

REPORT No. 174/11¹
PETITION 342-02
INADMISSIBILITY
JOEL ARRIAGA NAVARRO
MEXICO
November 4, 2011

I. SUMMARY

1. On 16 May 2002, the Inter-American Commission on Human Rights (hereinafter, “the Commission” or “IACHR”) received a petition lodged by Judith García Barrera, widow of Arriaga (hereinafter, “the petitioner”) against the United States of Mexico (hereinafter, “the State of Mexico” or “the State”). She claims that the State is internationally liable because on 20 July 1972, in the city of Puebla and in the context of the process to reform the *Universidad Autónoma del Estado*, her husband, Joel Arriaga Navarro, was murdered and the authorities did not investigate the facts or punish those responsible.

2. The petitioner claims that the State violated the rights enshrined in Articles 1 (the obligation to respect rights), 4 (the right to life), 8 (the right to a fair trial), 24 (the right to equal protection), and 25 (the right to judicial protection) of the American Convention on Human Rights (hereinafter, “the Convention” or the “American Convention”). Concerning exhaustion of domestic legal remedies, the petitioner claims there has been unjustified delay in the legal investigation of the extrajudicial execution of Joel Arriaga Navarro. For its part, the State claims that the petition is inadmissible because all domestic legal remedies have not yet been exhausted and, furthermore, it invokes the “fourth-instance doctrine”.

3. After analyzing the parties’ positions, the Commission concluded that it is competent to hear the claim, but that it is inadmissible for failing to meet the requirement provided for at Article 46(1)(b) of the American Convention. The Commission resolved to notify the parties of this report, to make it public, and to include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE COMMISSION

4. The petition was received on 16 May 2002 and recorded as P-343-02. On 21 August 2002 it was forwarded to the State, which was given two months to file its response, pursuant to IACHR Regulations in force at that time. The IACHR received the response from Mexico on 23 October 2002.

5. The Commission received additional information from the petitioner on the following dates: 6 December 2002, 28 March 2003, 11 September 2003, 2 June 2004, 4 June 2004, and 1 June 2010. These communications were duly forwarded to the State. For its part, Mexico sent information on the following dates: 15 January 2003, 25 February 2004, 22 November 2004, and 13 April 2011. These notes were duly forwarded to the petitioner.

III. POSITIONS OF THE PARTIES

A. The petitioner

6. The petitioner reports that her husband, Joel Arriaga Navarro, was an architect and at the time of his death served as Director of the “Benito Juárez” Preparatory School of the *Universidad Autónoma de Puebla*. She indicates that he was persecuted for his ideas and his political practice. Specifically, she reports that on 4 October 1969, following the Tlatelolco massacre, he was arrested without a warrant by agents of the judicial police of the state of Puebla, delivered the following day to the

¹ In keeping with the provisions of Article 17.2 of IACHR Regulations, Commissioner José de Jesús Orozco Henríquez, a Mexican national, did not participate in the debate or the decision over this case.

chief of the 25th Military Zone, and remained imprisoned and incommunicado in the military jail until 4 November 1968. She indicates that on that day he was transferred to Military Camp No. 1 in Mexico City, Federal District, where they also kept him incommunicado as a detained-and-missing person until 12 December 1968, when he was transferred to the Lecumberri Penitentiary Center and placed before the Second District Judge for Criminal Matters in the Federal District. The petitioner reports that he was tried for the crime of social dissolution and others before being released on his own recognizance on 17 November 1971.

7. The petitioner claims that on 20 July 1972, Joel Arriaga Navarro was killed by a barrage of bullets at the corner of East 24th Street and North 2nd Street in the City of Puebla, while she accompanied him on his way home.

8. It is the petitioner's opinion that her husband's death was an extrajudicial execution. She alleges that the murder took place in the context of the struggle to reform the *Universidad Autónoma de Puebla*, a struggle that called for education that is democratic, critical, and for the people. She adds that the reform movement consisted of students, professors, researchers, and administrative workers and its major opponents included a number of the country's extreme right-wing groups. She adds that one month after her husband's death, university Professor Enrique Cabrera Barroso delivered, for publication in some newspaper in the city of Puebla, a manifesto signed by the "Revolutionary Youth Bloc" that mentioned the murder of Joel Arriaga Navarro. She reports that no communications medium agreed to publish the manifesto, so the information was disseminated through flyers and stickers. She adds that on 20 December 1972, Mr. Cabrera Barroso was murdered.

