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REPORT No. 184/21
PETITION 81-11
REPORT ON ADMISSIBILITY

FRANCISCO JAVIER ESPINOSA ALMANZA AND HUGO ALBERTO
LÓPEZ VIDAL
MEXICO

Approved electronically by the Commission on August 30, 2021.

Cite as: IACHR, Report No. 184/21, Petition 81-11. Admissibility. Francisco Javier Espinoza Almanza and Hugo Alberto López Vidal. Mexico. August 30, 2021.

I. INFORMATION ABOUT THE PETITION

Petitioners:	Francisco Espinosa Granados, María Elena Vidal
Alleged victims:	Francisco Javier Espinoza Almanza and Hugo Alberto López Vidal
Respondent State:	México ¹
Rights invoked:	No specific provisions invoked

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition:	January 27, 2011
Additional information received at the stage of initial review:	February 24 and December 18, 2011; May 15, 2012; June 1, 2012; February 25, 2013; July 20 and June 24, 2015
Notification of the petition to the State:	May 16, 2016
State's first response:	August 14, 2017
Additional observations from the petitioner:	November 22, 2017; August 9, 2018; and July 22, 2019

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 on Human Rights ³ (deposit of instrument of ratification on August 21, 1990); and Inter-American Convention on Forced Disappearance of Persons (deposit of instrument of ratification on April 9, 2002)

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 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 19 (rights of the child) and 25 (judicial protection) of the American Convention, in relation to Articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof; Article I of the Inter-American Convention on Forced Disappearance of Persons
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of section VI
Timeliness of the petition:	Yes, under the terms of section VI

¹ Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner Joel Hernández García, a Mexican national, did not participate in the discussion or voting on this matter.

² The observations submitted by each party were duly transmitted to the opposing party.

³ Hereinafter "American Convention" or "Convention."

V. ALLEGED FACTS

1. The petitioners allege that on April 24, 2007, at 5:00 pm Francisco Javier Espinosa Almanza, a 17-year-old student and Hugo Alberto Lopez Vidal, 21 years old (“the alleged victims”) were forcibly taken in the city and state of Aguascalientes, Mexico, together with other persons, by a group of armed persons dressed in black. According to witnesses the abductors were apparently under the command of a soldier. According to the petitioners, the alleged victims have never been seen again.

2. The abduction and disappearance of the alleged victims were denounced to the Office of the Public Prosecutor of the State of Aguascalientes (*Procuraduría General de Justicia del Estado de Aguascalientes* or “PGJ”) and to the Office of the Public Prosecutor of the Republic (*Procuraduría General de la República* or “PGR”). Ultimately, the petitioners allege that these authorities have failed to carry out any adequate investigation into the events denounced; and that they are responsible of the undue delay of such investigations and the lack of prosecution or apprehension of the perpetrators.

3. The petitioners point out that the PGR opted to classify its investigation as confidential, which resulted in the failure to provide any updates when requested. They also inform that in 2009 they submitted a complaint to National Human Rights Commission of Mexico (*Comisión Nacional de Derechos Humanos de México* or “CNDH”) regarding the conduct of the criminal investigation undertaken by PGJ. The CNDH found in 2009 that the PGJ had failed to carry out the relevant and necessary steps to investigate the abduction and disappearance of the alleged victims, which led to a delay in clarifying or determining the facts.

4. According to the petitioners, the state and federal prosecuting authorities have claimed that they are continuing their investigations but have provided no information to confirm that those are ongoing. They further submit that they have written to other authorities, such as the Governor of Aguascalientes and the President of Mexico, to no avail so far. They further contend that their requests to the state and federal authorities for investigations into the facts constitutes an exhaustion of available remedies. In the alternative, they argue that the delay in completing such investigations constitutes a basis for an exception to the requirement to exhaust domestic remedies.

5. For its part, the State holds that the petition is inadmissible for failure to exhaust domestic remedies. It contends that the abduction and disappearance of the alleged victims has been under investigation by Mexican authorities and continues to be. The State acknowledges that the investigations have not resulted in identifying the whereabouts the alleged victims or in identifying or prosecuting those responsible; however, it points out that the duty to investigate is an obligation of means and not results. The State refers to investigations undertaken primarily by the PGR and the PGJ and mentions the intervention of the CNDH at the behest of the petitioners.

6. Regarding the PGR, the State identifies several investigative steps taken between 2013 and 2015, which included interviewing one of the petitioners on August 9, 2013; retrieving information from the PGJ on January 20, 2014 about the status of its investigation; obtaining DNA material from the families of the alleged victims on November 19 and 20, 2014; determining in December 2014 that the fingerprints of Hugo Alberto López Vidal were not in any government database; and confirming in May 2015 that the genetic profile of Hugo Alberto López Vidal’s family was not found in relevant DNA databases. The State also alludes to other steps undertaken by the PGR, such as a request made in May 2015 to the Federal Police to locate several persons thought to have information on what happened to the alleged victims; and the confirmation in July 2015 that the alleged victims were not incarcerated in any federal prison or detention facility.

