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REPORT No. 402/20
PETITION 1549-11
REPORT ON ADMISSIBILITY

JOSÉ DOMINGO ADASME NUÑEZ AND FAMILY
CHILE

Approved by the Commission electronically on December 10, 2020

Cite as: IACHR, Report No. 402/20, Petition 1549-11. Admissibility. . José Domingo Adasme Núñez and family. Chile. December 10, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Nelson Caucoto Pereira ¹
Alleged victim:	José Domingo Adasme Núñez y familia ²
Respondent State:	Chile ³
Rights invoked:	Articles 4 (life), 5 (personal integrity), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights ⁴ in relation to its Article 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the same instrument.

II. PROCEEDINGS BEFORE THE IACHR⁵

Filing of the petition:	November 3, 2011
Notification of the petition to the State:	June 16, 2016
State's first response:	December 28, 2016
Additional observations from the petitioner:	September 8, 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 Declaration on the Rights and Duties of Man ⁶ (Ratification of the OAS Charter on June 5, 1953); American Convention on Human Rights (deposit of the instrument made on August 21, 1990); Inter-American Convention to Prevent and Punish Torture ⁷ (deposit of the instrument made on September 30, 1988); and Inter-American Convention on Forced Disappearance of Persons (deposit of the instrument made on January 26, 2010)

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 3 (juridical personality), 4 (life), 5 (personal integrity), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention in relation to its Article 1.1 (obligation to respect rights) and 2 (domestic legal effects) of the same regulatory body; Articles I (life, liberty, personal security and integrity), XVII (recognition of judicial personality and civil rights), XVIII (justice) and XXV (protection from arbitrary arrest) of the American Declaration; Articles 1, 6 and 8 of the Convention against Torture; and Article I of the Inter-American Convention on Forced Disappearance of Persons
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in the terms of section VI
Timeliness of the petition:	Yes, in the terms of section VI

¹ The petition was initially filed also by Franz Moller Morris, but by means of a communication September 26, 2017, he resigned from being a petitioner.

² Graciela del Carmen Tamayo Romero, spouse of the alleged victim.

³ As set forth in Article 17.2.a of the Commission's Rules for Procedure, Commissioner Antonia Urrejola Noguera, a Chilean national, did not participate in the discussion nor in the decision of the present matter.

⁴ Hereinafter "the American Convention".

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

⁶ Hereinafter "Declaration" or "American Declaration".

⁷ Hereinafter "Convention against torture".

V. FACTS ALLEGED

1. The petitioner denounces the extrajudicial arrest, torture and further forced disappearance of José Domingo Adasme Núñez (hereinafter, "alleged victim") in the context of the military coup in Chile, as well as the lack of reparations to his family for the damage caused, in violation of the rights to a fair trial and judicial protection.

2. The petitioner argues⁸ that on October 16, 1973 the alleged victim was arrested in his home by military personnel of the Infantry Academy of San Bernardo. His home was raided without the corresponding court order. The soldiers took the alleged victim and told his family he would return the following day, after a declaration in San Bernardo. When he did not return, his relatives searched for him in several detention centers of the zone, in all of which they denied his presence; his whereabouts are unknown to this date. The petitioner indicates that a judicial investigation --details of which are unspecified-- established that he was taken along with other detained to the hills of Codegua, close to Melipilla, where he was ultimately executed.

3. On March 24, 1974 a collective amparo petition in the name of 131 persons, among them the alleged victim, was filed before the Court of Appeals of Santiago. The petition was dismissed on November 28, 1974; this decision was confirmed by the Supreme Court on January 31, 1975, which assigned the First Criminal Court of Santiago as special inspecting judge to hear the cause. On September 25, 1975, the case was closed, and on September 29 of the same year it was temporarily dismissed; this decision was approved by the Court of Appeals on May 10, 1976. Likewise, on March 21, 1975, a presumed disappearance claim was filed before the Civil Court judge of Maipú-Buín, upon which several measures were ordered in different institutions, among them the Medical Legal Institute (IML); all of them stated having no track of the alleged victim. In November 1975, the file was closed and the case was definitively dismissed. On January 20, 1976, the Court of Appeals of Rancagua temporarily confirmed the dismissal, and on March 23, 1977, the case was reopened when the government issued a list of deceased persons in a report submitted to the United Nations regarding the human rights situation in the country, which contradicted the version given by the IML.

4. A new complaint was filed in September 1977 for the detention and later disappearance of the alleged victim, and in March 1978, his family filed a lawsuit for cover-up against Colonel Jorge Dawling Santa María, Director of the Infantry Academy of San Bernardo, both added to the proceedings. The Court Minister assigned on April 3, 1979 ordered a series of measures allowing the establishment of the falsehood of the list submitted to the UN by the government. The Minister excused himself from the matter, and on October 17, 1980, the casefile was forwarded to the II Military Prosecutor for a motion to dismiss. On May 24, 1982, the case was temporarily dismissed. In March 1984, a Military Court revoked the dismissal and ordered measures for the pursuance of the investigation; during 1985, 26 officers and non-commissioned officers of the Infantry Academy gave their testimony, all of them denying participation in the operations in Paine and surrounding areas. On November 22, 1985, the Military Prosecutor requested the application of the Amnesty Law, and the Military Judge dismissed the case totally and definitively which resulted in the extinction of criminal liability of those allegedly incriminated. In February 1992 the Martial Court revoked this decision and ordered the exhumation of six bodies in Patio 29 of the General Cemetery, measure that did not take place due to a case before the 22 Criminal Court under the charge of illegal inhumation regarding all the remains that were deposited there, which had already been ordered and its corresponding exhumation already performed. As part of the latter case, anthropomorphic data of the alleged victim was provided; 108 tombs in Patio 29 were exhumed in September 1991, and the bones collected were forwarded to the IML and subjected to identification process. Until 1992, when the Rettig Report was published, the alleged victim had not been identified; the documents submitted to the IACHR contain no information regarding the identification of the alleged victim or whether his remains were returned to his family.