9. Concerning the investigation into the death of Joel Arriaga Navarro, the petitioner states that the *Procuraduría General de Justicia del Estado de Puebla* [Prosecutor's Office of the state of Puebla] (PGJEP) opened preliminary inquiry 123/2130/72 and performed a number of investigative procedures, including two appearances by the petitioner during which she provided elements that she, as a witness of the facts, possessed. She indicates that later different employees of the PGJEP told her verbally that the file "had been misplaced" in that same Prosecutor's Office. She adds that it was not until September 2001 that the file was "found" with several of its pages having been removed. The petitioner states that investigation resumed through preliminary inquiry 123/2130/72/2001/DMS-1, but that investigative procedures were limited to another appearance by the petitioner and some procedures to recognize, among several exhibits of old automobiles, the automobile model that carried the persons who riddled Joel Arriaga Navarro with bullets. She reports that she requested that a number of persons be summoned who could have elements to clarify the murder of her husband, but the Prosecutor's Office denied those requests.

10. On 2 May 2002, the petitioner was notified of the decision by PGJEP to "send [preliminary inquiry 123/2130/72/2001/DMS-1] to the reserve archives", despite the fact that no investigation had been conducted to determine who had been the intellectual and material authors of her husband's [murder]. She indicates that a *recurso de inconformidad* [remedy of complaint] was filed objecting to that decision. The appeal was ruled as "No exercise of Criminal Action" and with the file being archived definitively. The petitioner reports that she then filed an appeal for *amparo* with a Federal District Judge, who dismissed the appeal for *amparo*, ruling that because over 30 years had passed since the homicide of the alleged victim, the statute of limitations had expired. The petitioner adds that, pursuant to domestic law, the statute of limitations for the crime of homicide expires after expiration of length of time equal to the maximum sentence the crime would have carried, which would have been 30 years. The petitioner indicates that the actions by authorities of the Mexican Government were aimed at allowing the 30-year period to pass so as to exempt them from the obligation to prosecute the crime. However, the petitioner claims that the fact that this case is about an extrajudicial execution with political motives in which employees of the State may have been involved, according to international law the statute of limitations would not apply to this case.

11. The petitioner further reports that an investigation was also begun by the *Fiscalía Especial para Movimientos Sociales y Políticos del Pasado* [Special Prosecutor for Social and Political Movements of the Past] (FEMSPP), which is under the Office of the General Prosecutor of the Republic,

which she claims does not act speedily, given that the criminal charges were filed on 22 May 2002.² The petitioner indicates that due to the negligence of the authorities in charge of seeking justice, she had lodged her petition with the IACHR, fearing that the crime, which has clear political overtones, will remain unpunished.

12. Concerning the exhaustion of all domestic legal remedies, the petitioner claims that the legal investigation of her husband's homicide has been delayed unjustifiably and procedures to solve the crime have been omitted. She states that the material and intellectual authors of the crime enjoy impunity and infers that the creation of the FEMSPP is a political maneuver. Therefore, the petitioner alleges the violation of the rights enshrined in Articles 1 (the obligation to respect rights), 4 (the right to life), 8 (the right to a fair trial), 24 (the right to equal protection), and 25 (the right to judicial protection) of the American Convention.

B. The State

13. The State claims that the preliminary inquiry 2130/972 opened by the PGJEP shows that on 20 July 1972, Mr. Joel Arriaga Navarro was a victim of the crime of homicide and that according to those who reported the crime he was allegedly murdered because of his involvement in the reform movement of the *Universidad Autónoma de Puebla*. Concerning the investigation of the facts, the State reports that after conducting a few investigative procedures, "the preliminary inquiry was interrupted by inactivity."

14. The State indicates that on 19 September 2001 preliminary inquiry 123/2130/72/2001/DMS-I-III was opened and procedures related to the aforementioned preliminary inquiry resumed. The State reports that a number of procedures were conducted, which included: statements by witnesses and relatives and the appearance of the former governor of the state of Puebla, who held that office at the time of the facts. The State indicates that on 8 April 2002, the PGJEP ordered, subsequent to those investigative procedures, that the inquiry be "Archived in Reserves" because it was deemed to lack sufficient elements for criminal action to be taken, specifically because of the following considerations: 1) The governor of the state of Puebla immediately ordered the PGJ to initiate investigation to establish the facts and punish the probable person responsible; 2) an exhaustive investigation was conducted that included statements by a number of individuals in order to obtain sufficient evidence to learn the identities of the material authors of the deed; 3) intervention by the forensic service was requested; 4) there were discrepancies among the witness statements, with different witnesses stating that different subversive organizations were responsible, though these statements were not backed by material evidence, which further diversified the lines of investigation; 5) because of this diversity of investigations traces got lost or altered with the passing of time; 6) precise data on the characteristics of the vehicle carrying the aggressors was impossible to obtain because of differing statements given about the vehicle.

