

OEA/Ser.L/V/II.
Doc. 24
11 March 2019
Original: Spanish

REPORT No. 21/19
PETITION 578-07
REPORT ON ADMISSIBILITY

VÍCTOR EMMANUEL TORRES LEYVA AND FAMILY
MEXICO

Approved electronically by the Commission on March 11, 2019.

Cite as: IACHR, Report No. 21/19. Petition 578-07. Admissibility. Víctor Torres Leyva and family. Mexico. March 11, 2019.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Alma Patricia Torres Leyva and Antonio Javier Torres Leyva ¹
Alleged victims:	Víctor Emmanuel Torres Leyva and family ²
Respondent State:	Mexico ³
Rights invoked:	Articles 4 (life), 5 (humane treatment), 8 (fair trial), 11 (privacy), 13 (freedom of thought and expression), 14 (reply), 17 (family), 22 (movement and residence) and 25 (judicial protection) of the American Convention on Human Rights, ⁴ concerning Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof

II. PROCEDURE BEFORE THE IACHR⁵

Filing of the petition:	May 9, 2007
Additional information received at the stage of initial review:	October 29, 2008 and August 26, 2009
Notification of the petition to the State:	February 5, 2013
State's first response:	August 5, 2013
Additional observations from the petitioner:	December 12, 2013 and July 13, 2018
Additional observations from the State:	December 13, 2016
Notification of the possible archiving of the petition:	June 14, 2018
Petitioner's response to the notification regarding the possible archiving of the petition:	July 13, 2018

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

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 4 (life), 5 (humane treatment), 8 (fair trial), 11 (privacy), 13 (freedom of thought and expression), 14 (reply) and 25 (judicial protection) of the American Convention, concerning Article 1.1 (obligation to respect rights) thereof

¹ On March 24, 2008 the Commission of Human Rights of the Federal District was included as a co-petitioner, and on September 30, 2009 it informed its withdrawal.

² Ms Alma Patricia Torres Leyva and Mr. Antonio Javier Torres Leyva, siblings of Mr. Víctor Emmanuel Torres Leyva.

³ In accordance with Article 17.2.a of the IACHR Rules of Procedure, Commissioner Joel Hernández García, a Mexican national, did not partake in the discussion or the decision on this matter.

⁴ Hereinafter "Convention" or "American Convention."

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

Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, October 23, 2007
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. The petitioners assert that the State of Mexico is responsible for human rights violations against Mr. Víctor Emmanuel Torres Leyva (hereinafter “Mr. Torres Leyva”) and his next-of-kin for: i) causing Mr. Torres Leyva’s death; ii) failing to duly investigate the actions of all the police officers involved in his death and establishing the facts; iii) failing to sanction all the persons involved in his death, and iv) revictimizing his family and tarnishing the name and honor of the deceased and his next-of-kin.

2. According to the petitioners, the morning of August 19, 2005, Mr. Torres Leyva was driving home when dozens of police cars began to chase him for allegedly driving on the wrong-way. They indicate that, according to an account of the facts given by the police, officers requested Mr. Torres Leyva to stop his car and, as he did not stop, they opened fire on his car. The petitioners affirm that 27 shots hit the car, four of which hit and killed Mr. Torres Leyva.

3. Considering that there was a disproportionate use of force and that Mr. Torres Leyva’s death was a murder, on August 20, 2005, his next-of-kin filed a complaint to the Commission of Human Rights of the Federal District (“CDHDF”). On December 22, 2005, the CDHDF found that the state officers were liable for the arbitrary, illegal and summary deprivation of Mr. Torres Leyva’s life, and made the following recommendations to the authorities: i) to investigate and, if applicable, file the applicable administrative charges against the officer who gave the order to chase the alleged victim’s car and against the officers involved in the chase and caused Mr. Torres Leyva’s death; ii) to assess the effectiveness of police training courses regarding the use of force and the use of firearms; iii) to redress his next-of-kin and undertake the necessary actions to restore and defend Mr. Torres Leyva’s name and reputation; and iv) that the Ministry of Public Security (“SSP”) apologize to his next-of-kin in public.

