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REPORT No. 58/20
PETITION 643-11
REPORT ON ADMISSIBILITY

RELATIVES OF CLAUDIO RÓMULO TOGNOLA RÍOS
CHILE

Approved electronically by the Commission on April 22, 2020.

Cite as: IACHR, Report No. 58/20. Petition 643-11. Admissibility. Relatives of Claudio Rómulo Tognola Ríos. Chile. April 22, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Nelson Caucoto Pereira ¹
Alleged victim:	Relatives of Claudio Rómulo Tognola Ríos ²
State denounced:	Chile ³
Rights invoked:	Articles 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights, ⁴ in conjunction with its articles 1(1) (obligation to respect rights) and 2 (duty to adopt domestic legal effects)

II. PROCEEDINGS BEFORE THE IACHR⁵

Filing of the petition:	May 10, 2011.
Notification of the petition to the State:	June 17, 2010.
State's first response:	December 20, 2017.
Additional observations from the petitioner:	February 6, 2018.
Notice of the possible decision to archive	April 10, 2017.
Response to the notice of possible decision to archive	April 11, 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 Convention (instrument of ratification deposited 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 conjunction with 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, November 10, 2010
Timeliness of the petition:	Yes, May 10, 2011

¹ The petition was also presented initially by Franz Moller Morris, but in a communication dated September 26, 2017, he indicated that he was withdrawing as petitioner.

² Rosa Canales Illesca, wife of the alleged victim; and Claudia Rossana Tognola Canales, Verónica Pila Tognola Canales and Paola Christina Tognola Canales, daughters of the alleged victim.

³ Commissioner Antonia Urrejola Noguera, of Chilean nationality, did not participate in the deliberations nor in the decision in this case, in keeping with the provisions of Article 17(2)(a) of the Rules of Procedure of the Commission.

⁴ Hereinafter "the American Convention" or "the Convention."

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

V. SUMMARY OF THE ALLEGED FACTS

1. The petitioner alleged a failure to provide reparations to the relatives of Claudio Rómulo Tognola Ríos (hereinafter the "alleged victim") for the damage caused by his extrajudicial detention and later extrajudicial execution, as well as the violation to the right to a fair trial and the right to judicial protection in the framework of civil proceedings, constituting denial justice.

2. The petitioner submits⁶ that the alleged victim, a member of the Socialist Party, was detained in Tocopilla on September 16, 1973, at 9:30 pm, during curfew hours, by the local investigations chief and a military patrol. He was then transported to the Tocopilla Precinct and then the Tocopilla jail, where he was seen by witnesses. It was stated that he was then processed by the Office of the Prosecutor of the Military Police (*Carabineros*) for belonging to the Socialist Party, and in October 1973, he was taken to an abandoned mine 15 km from Tocopilla, where he was executed. Upon receiving no news from him, the alleged victim's wife traveled from Santiago to Tocopilla, where she was told that her husband had escaped, and that in one month, she would receive a document from the Office of the Military Prosecutor of Antofagasta stating this. On October 6, 1973, an official announcement of the fake escape of a group of detainees (including the alleged victim) was published in the local media

3. In 1989, a criminal complaint for homicide was filed before the First Court Martial of Antofagasta. In September 1989, the case was fully and definitively dismissed under the Amnesty Decree Act. The Court Martial upheld this ruling in August 1990, and a ruling on a complaint motion filed before the Supreme Court remains pending. Additionally, in June 1990, the Commission on Human Rights of Tocopilla filed a criminal complaint before the First Criminal Court of Antofagasta alleging illegal burial. As a result, the La Veleidosa mine was excavated, and the corpse alleged victim was found and identified. He was finally laid to rest in 1991 in the General Cemetery.

4. On July 29, 2002, a civil case was brought before the Seventh Civil Court of Santiago, which issued a judgment on June 8, 2004, finding that the alleged victim had been recognized as a victim in the Rettig Report and acceding to the claim of the alleged victim's relatives to compensation for the damage caused. In a judgment issued May 29, 2008, the Appellate Court of Santiago overturned the lower court's judgment. A cassation appeal was filed against this ruling before the Supreme Court, and on October 25, 2010, the appeal was rejected by the court, which accepted the State's argument that the civil actions brought were barred by prescription. On November 10, 2010, the lower civil court issued the order to enforce the latter judgement

5. For its part, the State argues that the petition lacks a clear and coherent narrative explaining the violations alleged. However, in a show of good faith and the understanding that the petitioner's claim is limited to the civil proceedings, it has no objections to raise as regards compliance with formal requirements, without prejudice to observations on the merits that it may choose to make at the appropriate time. Regarding alleged facts that may have taken place in September 1973, consisting of the violation of the rights to life, humane treatment, and personal liberty of the alleged victim, the State highlights the existence of a criminal case before the Appellate Court of Santiago currently in the plenary stage. It additionally recalls its reservations to the American Convention, pursuant to which it indicated that recognitions of competence conferred by the State refer to facts subsequent to the date of deposit of the ratification instrument, or in any case, to facts the execution of which commenced subsequent to March 11, 1990. Therefore, it argues the Commission does not have competence to address said facts because of a *ratione temporis* restriction.

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

6. The IACHR notes that the petitioner states that the petition is limited to alleging lack of access to civil reparations for the alleged victims, derived from the forced disappearance of Claudio Rómulo Tognola Ríos, and whose civil suit was rejected on the grounds of prescription. The Commission observes that a case was brought before the civil jurisdiction of the Seventh Civil Court of Santiago on July 29, 2002, and that on November 10, 2010, the lower court judge issued the order to enforce the Supreme Court's decision of October

⁶ The petitioner based his statements and the facts alleged in this petition on the report of the National Truth and Reconciliation Commission (the Rettig Report).

25, 2010, rejecting the petitioners' claims. Based on this, the Commission concludes that domestic remedies have been exhausted and that this petition complies with the requirement established in Article 46(1)(a) of the Convention.

7. Likewise, the petition was presented before the IACHR on May 10, 2011, complying with the requirement of period for lodging the petition established in articles 46(1)(b) of the Convention and 32(1) of the Rules of Procedure of the IACHR.

VII. ANALYSIS OF COLORABLE CLAIM

8. The Commission observes that this petition includes allegations of a failure to provide compensation to the relatives of the alleged victim for his kidnapping and extrajudicial execution, based on the judicial application of civil prescription. 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 that the application of the statute of limitations is an obstacle to effective access to justice for victims seeking reparations⁷. 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 Convention, in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects), and consistent with other similar cases previously decided by the IACHR.⁸

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 8 and 25 of the American Convention, in relation to Articles 1.1 and 2; 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 22nd 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.

⁷ 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.

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.