5. On October 9, 2001, a civil suit was filed before the 26th Civil Court of Santiago; its decision rendered on August 24, 2004 rejected the claims of the family of the alleged victim for reparations for the damage caused, in application of the statute of limitations for civil actions. By a decision dated October 29, 2008, the Court of Appeals of Santiago confirmed the first instance decision. The plaintiff challenged this decision with a cassation complaint before the Supreme Court, which was rejected on April 14, 2011, following

⁸ The petitioner based his narration and the reported facts in this petition in the Report of the National Commission of Truth and Reconciliation (Rettig Report)

to the State's thesis of the applicability of the statute of limitations. On May 3, 2011, the First Instance Civil Court issued an enforcement order.

6. As regards the lack of civil reparations, the State raises no objections on the formal requirements; however, it reserves its rights to eventually present observations on the merits. Concerning the criminal aspect, the State points out that the "Patio 29" case is before the Court of Appeals at a summary stage.

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

7. The IACHR recalls that each time an alleged crime prosecutable *ex officio* is committed, the State is bound to initiate and promote legal proceedings⁹; and that in such cases this is the adequate path to clarify the facts, judge and determine the punishment for those responsible. Likewise, the Commission reminds that military justice is not a proper forum to rule on these claims, insofar as it does not offer an adequate remedy to investigate, judge and punish the alleged violations to human rights recognized in the American Convention, which were presumably committed by members of the security forces or with their collaboration or acquiescence. Finally, even though the State mentions that there is still an ongoing domestic proceeding on the matter, the Commission notes that, more than 40 years later, there is yet no clarity as to the facts concerning the allegations of detention, torture and disappearance; nor have the perpetrators been punished. Thus, the Commission concludes that in the present matter the exception for exhaustion of domestic remedies set forth in Article 46.2.c of the American Convention is applicable. In light of the context and of the characteristics of the petition analyzed in the present report, the Commission considers that it was filed within a reasonable period and thus that it meets the admissibility requirement regarding timeliness.

8. Additionally, in terms of reparation proceedings before the civil jurisdiction, the Commission has repeatedly held that such legal path does not constitute a suitable remedy for the analysis of the admissibility of a complaint such as the present one, since it is not appropriate to grant integral reparation, which includes clarification of the facts and justice for the next of kin. Notwithstanding the foregoing, although in the present case the criminal proceeding is the suitable remedy for the investigation of the facts, the petitioners also allege concrete violations within the direct reparation claim. For this reason, given the connection between both proceedings, the Commission takes into account that domestic remedies were exhausted in the civil jurisdiction with the enforcement order issued by the first instance judge on May 3, 2011, regarding the decision of the Supreme Court from April 14, 2011. Based on this, the Commission concludes that the present petition meets the requirement set forth in Article 46.1.a of the American Convention. Likewise, the petition was filed before the IACHR on November 3, 2011, therefore complying with requirements set forth in Articles 46.1.b of the American Convention and 32.1 of its Rules for Procedure.

VII. ANALYSIS OF COLORABLE CLAIM

9. As regards competence *ratione temporis* and *ratione materiae*, the Commission will analyze the facts of the present matter that occurred after such instruments came into force or the occurrence of which continued after such instruments came into force for the State of Chile, in light of the obligations established in the American Convention, in the Inter-American Convention on forced disappearance of persons and in the Convention against Torture. The Commission shall review the facts that took place prior to the American Convention's entry into force for the State in light of the obligations derived from the American Declaration.

10. The Commission observes that the present petition includes claims regarding the detention and enforced disappearance of the alleged victim. In view of these considerations, and after examining the factual and legal elements set forth by the parties, the Commission considers that the petitioner's claims are not manifestly unfounded and require a study on the merits since the alleged facts, if corroborated, may characterize violations of the rights established in Articles I (life, liberty, personal security and integrity), XVII (recognition of judicial personality and civil rights), XVIII (justice) and XXV (protection from arbitrary arrest) of the American Declaration. Likewise, the Commission observes that 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 the reparation of crimes against humanity, as in the present petition, both the Commission and the Inter-American Court have

⁹ See IACHR, Report No. 105/17. Petition 798-07. Admissibility. David Valderrama Opazo and others. Chile. September 7, 2017.

found 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 circumstances¹⁰. In light of the above, the IACHR considers that the petitioner's claims are not manifestly unfounded and require a study on the merits, since the alleged facts, if corroborated, may characterize violations of rights recognized in Articles 3 (legal personality), 4 (life), 5 (personal integrity), 7 (personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention, in relation to Articles 1.1 (obligation to respect rights) and 2 (obligation to abide by domestic legal effects), as well as Articles 1, 6 and 8 of the Convention against Torture; and Article I of the Inter-American Convention on Forced Disappearance of Persons¹¹.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 3, 4, 5, 7, 8 and 25 of the American Convention in relation to its Articles 1.1 and 2; Articles 1, 6 and 8 of the Convention against Torture; and Article I of the Inter-American Convention on Forced Disappearance of Persons regarding those facts occurred after their entry into force, the occurrence of which continued after such instruments came into force for the State of Chile; and Articles I, XVII, XVIII and XXV of the American Declaration.

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.

¹⁰ 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.

¹¹ IACHR, Report No. 105/17. Petition 798-07. Admissibility. David Valderrama Opazo and others. Chile. September 7, 2017.