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REPORT No. 403/20
PETITION 1295-12
REPORT ON ADMISSIBILITY

FAMILY OF DOMINGO BARTOLOMÉ BLANCO TARRÉS
CHILE

Electronically approved by the Commission on December 10, 2020.

Cite as: IACHR, Report No. 403/20, Petition 1295-12. Admissibility. Family of Domingo Bartolomé Blanco Tarrés. Chile. December 10, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Nelson Caucoto Pereira ¹
Alleged victim	Family of Domingo Bartolomé Blanco Tarrés 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 Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof

II. PROCEEDINGS BEFORE THE IACHR⁵

Date of filing	June 11, 2012
Notification of the petition	August 9, 2017
State's first response	December 13, 2017
Additional observations from the petitioner	February 26, 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 (deposit of ratification instrument 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 Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof
Exhaustion or exception to the exhaustion of remedies	The exception provided in Article 46 applies
Timeliness of the petition	Yes, in the terms of Section VI

V. SUMMARY OF FACTS ALLEGED

1. The petitioner claims a lack of compensation to the relatives of Domingo Bartolomé Blanco Tarrés (or “the alleged victim”) for the damage caused by his extrajudicial detention and forced disappearance, as well as violations of the rights to a fair trial and judicial protection during the civil proceeding, leading to a denial of justice.

2. The petitioner submits⁶ that journalists from El Mercurio newspaper reported that on September 11, 1973, the alleged victim, an active member of the Socialist Party and head of President Allende's guard, was going from El Cañaveral to La Moneda, when Carabineros officers arrested him on the outskirts of Santiago city and took him to the Sixth Police Station. On September 13, he was taken to a public prison. He stayed there until September 19, when a military vehicle transported him to an unknown destination. His whereabouts remain unknown to date, despite his spouse's approaches to entities such as the Military Academy, the Army Intelligence Bureau, the State Prison, the National Secretariat of Detainees, and the Legal-Medical Institute.

¹ Initially filed also by Franz Moller Morris; however, by a communication dated September 26, 2017, he withdrew as a petitioner.

² María Soledad Blanco Arancibia, daughter of the alleged victim.

³ In keeping with the provision of Article 17.2.a of the IACHR Rules of Procedure, Commissioner Antonia Urrejola Noguera, a Chilean national, did not partake in the discussion or the decision on this matter.

⁴ Hereinafter the “American Convention” or “Convention.”

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

⁶ The petitioner's account of the facts and allegations are based on the report by the Commission for Truth and Reconciliation (Rettig report).

3. On November 28, 1973, the alleged victim's spouse went to the Office of the First Military Prosecutor, where she was read the list of the detainees, which included her husband's name. On December 5, 1973, the prosecutor told her that the alleged victim had been sentenced to 10 years' imprisonment but made a gesture indicating that he had been executed. On December 26, 1974, at the request of the alleged victim's spouse, the Brigadier General Commander in Chief of the II Military Division issued a certificate attesting that in none of the actions processed by the Military Courts was a record of his death.

4. On March 23, 1974, an appeal for the protection of fundamental rights (*amparo*) was filed on behalf of 131 people, including the alleged victim, and on December 22, 1974, a missing person report was filed with the Third Criminal Court. The petitioner has not provided more information in this regard. A criminal charge for kidnapping was filed with the Third Criminal Court on February 1, 1991, which by 1992 was still being processed. Moreover, a physical description of the alleged victim was submitted to the 22nd Criminal Court for the case on the illegal burials in Patio 29 of the General Cemetery. In September 1991, 125 bodies buried between September and December 1973 were exhumed. By 1992, the results from the Legal-Medical Institute yet to be published.

5. The civil proceeding began on September 11, 2002, before the 27th Civil Court of Santiago, which granted claim for damages of the alleged victim's relatives on May 13, 2005. On April 13, 2009, the Court of Appeals of Santiago confirmed the lower court's ruling, obliging the State to compensate. An extraordinary appeal for annulment was filed with the Supreme Court of Justice and on October 18, 2011, the Supreme Court admitted the appeal, thereby revoking the judgment by which compensation had been granted. On November 11, 2011, the first instance Civil Court issued an enforcement order.

6. For its part, the State contends that as for the alleged lack of civil reparation, it has no objections regarding the fulfillment of the formal requirements, without prejudice to the observations it may submit on the merits. Regarding the allegations of events that might have happened in September 1973, consisting in violations of the alleged victim's rights to life, humane treatment, and personal liberty, the State says that a criminal process is currently at the trial stage. Furthermore, it reiterates its reservations to the American Convention, because of which Chile acknowledges the inter-American system's competence strictly regarding events happening after the date of deposit of the instrument of ratification or, in any case, events that started after March 11, 1990. It claims that, therefore, the Commission is not competent to rule on them for lack of jurisdiction *ratione temporis*.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

7. The IACHR notes that the petitioner asserts that this petition is limited to the lack of civil reparation to the alleged victims for the disappearance of Mr. Domingo Bartolomé Blanco Tarrés, whose civil complaint was dismissed on the grounds of the statute of limitations. In view of Chilean courts' established practice of applying the statute of limitations rules to reparation proceedings concerning human rights violations committed in the military dictatorship⁷, the Commission reiterates that, pursuant to its jurisprudence and that of other human rights bodies, ineffective remedies need not be exhausted. In the IACHR's view, for the purposes of a petition's admissibility, remedies are ineffective when it is shown that none of the means to vindicate a reparation before the domestic legal system appears to have prospects of success. In order to satisfy this point, the Commission must have evidence allowing it to evaluate the probable outcome of the petitioners' proceedings effectively. The mere doubt about the prospects of filing a case is insufficient to exonerate the petitioners from exhausting domestic remedies. In order to decide whether a case is admissible or not and without prejudging the merits issues, in those cases where the said remedies are considered ineffective due to a lack of prospects for success, the exception to the exhaustion of domestic remedies set out in Article 46.2.b of the American Convention would be applicable.⁸

8. Furthermore, given the context and the characteristics of the instant case, the Commission finds that this petition was presented within a reasonable time and, thus, meets the admissibility requirement.

⁷ IACHR, Report No. 59/16. Petition 89-07. Admissibility. Juan Alberto Contreras González, Jorge Edilio Contreras González, and Family. December 6, 2016; IACHR, Report No. 84/17, Petition 188-11. Admissibility. Marcos Luis Abarca Zamorano and Others. Chile. July 7, 2017; IACHR, Report No. 5/19, Petition 1560-08. Admissibility. Juan Paredes Barrientos and Family. Chile. January 31, 2019.

⁸ IACHR, Report No. 18/12, Petition 161-06. Admissibility. Juvenile Offenders Sentenced to Life Imprisonment without Parole. United States of America. March 20, 2012, par. 47.

VII. COLORABLE CLAIM

9. 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 to be repaired, and therefore should not be applied in such circumstances⁹. 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.¹⁰

VIII. DECISION

1. To declare this petition admissible regarding Articles 8 and 25 of the American Convention in accordance with Articles 1.1 and 2 thereof; 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 10th day of the month of December, 2020. (Signed): Joel Hernández, President; Flávia Piovesan, Second Vice-President; Margarette May Macaulay, and Esmeralda E. Arosemena Bernal de Troitiño, Commissioners.

⁹ 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.

¹⁰ 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.