7. As to the PGJ, the State asserts that it initiated an investigation in 2007 at the request of the petitioners and others, which is continuing. It further mentions that the PGJ has taken several investigative steps, which include obtaining the testimonies of various witnesses, both police and civilian; requesting the assistance and cooperation of the PGR, as well as other prosecuting authorities in other Mexican states; and identifying experts to take DNA samples from the families of the alleged victims.

8. Regarding the CNDH, the State notes that the petitioners filed a complaint on April 1, 2009, regarding alleged omissions by the PGJ in its investigation of the facts. In response to this complaint, on August 21, 2009, the CNDH sent its proposed recommendations (*propuesta de conciliación*) to the PGJ, which were accepted. The State indicates that the PGJ initiated certain administrative procedures in compliance with the recommendations⁴; and that the petitioners subsequently filed another complaint in 2010 against certain agents of the PGJ. The State submits that on October 26, 2010, the CNDH rejected the complaint for failure to meet the requisites of Article 5 of the law that governs the responsibility of state civil servants (*Ley de Responsabilidades de los Servidores Públicos de Aguascalientes*).

9. The State argues that it has taken steps to investigate, and that it is continuing to do so, in keeping with its international obligations. Further, the State contends that the petitioners may invoke *amparo* proceedings if the investigations do not result in criminal proceedings.

10. The petitioners generally reject the State's contentions and emphasize that the investigations have not been conducted in a prompt or expeditious manner. In this regard, they note the State's acknowledgement that the PGR did not take any substantive steps to investigate until July 2013, seven years after the abduction and disappearance of the alleged victims. The petitioners also reject the State's argument that the petition is inadmissible for failure to exhaust domestic remedies, and they point out that there has been an undue delay in conducting or completing the investigations. They stress the finding of the CNDH that no remedial steps were taken by the State with respect to the PGJ investigation.

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

11. The IACHR has previously established that whenever an alleged crime prosecutable *ex officio* is committed, the State is obligated to promote and further an expeditious criminal investigation; and that in such cases, the criminal process is the only adequate means to clarify the facts, and to prosecute and punish those responsible⁵. The State indicates that criminal investigations regarding this matter are still pending and that therefore the petition is inadmissible for failure to exhaust domestic remedies. It also contends that the petitioners have available to them *amparo* proceedings if criminal investigations are unsuccessful in resolving their complaints. However, the Inter-American Commission observes that it has been almost 14 years since the abduction and disappearance of the alleged victims; and that so far, the investigations have not served to clarify the facts or to prosecute or punish those responsible. The IACHR must emphasize that the State is under the duty to conduct an expeditious investigation, and that the petitioners are not required to exhaust additional domestic remedies like *amparo*. Therefore, the Commission concludes that the exception to the exhaustion of domestic remedies outlined in Article 46.2(c) of the Convention is applicable. Given the context and the characteristics of the petition referred to in this report, the IACHR deems that the petition was filed within a reasonable time and therefore the requirement on timeliness is met.

VII. ANALYSIS OF COLORABLE CLAIM

12. The instant petition includes alleges the abduction and forced disappearance of the alleged victims, one of whom was a child at the time; as well as the ineffectiveness and undue delay of the criminal investigations to clarify the facts and to identify, prosecute, and punish those responsible. After the examination of the elements of fact and law presented by the parties, the IACHR considers that the claims of the petitioners are not manifestly unfounded and require a substantive study on the merits since the alleged facts, if corroborated as true, could constitute violations of Articles 3 (juridical personality), 4 (life), 5 (humane treatment), 7 (personal liberty), 8 (fair trial), 19 (rights of the child) and 25 (judicial protection) of the American Convention, in connection with articles 1.1 (obligation to respect rights) and 2 (domestic legal effects) thereof; and of Article I of the Inter-American Convention on Forced Disappearance of Persons.

⁴ The State does not specify the nature of the administrative procedures undertaken.

⁵ See IACHR, Report No. 105/17. Petition 798-07. Admissibility. David Valderrama Opazo *et al.* Chile. September 7, 2017.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 3, 4, 5, 7, 8, 19 and 25 of the American Convention in connection with Articles 1(1) and 2 thereof; and Article I of the Inter-American Convention on Forced Disappearance of Persons.

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 30th day of the month of August, 2021. (Signed:) Antonia Urrejola, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño and Stuardo Ralón Orellana, Commissioners.