4. Simultaneously, on August 19, 2005, a preliminary investigation was filed on the facts. In the framework of this investigation, the 34 police officers that had participated in the chase were brought before the Public Prosecutor’s Office. The results of sodium rhodizonate tests indicated that six officers had fired their guns. Moreover, ballistics tests were used to determine the trajectory of the projectiles fired by those officers. The results of these tests led to the indictment of four police officers on the charge of aggravated murder. However, some of the officers who had fired their guns were not indicted because the tests did not establish the trajectory of their gunshots and they contended that they had fired into the air.

5. On August 11, 2006, three of the four accused officers were sentenced to 27 years and six months in prison for aggravated murder to the detriment of Mr. Torres Leyva. Each convict and the Prosecutor’s Office appealed the trial court’s decision, but on November 9, 2006, the Superior Court of Justice of the Federal District upheld that decision. The three convicts filed writs of *amparo* and, on March 28, 2007, the court acquitted two of them. It considered that the evidence proved that they had fired at the car, but that there was nothing to indicate that their shots had hit Mr. Torres Leyva. On the other hand, concerning the other convict’s petition for *amparo*, the Superior Court found that the court of appeals should reconsider the evidence and issue another resolution. As a result, on October 23, 2007, the Superior Court of Justice of the Federal District issued a new resolution by which it upheld the convicted officer’s sentence because his gunshots caused Mr. Torres Leyva’s death, and sentenced him to 27 years and five months in prison.

6. The petitioners argue that although a police officer was convicted for the murder of Mr. Torres Leyva, authorities failed to undertake a diligent and transparent investigation, and several aspects remain unclear. In this regard, they claim, *inter alia*, that: i) more than six hours elapsed between Mr. Torres Leyva’s death and the notification of his death to his family; ii) the crime scene was possibly altered given that

one of the officers that had participated in the chase was in charge of preserving the crime scene; iii) it remains unclear who gave the order to fire at the car; iv) it remains unclear why the officers submitted 98 ammunition cartridges less than those that they had received at the beginning of their workday on the day of Mr. Torres Leyva's death ; v) it is unclear at what distance the car and Mr. Torres Leyva were shot; vi) authorities did not take the statement of the detainees, being were inside the police cars that took part in the chase, were eyewitnesses of the facts; vii) it remains unclear why the driver's seat had no bloodstains if the police asserts that Mr. Torres Leyva was shot while he was driving; viii) it is unclear why there were bloodstains on the passenger seat and front door; ix) it is unclear why the police radio was off for about one hour right after the facts; and x) there are no details on the other officers' participation in the operation. Given these claims, the petitioners allege a lack of a diligent investigation and allege that several officers who participated in Mr. Torres Leyva's death remain unpunished and have never faced criminal or administrative prosecution. They refer to the State's obligation to advance *ex officio* the investigation procedure or the criminal action.

7. They also affirm that the State has failed to comply with the recommendations of the CDHDF and that, in trying to comply with them, it revictimized the family. In this regard, they claim that several public statements distorted the facts and tarnished his good name and honor and that the State has not taken the necessary measures to repair the damage. They submit that the SSP's public apologies were inappropriate and that, when they requested another public apology, the SSP asked the family members to write the apologies themselves. When they submitted their proposal, the SSP argued that it was unacceptable and disrespectful to said institution. They also assert that the public apologies were not published on the country's major media outlets as the family had requested. Finally, the petitioners submit that each time that they meet with the authorities to discuss measures of reparation, they realize that public officials do not prepare for these meetings hence are not acquainted with the case file. Consequently, the family members need to retell all the facts.

