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## **REPORT No. 153/17**

## **PETITION 274-08**

### **REPORT ON ADMISSIBILITY**

**JIMMY FREDDY TORRES VILLALVA AND FAMILY**  
**CHILE**

Approved by the Commission at its session No. 2110 held on November 30, 2017.  
166<sup>th</sup> Regular Period of Sessions.

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**REPORT No. 153/17**  
**PETITION 274-08**  
 REPORT ON ADMISSIBILITY  
 JIMMY FREDDY TORRES VILLALVA AND FAMILY  
 CHILE  
 NOVEMBER 30, 2017

**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Kenny Alfonso Torres Villalva, Jhonnys Torres Villalva and Jorge Sosa Meza
<b>Alleged victim:</b>	Jimmy Freddy Torres Villalva and family
<b>State denounced:</b>	Chile
<b>Rights invoked:</b>	Articles 4 (life), 5 (physical integrity), 7 (personal liberty), 8 (judicial guarantees), 10 (compensation) and 25 (right to judicial protection) of the American Convention on Human Rights <sup>1</sup>

**II. PROCEDURE BEFORE THE IACHR<sup>2</sup>**

<b>Date on which the petition was received:</b>	March 3, 2008
<b>Date on which the petition was transmitted to the State:</b>	July 1, 2013 <sup>3</sup>
<b>Date of the State's first response:</b>	January 17, 2014

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes, American Declaration on the Rights and Duties of Man <sup>4</sup> (ratification of the Charter of the OAS on June 5, 1953); and American Convention (deposit of instrument made on August 21, 1990)
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Declaration and American Convention

<sup>1</sup> Hereinafter "the Convention" or "the American Convention"

<sup>2</sup> The observations presented by each party were duly transmitted to the opposing party.

<sup>3</sup> The petitioner requested information on the status of his petition on March 18, 2014 and April 4, 2016. On the other hand, in this petition requests for information have been received from the Republic of Ecuador on May 2, 2013, July 20, 2015 and November 6, 2015.

<sup>4</sup> Hereinafter "the Declaration" or "the American Declaration".

**IV. ANALYSIS OF DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles 5 (physical integrity), 8 (judicial guarantees) and 25 (judicial protection) of the American Convention, in relation to its Articles 1.1 and 2; and Articles I (life, liberty, security and integrity of the person), XVIII (justice) and XXV (protection against arbitrary detention) of the American Declaration
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, April 26, 2016
<b>Timeliness of the petition:</b>	Yes, March 3, 2008

**V. ALLEGED FACTS**

1. The petitioners indicate that 19-year old Ecuadorian Jimmy Torres Villalva came to the city of Concepción in Chile in March 1973 as an engineering student, thanks to the "Salvador Gálves Rojas" scholarship granted on the basis of his school performance. They indicate that, in the context of the military coup that took place in Chile on September 11, 1973, Jimmy Torres Villalva was arrested on September 19, 1973, tortured and murdered. His body was found on the south bank of the Bío Bío River on September 20, 1973. The corpse of Felipe Campos Carrillo, a 23-year-old Ecuadorian student, was also found next to him. The petitioners add that both corpses showed signs of torture with cigarettes and electric shocks, and both had multiple bullet wounds, blows to the head and fractures. Also, there were 3 projectiles and 10 perforated 22mm caliber bullets, 4 9mm projectiles and a gold canine around the bodies.

2. They indicate that after finding the alleged victim's body, the police mounted a short investigation, stating that the alleged victim had been murdered by members of the *Movimiento de Izquierda Revolucionaria* (MIR), a movement opposed to the ruling military regime. The case was closed. According to the police investigation, the alleged victim had been in contact with members of the MIR and obtained sensitive information, for which they had murdered him to prevent disclosure of the information. They point out that this version was the only official investigation carried out. Subsequently, the Rettig Report published by the Truth and Reconciliation Commission in 1991 determined that the alleged victim had been held in the Fourth Carabineros Police Station in Concepción and "was executed by agents of the State, who violated his right to life. This view was based on the certainty that they died due to multiple bullet wounds; and on the fact that his imprisonment at the hands of Carabineros is verified; and on the use at a national level of similar procedures with foreign citizens residing in the country and the existence of several acts of the same nature in the area."

3. Following the recommendations of the Truth Commission with regard to taking legal and judicial measures to ensure these cases do not remain in impunity, criminal proceedings were taken in 2004 in the First Criminal Court of Coronel against a colonel allegedly involved in the extrajudicial execution of the alleged victim and the other student. The petitioners indicate that in December 2007, the Third Chamber of the Court of Appeals granted the agent's release on bail. They add that the proceedings did not include all those involved in the events that occurred on September 19 and 20, 1973, but only the masterminds.

4. They conclude by indicating that the alleged victim was never mixed up in matters of a political nature, so the first version of the facts is false and that it took more than a decade for real investigations to begin on the case. They add that because of the historical context in which the events occurred, the student's detention was not communicated to the Ecuadorian Embassy, nor to his family. There was no prior arrest warrant to detain him and he was not taken to an official detention facility, but was transferred to a secret torture center. They also allege that, to date, there has been no direct compensation for

Jimmy Freddy Torres Villalva's death, but that his family members have only been granted a pension (Benefit of the Reparation Law - Law 19.123). There has been no investigation or sentencing of those responsible for their torture and execution at the hands of police agents more than 40 years after the events.