15. The State indicates that on 17 May 2002, Mrs. Judith García Barrera, Arriaga's widow, filed a remedy of complaint against the above order. A ruling issued on 23 May 2002 the order of "No exercise of Criminal Action". The State indicates that on 4 July 2002 the petitioner filed an appeal for *amparo* with the Second Court of District "B" of the state of Puebla. The State claims that during that trial Mrs. Judith García enjoyed the right and the opportunity to file whatever evidence she considered appropriate and to express all allegations she considered useful in support of her claims. The State reports that on 20 September 2002, the Court dismissed the appeal for *amparo*, declaring the part of the offense groundless and part of it with grounds but inoperable, because the statute of limitations for the

² According to the information contained in the file, the FEMSPP investigation was opened at the request of Miguel Alfredo Calderón Moreno. The petitioner also claims that in the Public Ministry's investigation into her husband's death, aspects were presented that were of a political character, such as statements by the governor of the state of Puebla at that time. The statements, made on 22 July 2002, held that "To reopen inquiries into the case of Joel Arriaga will revive old conflicts between political groups and foster division among the citizenry; there are issues that we must keep right where they are and not revive old accounts, old quarrels."

crime of homicide had expired.³ The State indicates that in response to that ruling, Mrs. García Barrera filed an appeal for review with the Second Collegial Court for Criminal Matters of the Sixth Circuit. On 27 May 2003, the Second Collegial Court ruled that the act under appeal had met all legal requirements, given that expiration of the statute of limitations is an insurmountable material obstacle. Concerning this, the State claims that with the extinguishment of the prosecution of the crime of homicide of Joel Arriaga Navarro (statute of limitations), the local prosecuting authority was impeded from continuing its investigation.

16. The State also reports that on 20 May 2002,⁴ the *Fiscalía Especial para Movimientos Sociales y Políticos* [Special Prosecutor for Social and Political Movements of the Federal Prosecutor's Office] (FEMOSPP) opened a preliminary inquiry (PGR/FEMOSPP/007/2002) that is still pending.⁵ The State indicates that actions related to preliminary inquiry 123/2130172/DMS-I-III resumed and it conducted an investigation to determine if federal public servants had participated in the deeds. The State indicates that FEMOSPP has not found any evidence that would lead to the presumption of a link between the homicide of Joel Arriaga Navarro and any state or federal public servant.

17. Concerning the characterization of the facts of the complaint, the State claims that legal proceedings in the case of Mr. Joel Arriaga were conducted in keeping with the standards of Inter-American justice. It further indicates that Mrs. García Barrera had access to and exercised all legal remedies for judicial protection as it relates to actions by the General Prosecutor of Justice of the state of Puebla and that some remedies are still available through the Office of the General Prosecutor of the Republic. Therefore, the State invokes the fourth-instance doctrine.

18. As concerns the exhaustion of all domestic legal remedies, the State claims that these have not been exhausted. It indicates that the preliminary inquiry opened on 20 May 2002 by federal authorities is still underway and must be considered an adequate remedy. The State adds that the petitioner has not appealed the federal preliminary inquiry in any national court. Therefore, the State holds that intervention by the IACHR would impede the State from acting within its own domestic jurisdiction, which is counter to the subsidiary character of the Inter-American system. The State further claims that any omission or act by the authority that is considered to be in violation of the petitioner's individual rights can be brought before the Specialized Unit for the Investigation of Crimes committed by Public Servants and against the Administration of Justice, and that the petitioner also can file an appeal for *amparo*, which protects citizens from any violation of their basic rights, as well as an appeal for review, which in her case could alter the ruling on the appeal for *amparo*. In summary, the State maintains that the petitioner has multiple national legal avenues through which she can pursue her case, though she has not used any of them.

IV. ANALYSIS OF JURISDICTION AND ADMISSIBILITY

A. Jurisdiction: *ratione personae*, *ratione temporis*, *ratione loci* and *ratione materiae*

³ The State expresses that Court's reasoning was based on, inter alia, a deed can only be prosecuted within the time frame equal to the maximum sentence the crime of qualified homicide could carry, which in this case was 30 years imprisonment. The authorities noted that from 20 July 1972, the date the events occurred, to 20 July 2002, 30 years had passed, and on these grounds denied the appeal for *amparo* from the "no criminal prosecution" ruling that was handed down and upheld by the PGJP.

⁴ The State indicates that on 20 May 2002, Miguel Alfredo Calderón Moreno appeared at FEMOSPP to press charges for the death of his acquaintance, Joel Arriaga Navarro, indicating as the probable persons responsible for the deeds the former Governor of the state of Puebla, the former secretary of the Government, the former General Prosecutor of Justice, the former chief of police, the former president of the Republic at that time, and the former secretary of Governance. On 22 May 2002, Judith García Barrera appeared to press charges for the same deeds, accusing the same individuals mentioned above.

