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REPORT No. 88/20
PETITION 581-10
REPORT ON ADMISSIBILITY

RELATIVES OF ALAN ROBERTO BRUCE CATALÁN
CHILE

Approved electronically by the Commission on May 13, 2020.

Cite as: IACHR, Report No. 88/20, Petition 581-10. Admissibility. Relatives of Alberto Roberto Bruce Catalán. Chile. May 13, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Nelson Caucoto ¹
Alleged victim	Relatives of Alan Roberto Bruce Catalán ²
Respondent State	Chile ³
Rights invoked	Articles 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights, ⁴ in connection with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof

II. PROCEEDINGS BEFORE THE IACHR⁵

Date of filing	April 15, 2010
Notification of the petition	May 3, 2016
State's first response	June 29, 2016
Additional observations from the petitioner	September 8, 2017
Additional observations from the State	June 21, 2018

III. COMPETENCE

<i>Ratione personae</i>	Yes
<i>Ratione loci</i>	Yes
<i>Ratione temporis</i>	Yes
<i>Ratione materiae</i>	Yes (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, in connection with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof
Exhaustion or exception to the exhaustion of remedies	Yes, October 15, 2009
Timeliness of the petition	Yes, April 15, 2010

V. SUMMARY OF FACTS ALLEGED

1. The petitioner claims that the State has failed in providing reparation to the relatives of the alleged victim, Alan Roberto Bruce Catalán, for the damage caused by his extrajudicial detention and forced disappearance. He asserts that his petition is confined to reporting the denial of civil reparation to the relatives of the alleged victim for the latter's forced disappearance.

2. The petitioner states⁶ that the alleged victim was a member of the Revolutionary Left Movement (or MIR). In 1974, the alleged victim was unlawfully arrested by military officers and taken to the headquarters of the Buin Regiment, from there to the military academy, and then returned to his domicile by order of Marcelo Moren Brito, the alleged victim's uncle and head of the Buin Regiment back then. He claims that on February 13, 1975, the alleged victim was arrested again by the National Directorate of Intelligence (or DINA) and taken to Villa Grimaldi prison, where he was held in isolation, with his feet shackled. The alleged

¹ By a communication dated September 26, 2017, Franz Moller Morris announced his withdrawal as a petitioner.

² Silvia Mónica Gana Valladares and Alan Bruce Gana, the alleged victim's spouse and son respectively.

³ Pursuant to the provision of Article 17.2.a of the IACHR Rules of Commission, Commissioner Antonia Urrejola Noguera, a Chilean national, did not partake in the discussion or the voting 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.

⁶ The petitioner's recount and allegations in this petition are based on the Rettig Commission's report.

victim was last seen on February 24, 1974. According to the petition, the alleged victim's relatives unsuccessfully filed countless proceedings and inquiries to determine his whereabouts.

3. On April 8, 1975, the alleged victim's father lodged an amparo action with the Court of Appeals of Santiago,⁷ but it was dismissed on June 5, 1975. On June 19, 1975, the Supreme Court of Justice upheld the judgment, sending the case record to the Criminal Court of Santiago for an investigation into the alleged victim's disappearance. On November 20, 1975, the court visited the Puchuncaví prison, and on January 5, 1976, on receiving a final report from the National Secretariat of Detainees concluding into the inexistence of any record concerning the alleged victim, it stayed the case provisionally. The Court of Appeals upheld this stay of proceedings on May 19, 1976. Moreover, on August 10, 1976, the alleged victim's father lodged before the visiting Minister a complaint against the DINA on the charge of kidnapping. On April 28, 1980, the said Minister forwarded the complaint to the Second Military Prosecutor's Office so that it would be processed within case 553-78, filed against several DINA officers. This decision was challenged before the Court of Appeals, which upheld the resolution. On November 20, 1989, the army's lieutenant colonel requested the application of the Amnesty Decree-Law,⁸ and on November 30, 1989, the court permanently dismissed the complaint. The Martial Court upheld this decision in January 1992. A complaint appeal was filed with the Supreme Court of Justice; however, to December 1992, no resolution had been passed yet.

4. Further, on March 2, 2000, a civil action was filed with the Civil Court of Santiago to obtain reparation for the damage sustained by the alleged victim's relatives. On August 28, 2002, the court granted the complaint as well as the petitioners' claims, providing compensation to them. The decision was challenged before the Court of Appeals of Santiago on March 21, 2003. By a judgment passed on September 28, 2007, this court revoked the appealed decision, hence denying the claims of the petitioners. On March 19, 2008, an appeal for annulment was filed to the Supreme Court of Justice, which, on August 31, 2009, upheld the Court of Appeals' judgment, invoking the Chilean Attorney General's Office argument that the claims were based on acts barred by the statute of limitations. An order enforcing this decision was passed on October 15, 2009.

5. For its part, the State submits that, regarding the criminal proceeding, an action was filed to punish those responsible for the facts alleged in the petition. It says that the proceeding concluded with a final judgment of guilt, with those responsible for kidnapping the alleged victim being sanctioned to imprisonment, and that on January 21, 2016, the Supreme Court dismissed the appeals for annulment submitted by the convicts' defense. As for the allegations concerning the rights to life, humane treatment, and personal liberty, it contends that those events occurred prior to Chile's deposit of the instrument of ratification of the American Convention. The denounced facts occurred in February 1975, and Chile ratified the Convention in August 1990. It claims that, hence, the Commission is not competent to hear them.

6. The State also says 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 on the merits that it may submit in due course.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

7. The Commission notes the petitioner's assertion that his petition is confined to reporting the denial of civil reparation to the relatives of the alleged victim for the latter's forced disappearance. The Commission observes that in the contentious-administrative jurisdiction, the domestic remedies were exhausted with the trial court's order of October 15, 2009, that enforced the Supreme Court's decision of June 31, 2009, in which the latter denied the claims of the alleged victim's relatives in application of the statute of limitations in civil matters. Therefore, and since the Commission received the instant petition on April 15, 2010, the Commission finds that this petition meets the requirement established in Article 46.1 (a) and (b) of the Convention.

VII. COLORABLE CLAIM

8. The Commission observes that the instant petition involves claims regarding a lack of compensation to the alleged victim's relatives for his extrajudicial detention and forced disappearance, given

⁷In the proceeding, the court got the reports from the *Jefatura de Zona en Estado de Emergencia* [military-run regional police station] and the Ministry of the Interior that established the lack of information on the alleged victim's detention.

⁸Decree-Law 2191.

the application of the statute of limitations to civil proceedings. Regarding the civil actions for reparation filed in matters such as this one, both the Commission and the Inter-American Court have ruled that the application of the statute of limitations constitutes an obstacle to effective access to justice for victims to be repaired.⁹ 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 the instant 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 13th day of the month of May, 2020. (Signed): Joel Hernández, President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.

⁹IACHR, Report No. 52/16, Case 12.521. Background. María Laura Ordenes Guerra and others. 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 HR, Case of War Orders and others vs. Chile, Judgment of November 29, 2018 (Merits, Reparations and Costs).

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.