5. The State, for its part, points out that the petition is inadmissible because the facts outlined occurred prior to the ratification of the American Convention and its deposit with the Organization of American States; consequently the reservation of competence made by Chile operates in this case, in the sense that the Commission is only competent to examine, under the Convention, events that occurred after March 11, 1990. It therefore states, in accordance with the reservation made by the State, the facts of the complaint are expressly excluded from the temporal competence of the Commission.

6. Regarding civil reparation, it indicates that "the State has made considerable efforts in the implementation of a comprehensive policy of reparations" for the violations that occurred between 1973 and 1990. Among them, the National Commission of Truth and Reconciliation, whose final report (Rettig Report) created a register of human rights violation victims; the National Corporation for Reparation and Reconciliation, created by Law 19.123, whose mission, among others, is to grant a series of "economic benefits to victims of human rights violations" such as the granting of reparation pensions to spouses, mothers and fathers and their children; and the Advisory Commission for the Qualification of Disappeared Detainees, the Tortured, and those Executed or Detained on Political Grounds (Valech II Commission). The State points out that in the present case, Jimmy Freddy Torres Villalva was recognized as a victim in the Rettig Report and as a result his family members are not prevented from requesting the benefits established by the State's reparations policy.

7. As to the allegations regarding the lack of justice, the State indicates that on October 21, 2013, the Criminal Court of Coronel issued a first instance judgment in the criminal investigation into the events relating to Jimmy Torres Villalva's death, a judgment that, at the date the State presented its observations, was subject to appeal before the Court of Appeals of Concepción.

## **VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

8. The IACHR observes that in 2004, criminal proceedings were started in the First Criminal Court of Coronel for the alleged extrajudicial execution of Jimmy Freddy Torres Villalva. On October 21, 2013, in a first instance judgment, and according to public information, the Court acquitted two Carabineros' agents and sentenced retired Colonel Sergio Arévalo Cid to 15 years and one day imprisonment for the crime of first degree murder to the detriment of the alleged victim and another student. This sentence was appealed and, according to public information, on July 23, 2015, a second agent was sentenced to the same penalty. However, this sentence was reviewed on April 26, 2016, reversing the appeal judgment, leaving the retired colonel convicted at first instance as the sole perpetrator of murder. Therefore, the Commission understands that in the present case, domestic remedies have been filed and exhausted in accordance with Article 46.1.a of the American Convention.

9. Regarding timeliness for submission, the petition was filed with the IACHR on March 3, 2008, and the remedies were exhausted with the cassation judgment on April 26, 2016, while the petition was at the admissibility stage. According to the case law of the IACHR, the analysis of the requirements set forth in Articles 46.1.b of the Convention and 32.1 of the Rules of Procedure must be made in the light of the situation in force at the time when the admissibility or inadmissibility of the claim is being considered. Given the above, it is appropriate to find the requirement fulfilled.

## **VII. COLORABLE CLAIM**

10. In view of the factual and legal elements submitted by the parties and the nature of the matter brought to its attention, the Commission considers that, if proven, the alleged lack of investigation and criminal punishment of all those responsible for the extrajudicial execution of Jimmy Freddy Torres Villalva after more than 43 years, as well as the alleged lack of integral reparation to his family, could characterize possible violations of the rights recognized in Articles 5 (physical integrity), in relation to the family

members, as well as in Articles 8 (judicial guarantees) and 25 (right to judicial protection) of the American Convention in accordance with Articles 1.1 and 2 of said treaty, in relation to the events that occurred after its entry into force; as well as Articles XVIII (justice) and XXV (protection against arbitrary detention) of the American Declaration in relation to the events that occurred prior to August 21, 1990, all to the detriment of the alleged victim's next of kin. Likewise, the IACHR declares Article 4 of the American Convention inadmissible, given that the facts regarding the alleged state responsibility for the alleged torture and extrajudicial execution of Jimmy Freddy Torres Villalva will be analyzed in the merits phase under Article I (life, liberty, security and integrity of the person) of the American Declaration.

11. Regarding the claim about the alleged violation of the rights contained in Article 10 (right to compensation) of the Convention, the Commission observes that the petitioners do not offer allegations or support for their alleged violation, so it is not appropriate to declare said claim admissible.

## **VIII. DECISION**

1. To find the instant petition admissible in relation to Articles 5, 8 and 25 of the American Convention on Human Rights in relation to Articles 1.1 and 2 of the same instrument; and Articles I, XVIII and XXV of the American Declaration on the Rights and Duties of Man;

2. To find the instant petition inadmissible in relation to Articles 4 and 10 of the American Convention on Human Rights;

3. To notify the parties of this decision;

4. To continue with the analysis on the merits; and

5. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 30<sup>th</sup> day of the month of November, 2017. (Signed): Francisco José Eguiguren, President; Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.