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REPORT No. 89/20
PETITION 803-09
REPORT ON ADMISSIBILITY

RELATIVES OF CLAUDIO JIMENO GRENDI
CHILE

Approved electronically by the Commission on May 13, 2020.

Cite as: IACHR, Report No. 99/20, Petition 803-09. Admissibility. Relatives of Claudio Jimeno Grendi. Chile. May 13, 2020.

I. INFORMATION ABOUT THE PETITION

Petitioner	Juan Francisco Asenjo Cheyre
Alleged victim	Relatives of Claudio Jimeno Grendi ¹
Respondent State	Chile ²
Rights invoked	Articles 24 (equal protection) and 25 (judicial protection) of the American Convention on Human Rights, ³ in connection with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof

II. PROCEEDINGS BEFORE THE IACHR⁴

Date of filing	June 29, 2009
Notification of the petition	August 19, 2014
State's first response	July 28, 2017
Additional observations from the petitioner	September 12, 2017
Additional observations from the State	May 30, 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 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, January 13, 2009
Timeliness of the petition	Yes, June 29, 2009

V. SUMMARY OF ALLEGED FACTS

1. The petitioner denounces a lack of reparation to the relatives of the alleged victim, Claudio Jimeno Grendi, for the damage caused by the latter's extrajudicial detention and forced disappearance, and violations of judicial guarantees and the right to judicial protection in the civil action for compensation.

2. According to the petitioner,⁵ the alleged victim was a presidential adviser to the Chilean Army and Air Force. He says that on September 11, 1973, with the onset of the military coup, the alleged victim was arrested at La Moneda presidential palace along with the then-President of the Republic, Salvador Allende Gossens. He explains that after hours of bombing by the army and the air force, they were told to abandon the building, and they surrendered themselves to the officers surrounding the presidential palace. They were arrested and taken to the headquarters of the Tacna Regiment, under Army Colonel Joaquín Ramírez Pineda. That same day, Colonel Ramírez Pineda ordered the execution of the alleged victim and other detainees. However, as the execution could not take place, the alleged victim and the other detainees were taken to the horse stables of the regiment, where they were physically tortured and held for the night. Allegedly, and

¹ Diego Orlando Jimeno Chadwick and Cristóbal Emiliano Jimeno Chadwick, sons of the alleged victim.

² In conformity with the provisions of Article 17.2.a of the IACHR Rules of Procedure, Commissioner Antonia Urrejola Noguera did not partake in the discussion or the voting on this matter.

³ Hereinafter "American Convention" or "Convention."

⁴ The observations submitted by each party were duly transmitted to the opposing party.

⁵ The petitioner's account of the facts and allegations are based on the Rettig Commission's report.

according to witnesses—including an investigative police officer, head of section Presidente of the Republic—the alleged victim would then have been pulled into a truck of the army, along with other detainees. The alleged victim has been missing since that moment, without his whereabouts or what happened to him being known yet.

3. The petitioner claims that in the criminal jurisdiction, no complaint was filed, or judgment passed, or official statement made in that regard. The petitioner submits that the National Commission for Truth and Reconciliation recognized the alleged victim as a victim.

4. On April 7, 1999, the alleged victim's relatives filed a civil lawsuit with the 4th Civil Court of Santiago, and on December 5, 2001, the State was sentenced to pay them damages. In view of this, the State appealed to the Court of Appeals, which by a judgment of April 3, 2007, revoked the lower court's decision and rejected the initial claim in applying the statute of limitations. On April 23, 2007, the alleged victim's relatives lodged an appeal for annulment with the Third Division of the Court. However, this body dismissed it on January 13, 2009, confirming the decisions of the Court of Appeals. The petitioner further submits inconsistencies in the judicial decisions in relation with the judicial protection offered to the victims, arguing that the applicable norms vary depending on what Division hears a case.

5. For its part, the State contends that as for the alleged lack of civil reparation, it has no objections on the fulfillment of formal requirements, without prejudice to the observations on the merits that it may submit in due course. The State further asserts that a criminal process is under way, with a trial court's resolution pending. It submits that in the criminal investigation, nine officers are facing prosecution as principals in the criminal offences. It alleges that, therefore, the petition does not meet the admissibility requirement of exhaustion of domestic remedies under Articles 46.a and 47.a of the Convention, regarding the violation of the right to life, humane treatment, and personal liberty invoked by the petitioner.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

6. The IACHR notes the petitioner's assertion that his petition is limited to reporting the lack of civil reparation for the extrajudicial detention and forced disappearance of Claudio Jimeno Grendi, given the dismissal of the relatives' civil complaint on the grounds of the statute of limitations. The Commission observes that in the civil proceedings, the final resolution by the Court's Third Division on January 13, 2009, exhausted the domestic remedies; therefore, the instant petition meets the requirement outlined in Article 46.1.a of the American Convention.

7. As for timeliness, the Commission notes that the alleged victim was notified of the previous court ruling on January 13, 2009, and that the Commission received this petition on June 29, 2009. Accordingly, the petition meets the requirement established in Article 46.1.b of the Convention.

VII. COLORABLE CLAIM

8. The Commission observes that this petition includes allegations regarding the lack of compensation to the alleged victim's relatives for his extrajudicial detention, torture and forced disappearance, given the application of the statute of limitations to civil proceedings. 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 reparations⁶. 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 connection with Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof, in relation to other similar cases already decided upon by the IACHR.⁷

⁶ 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.

⁷ 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.

9. As for the alleged violation of Article 24 (equal protection) of the American Convention, the Commission observes that the petitioner has not provided enough support or evidence to *prima facie* establish a possible violation.

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 declare the instant petition inadmissible in relation to Article 24 of the American Convention; and

3. 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; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, and Julissa Mantilla Falcón, Commissioners.