8. For its part, the State informs that the authorities duly investigated the circumstances of Mr. Torres Leyva's death. It claims that the 34 police officers participating in the chase were brought before the Public Prosecutor's Office and that the authorities undertook several tests (forensic, ballistic, photographic, land traffic, mechanical, chemical, sodium rhodizonate, and necropsy testing) as well as the statements of witnesses and potential persons responsible to determine the officers' responsibility for Mr. Torres Leyva's death. It alleges that the investigation results led to the prosecution of four police officers, three of whom were initially convicted. It informs that a higher court acquitted two of the defendants because of their appeals. Therefore, the State contends that the facts have been clarified and that the person responsible for the shots that hit Mr. Torres Leyva was sentenced for aggravated murder. According to the State, if the family members disagreed with the Public Prosecutor's decision to discontinue the investigation of the non-prosecuted police officers, they should have filed an appeal or an indirect *amparo* at that moment. Since the family did not appeal the decision, the Prosecutor's Office closed the investigation. Consequently, it affirms that the petition is inadmissible for lack of exhaustion of domestic remedies.

9. Also, the State submits that it followed the recommendation of the CDHDF because it paid for the material damage to the car and the funeral expenses. It also granted compensation to the family. Moreover, it claims that it has included guarantees of non-repetition by promoting better training for police officers concerning the use of force and that it publicly apologized for Mr. Torres Leyva's death at the institutional level and through the media. It argues that the damage has been duly redressed and that the petitioners intend to have the IACHR work as court of fourth instance because they are not satisfied with the domestic decisions.

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

10. The Commission takes note of the State's allegations about the lack of an appeal or an indirect *amparo* against the decision to close the investigation concerning the 30 police officers involved in the chase of Mr. Torres Leyva who were not prosecuted. However, it reiterates that whenever a petition concerns an alleged offense liable to prosecution *ex officio*, the domestic remedy to be exhausted is a criminal

investigation, which the State must initiate and advance.⁶ As a result, based on the information presented by the parties, the IACHR deems that domestic remedies were exhausted on October 23, 2007, when the Superior Court of Justice of the Federal District issued its second judgment and convicted an officer for Mr. Torres Leyva's death. In view of the foregoing and given that the exhaustion of remedies took place when the petition was already at the IACHR under study, the Commission believes that the instant petition meets the requirements established in Articles 46(1)(a) and 46(1)(b) of the American Convention.

VII. ANALYSIS OF COLORABLE CLAIM

11. The IACHR considers that the claims regarding the purported lack of a diligent investigation into Mr. Torres Leyva's death and the alleged non-prosecution of officers responsible and the lack of clarification of the events, if proven, could establish a violation of the rights enshrined in Articles 4 (life), 8 (fair trial) and 25 (judicial protection) of the American Convention, in accordance with Article 1.1 thereof, in connection with Mr. Torres Leyva. Likewise, the same allegations, if proven, could establish a violation of the rights enshrined in Articles 5 (humane treatment), 8 (fair trial) and 25 (judicial protection) of the American Convention, in accordance with Article 1.1 thereof, regarding Mr. Torres Leyva's next-of-kin.

12. The claims regarding the alleged lack of clarification of the facts as well as the lack of reparation concerning Mr. Torres Leyva's reputation, and the revictimization of his family members, if proven, may constitute a violation of the rights enshrined in Articles 11 (privacy), 13 (freedom of thought and expression) and 14 (reply) of the American Convention, regarding Article 1.1 thereof, concerning Mr. Torres Leyva and his next-of-kin.

13. On the other hand, the petitioners have not submitted elements to establish *prima facie* that a possible violation of the rights protected by Articles 17 (family) and 22 (movement and residence) of the American Convention.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 5, 8, 11, 13, 14 and 25 of the American Convention on Human Rights, in connection with Articles 1.1 and 2 thereof;

2. To find the instant petition inadmissible in connection with Articles 17 and 22 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 11th day of the month of March, 2019. (Signed): Esmeralda E. Arosemena Bernal de Troitiño, President; Antonia Urrejola, Second Vice President; Margarette May Macaulay, Francisco José Eguiguren Praeli, Luis Ernesto Vargas Silva, and Flávia Piovesan, Commissioners.

⁶ IACHR, Report No. 144/17. Petition 49-12. Ernestina Ascencio Rosario *et al.* Mexico. October 26, 2017, para. 6.