALYSIS OF COLORABLE CLAIM

8. The Commission observes that the relatives of the alleged victim had access to the remedies provided in the Chilean law and that the matter was analyzed and resolved internally, including by the Supreme Court, the highest judicial instance. However, the petition includes claims regarding the lack of compensation to the relatives of the alleged victim for his kidnapping and forced disappearance, in judicial application of the statute of limitations in civil matters. Regarding civil actions for reparation for crimes against humanity, as in the present petition, both the Commission and the Inter-American Court have said that the application of the statute of limitations constitutes an obstacle to effective access to justice to guarantee the right of the victims

⁶ The petitioner based the petition and the denounced facts on the report of the National Commission for Truth and Reconciliation (Rettig report).

to be repaired, and therefore should not be applied in such circumstances⁷. Therefore, the Inter-American Commission considers that it is incumbent on it to exercise its complementary competence in this matter and to analyze in the merits stage whether the domestic system offered the petitioners the adequate channels to seek due reparation and guarantee the right to an effective judicial protection. 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, with regard to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects), in conformity with similar cases already decided upon by the IACHR.⁸

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8 and 25 of the American Convention in accordance with 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 9th day of the month of June, 2020. (Signed): Joel Hernández, President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.

⁷ IACHR, Report No. 52/16, Case 12.521. Background. Maria Laura Ordenes Guerra and others. Chile. November 30, 2016, para. 134; See also IACHR, Report No. 5/19, Petition 1560-08. Admissibility. Juan Paredes Barrientos and Family. Chile. January 31, 2019; I/A Court HR, Case of Ordenes Guerra and others vs. Chile, Judgment of November 29, 2018 (Merits, Reparations and Costs), para. 89.

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.