⁵ The State indicates former President of Mexico, Vicente Fox Quesada employed various measures to prosecute crimes committed against persons involved in social and political movements in the past. On 4 January 2002, the Office of the General Prosecutor of the Republic designated the Special Prosecutors to attend to facts that probably constituted federal crimes committed directly or indirectly by public servants against individuals involved with social and political movements in the past. FEMOSPP is the authorities empowered to investigate persons tied to social and political movements during the 1970s and 1980s. Its function is to address the demands for clarification of deeds and of justice, both for persons who allegedly disappeared because of political or social motives or because of motives related to student movements.

19. The petitioner is empowered by Article 44 of the American Convention to lodge petitions with the Commission. The petition names natural persons as the alleged victims, on behalf of whom the State of Mexico has committed to respect and guarantee the rights enshrined in the American Convention.

20. The State of Mexico has been a member state of the Organization of American States (OAS) since 23 November 1948, when the State deposited the ratification instrument of the Charter of the Organization of American States; and therefore is subject to the jurisdiction of the Commission as it relates to individual complaints, given that this jurisdiction was established in 1965 by statute. Furthermore, the State of Mexico has been subject to the jurisdiction of the Commission in terms of the American Convention since 24 March 1981, the date on which it deposited its accession instrument. Consequently, the Commission has *ratione personae* jurisdiction to examine this petition.

21. Some of the facts that allegedly violate human rights took place prior to 24 March 1981, the date the State deposited its instrument of accession with the American Convention. Therefore, the source of applicable law is the American Declaration. Both the Court and the Commission have ruled that the American Declaration is a source of international obligations for OAS member states.⁶ Once Mexico ratified it, the American Convention became the primary source of legal obligations, applicable to the rights and obligations explicitly mentioned by the petitioner, among others.⁷ Consequently, the IACHR has *ratione temporis* jurisdiction insofar as the obligation to respect and guarantee rights protected was in force for the State on the date the alleged facts contained in the petition took place, initially under the American Declaration and, subsequently, under the American Convention.

22. Therefore, the Commission decides to declare the petition inadmissible as it relates to Article 4 of the American Convention, given that the death of Joel Arriaga Navarro occurred before it went into force for Mexico.

23. The Commission has *ratione loci* jurisdiction to examine the petition because it contains allegations of facts that could be violations of rights protected by the American Declaration and the American Convention, which took place within the territory of a party State to those instruments. Lastly, the Commission has *ratione materiae* jurisdiction because the petition refers to complaints filed over the violation of human rights protected by the American Declaration of the Rights and Duties of Man and by the American Convention.

B. Admissibility requirements

1. Period for lodging the petition

24. Article 46(1)(a) of the American Convention provides that in order for a complaint submitted to the Inter-American Commission to be admissible, under Article 44 of the Convention, one must first have pursued and exhausted domestic remedies, in keeping with generally recognized principles of international law. Also, according to Article 32.2 of the Commission's Rules of Procedure, "In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case".

⁶ See, Inter-American Court of Human Rights, Consultative Opinion OC-10/89, *Interpretación de la Declaración Americana de los Derechos y Deberes del Hombre dentro del marco del artículo 64 de la Convención Americana sobre Derechos Humanos* [Interpretation of the American Declaration on the Rights and Duties of Man within the framework of Article 64 of the American Convention on Human Rights], 14 July 1989, Ser. A. No. 10 (1989), paragraphs 35-45; IACHR, James Terry Roach and Jay Pinkerton (United States), Case 9647, Res. 3/87, 22 September 1987, Annual Report 1986-1987, paragraphs 46-49, Rafael Ferrer-Mazorra *et al.* (United States), Report No. 51/01, case 9903, 4 April 2001. See also, Article 20 of the Statutes of the Inter-American Commission on Human Rights.

⁷ *Ibid.*, paragraph 46.

25. In this case, the IACHR observes that the facts of this claim took place beginning July 20, 1972 and the petition was received by the IACHR on May 16 2002. Without prejudice to the difficulties alleged in exhausting possible domestic remedies, the Commission observes that the Petitioner has turned to the system of individual petitions 30 years after the events took place. In light of said extensive lapse, the Petitioner has not presented to the Commission any arguments that explain or justify that is was reasonable. In view of the foregoing considerations, the Commission concludes in this case that the requirement stipulated in Article 46(1)(b) of the American Convention, regarding timely submission of the petition, was not met⁸.

26. The Commission determines that it is not necessary to consider the other admissibility requirements provided for in the American Convention.

V. CONCLUSIONS

27. In light of the arguments of fact and law set forth above, the Commission considers that the petition is inadmissible under Article 46(1)(b) of the American Convention, and, accordingly,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition inadmissible under Article 46(1)(b) of the American Convention.
2. To notify the parties of this decision.
3. To make the instant report public and publish it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 4th day of the month of November, 2011.
(Signed): Dinah Shelton, President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commissioners.

⁸ IACHR, Inadmissibility Report No. 159/10. Petition 1250-06, Iris Martinez and Others, Uruguay, November 1st 2010, para. 44.