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**REPORT No. 43/20**

**PETITION 1127-09**

REPORT ON ADMISSIBILITY

RELATIVES OF MARCO ESTEBAN QUIÑONES LEMBACH  
CHILE

Approved electronically by the Commission on April 20, 2020.

**Cite as:** IACHR, Report No. 43/20. Petition1127-09. Admissibility. Relatives of Marco Esteban Quiñones Lembach. Chile. April 20, 2020.

**I. INFORMATION ABOUT THE PETITION**

Petitioner:	Nelson Guillermo Caucoto Pereira <sup>1</sup>
Alleged victim:	Relatives of Marco Esteban Quiñones Lembach <sup>2</sup>
State denounced:	Chile <sup>3</sup>
Rights invoked:	Articles 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights <sup>4</sup> , in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects)

**II. PROCEDURE BEFORE THE IACHR<sup>5</sup>**

Reception of petition:	September 10, 2009
Notification of the petition to the State:	May 13, 2014
State's first response:	January 10, 2017
Additional observations from the petitioning party:	September 8, 2017

**III. COMPETENCE**

<i>Competence Ratione personae:</i>	Yes
<i>Competence Ratione loci:</i>	Yes
<i>Competence Ratione temporis:</i>	Yes
<i>Competence Ratione materiae:</i>	Yes, American Convention (ratification instrument deposited on August 21, 1990)

**IV. ANALYSIS OF DUPLICATION OF PROCEDURES AND INTERNATIONAL RES JUDICATA, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

Duplication of procedures and International res judicata:	No
Rights declared admissible	Articles 8 (fair trial) and 25 (judicial protection) of the 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, in terms of section VI
Timeliness of the petition:	Yes, in terms of section VI

**V. SUMMARY OF ALLEGED FACTS**

1. The petitioner denounces the lack of reparation to the relatives of the alleged victim, Marco Esteban Quiñones Lembach, for the damage caused by his unlawful detention, torture, and subsequent forced disappearance. It alleges violations to the right to a fair trial and the right to judicial protection in the framework of civil proceedings, constituting denial of justice.

2. The petitioner refers that the alleged victim was a member of the Revolutionary Left Movement [*Movimiento de Izquierda Revolucionaria*] (hereinafter "MIR"). It explains that on July 17, 1974, the alleged victim was detained by the National Intelligence Directorate [*Dirección de Inteligencia Nacional*] (hereinafter "DINA"), at around 8:30 p.m., at the home of his friend and MIR member, Germán Moreno Fuenzalida, who would himself have been arrested two days earlier. The petitioner argues that at that moment the alleged victim was grabbed from behind, handcuffed, and hit against a wall. He was then transferred to London 38, from where, the next day, he was taken to his home in order for a search to be carried out. The petitioner indicates that then, DINA officials proceeded to question Mrs. Norma Rojas Pizarro, the alleged victim's spouse, about her husband's activities. The petitioner argues that the alleged victim had visible traces

<sup>1</sup> By letter received on September 26, 2017, the petitioner Franz Moler Morris withdrew.

<sup>2</sup> Norma Rojas Pizarro, spouse of the alleged victim.

<sup>3</sup> Pursuant to Article 17.2.a of the Commission's Rules of Procedure, Commissioner Antonia Urrejola Noguera, a Chilean national, did not participate in the debate or decision on this matter.

<sup>4</sup> Hereinafter "the American Convention" or "the Convention".

<sup>5</sup> The observations presented by each party were duly transmitted to the opposing party.

of physical abuse. The agents refused to identify themselves or provide any explanation for their actions, only telling the alleged victim's spouse that Mr. Quiñones Lembach would be back home the next day. However, that was the last day that his family saw him, and since then, as for Germán Moreno, he has been detained-disappeared.

3. On July 19, 1974, the alleged victim's spouse filed an *amparo* remedy with the Santiago Court of Appeals, in which she explained the circumstances of the alleged victim's arrest, further arguing that he suffered from heart disease and kidney problems, which worsened his situation. On July 20, 1974, the Court notified the Ministries of the Interior and of Defense, and on November 28, 1974, the Ministry of Defense and the National Secretariat for Detainees informed the Court that the alleged victim was not being detained and that he had never been targeted by the Military Justice. Therefore, the Court rejected the *amparo* remedy, a decision confirmed by the Supreme Court on December 17, taking into special consideration that the events reported were not suitable for an *amparo* remedy, but rather actions that fall within the jurisdiction of the Criminal Justice.

4. Additionally, on October 11, 2001, the wife of the alleged victim opened a civil process before the Santiago Civil Court; however, her action was rejected by the Court on October 30, 2001, in application of the statute of limitation to the case. Therefore, she filed an appeal with the Santiago Court of Appeals, which confirmed the first instance ruling. Consequently, an appeal was filed before the Supreme Court of Justice, which was rejected by a ruling dated January 29, 2009. The order to comply (*cúmplase*) with said ruling was issued on March 10, 2009 by the 22nd Civil Court of Santiago.

5. For its part, the State indicates that regarding the alleged events that took place in 1973, which would have violated the rights to life, humane treatment, and personal liberty of the alleged victim, they fall outside the recognition of competence conferred by the State, as it occurred prior to the deposit of the Ratification Instrument. Likewise, it indicates that it has no objections to raise regarding compliance with the formal requirements regarding the lack of civil reparation, without prejudice to the observations on the merits that it may make at the appropriate time.

## **VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

6. The Commission notes that the petitioner has expressly limited his complaint to the lack of access to civil reparation for the relatives of the alleged victim, derived from his disappearance and extrajudicial execution. The Commission observes that, in the civil jurisdiction, the claim of the relatives of the alleged victim was rejected by the Civil Court of Santiago on October 30, 2001. On March 10, 2009, the latter issued an order to comply regarding the decision of the Supreme Court of January 29, 2009 confirming the first instance decision. Based on this, the Commission concludes that the domestic remedies were exhausted on March 10, 2009, and that the present petition meets the requirement established in Article 46.1.a of the Convention.

7. Likewise, regarding the filing deadline, the Commission notes that the petition was received before this Commission on September 10, 2009, complying with the requirement set forth in Article 46.1.b of the Convention.

## **VII. COLORABLE CLAIM**

8. The Commission observes that the present petition includes allegations regarding the lack of compensation to the relatives of the alleged victim for his kidnapping, torture, and subsequent forced disappearance, as a result of the judicial 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 the application of the statute of limitations is an obstacle to effective access to justice for victims seeking reparations<sup>6</sup>. 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

<sup>6</sup> 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; I/A Court H.R., Case of Órdenes Guerra et al. v. Chile. Merits, Reparations and Costs. Judgment of November 29, 2018.

Convention, in relation to its Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects), in accordance with other similar cases already decided by the IACHR<sup>7</sup>.

### **VIII. DECISION**

1. To declare this petition admissible in relation to Articles 8 and 25 of the American Convention, in relation to its Articles 1.1 and 2; and

2. To notify the parties of this decision; to continue with the analysis on the merits of the matter; 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 20<sup>th</sup> day of the month of April, 2020. (Signed): Joel Hernández, President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.

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<sup>7</sup> 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.