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REPORT No. 151/20
PETITION 1777-11
REPORT ON ADMISSIBILITY

RELATIVES OF HÉCTOR PATRICIO VERGARA DOXRUD
CHILE

Approved electronically by the Commission on June 9, 2020.

Cite as: IACHR, Report No. 151/20, Petition 1777-11. Admissibility. Relatives of Héctor Patricio Vergara Doxrud. Chile. June 9, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Nelson Caucoto Pereira ¹
Alleged victim:	Relatives of Héctor Patricio Vergara Doxrud ²
Respondent State:	Chile ³
Rights invoked:	Article 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights ⁴ , in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)

II. PROCEEDINGS BEFORE THE IACHR⁵

Filing of the petition:	December 13, 2011
Notification of the petition to the State:	May 23, 2017
State's first response:	December 26, 2017
Additional observations from the petitioner:	February 12, 2018
Notification of the possible archiving of the petition:	April 18, 2011
Petitioner's response to the notification regarding the possible archiving of the petition:	April 18, 2011

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 the instrument of ratification made 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 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, June 13, 2011
Timeliness of the petition:	Yes, December 13, 2011

V. FACTS ALLEGED

1. The petitioner denounces the lack of reparation to the relatives of Héctor Patricio Vergara Doxrud (or hereinafter "alleged victim") for the damages caused by his extrajudicial detention, torture and subsequent forced disappearance, as well as the violation of the right to a fair trial and the right to judicial protection in the framework of civil proceedings, which constituted a denial of justice.

¹ The petition was also initially filed by Franz Moller Morris, however by way of communication dated September 26, 2017, Franz Moller Morris indicated that he was resigning from being a petitioner.

² Mónica García Vivanco, widow of the alleged victim, Patricio Ignacio Vergara García and Macarena de Lourdes Vergara García, children of the alleged victim.

³ Pursuant to Article 17.2.a of the Commission's Regulations, Commissioner Antonia Urrejola Noguera, a Chilean national, did not participate in the debate nor decision 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.

2. The petitioner contends⁶ that the alleged victim, a member of the Unitary Popular Action Movement (MAPU), was detained on September 17, 1974 at his private office by members of the National Intelligence Directorate (DINA), without a judicial arrest warrant or search warrant. The petitioner indicates that on September 21 of the same year, the alleged victim telephoned his spouse and asked her to hand over the family savings to two people who would go to his house. She handed them over the savings and when she asked them to identify themselves and give her a receipt, they refused. Likewise, they recommended that she not take any steps to locate the alleged victim, since this could expose her at risk. Witnesses learned that the alleged victim was detained in Cuatro Álamos where he was violently beaten, tortured and interrogated. He was transferred to Villa Grimaldi and later returned to Cuatro Álamos. In January 1975, Army General (R) Roberto Fuentes confirmed to the family that Mr. Vergara Doxrud was still detained in Cuatro Álamos and that he would be expelled to Norway, which ultimately did not occur. His arrest was denied by the authorities, and his whereabouts remain unknown to this day.

3. On September 23, an appeal for amparo was filed with the Santiago Court of Appeals and on October 11, 1974, the Ministry of the Interior reported that there existed no record of arrest of the alleged victim. The Court rejected the appeal and forwarded the information to the Sixth Criminal Court to investigate the presumed disappearance of the alleged victim, which began on January 6, 1975. Due diligence was carried out without success, for which on September 15, 1975 the cause was temporarily dismissed. The Prosecutor of the Court of Appeals asked that the case be reopened to hear from a witness, Miguel Baeza Chaud, who was detained in Tres Álamos. The authorities reported that the possible witness had been expelled from Chile to France on June 26, 1975, and finally on November 24, 1975, the investigation was closed, and the case was temporarily dismissed. On January 13, 1978, the National Union of Education Workers presented, from Mexico, a new appeal for amparo, which was never submitted for processing because the Court understood that they were not persons capable of appearing in court, although this was never verified. The family took other steps, such as visiting the President of the Supreme Court, who contacted the Director of DINA, who purported that the alleged victim was a dangerous person and that he was probably in Argentina. However, all efforts to establish the fate and whereabouts of the alleged victim were unsuccessful.

4. On July 18, 2001, a civil case was initiated before the 12th Santiago Civil Court, whose sentence was issued on May 31, 2004, accepting the claim of the relatives of the alleged victim for compensation. In a judgment of December 31, 2008, the Santiago Court of Appeals confirmed the first instance sentence, forcing the State to compensate. Against this ruling, the Chilean Treasury appealed in cassation to the Supreme Court, and on May 23, 2011, this appeal was upheld, reversing the ruling granting compensation. On June 13, 2011, a "compliance order" was issued by the Civil Court of first instance.

5. For its part, the State indicates that the petition lacks a clear and coherent account that allows an adequate understanding of the alleged violations, however, in the interest of good faith and understanding that the petitioners' claim is based in the civil sphere, it has no objections to raise regarding compliance with the formal requirements, without prejudice to the observations on the merits it may make at the appropriate time. Regarding alleged events that would have taken place in September 1974, consisting of the violation of the rights to life, personal integrity, and personal liberty of the alleged victim, the State indicates that there is a conviction for the crime of kidnapping against Juan Manuel Contreras Sepúlveda, Marcelo Moren Brito, both deceased, and against César Manríquez Bravo and Orlando José Manzo Durán, dated June 18, 2012. Additionally, the State recalls its reservations to the American Convention, by virtue of which it was acknowledged that the jurisdiction conferred by the State to the Commission refers to events subsequent to the date of deposit of the instrument of ratification, or, in any case, to events whose principle of execution started after March 11, 1990. Therefore, the Commission would not have jurisdiction to rule on them due to a *ratione temporis* restriction.

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

6. The IACHR notes that the petitioner affirms that the petition is limited to denouncing the lack of access to civil reparation for the alleged victims derived from the kidnapping, torture, and forced disappearance of Patricio Héctor Vergara Doxrud, whose civil lawsuit was rejected based on the grounds of

⁶ The petitioner based his account and the events denounced in this petition on the report of the National Truth and Reconciliation Commission (Rettig Report).

prescription. The Commission observes that in the civil jurisdiction the case was initiated on July 18, 2001 before the 12th Civil Court of Santiago and that on June 13, 2011, the judge of first instance issued an order to comply regarding the Supreme Court's decision of May 23, 2011, rejecting the petitioners' claims. Based on this, the Commission concludes that domestic remedies have been exhausted and that the present petition meets the requirement established in Article 46.1.a of the Convention.

7. Likewise, the petition was presented to the IACHR on December 13, 2011, complying with the filing deadline requirement established in Articles 46.1.b of the Convention and 32.1 of the IACHR Rules of Procedure.

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, torture 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 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 declare this petition admissible in relation to Articles 8 and 25 of the American Convention, in relation to Articles 1.1 and 2; and

2. Notify the parties of this decision; continue with the analysis of the merits of the matter; and 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; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón, and Stuardo Ralón Orellana, 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.