

REPORT No. 57/13¹

PETITION 12.229

ADMISSIBILITY

DIGNA OCHOA ET AL

MEXICO

July 16, 2013

I. SUMMARY

1. On November 2, 1999, the Inter-American Commission on Human Rights (hereinafter "Commission," "Inter-American Commission" or "IACHR") received a petition lodged by the Center for International Justice and Law (CEJIL) and the National Network of Civil Human Rights Organizations "All Rights for All" [*"Todos los Derechos para Todos y Todas"*], alleging the violation of several rights provided for in the American Convention on Human Rights (hereinafter "American Convention" or "Convention"), to the detriment of Digna Ochoa y Plácido, by the United Mexican States (hereinafter "State" or "Mexican State" or "Mexico"). Initially, the petition was filed in connection with a string of alleged threats and harassment perpetrated against the "Miguel Agustín Pro Juárez" Center for Human Rights (hereinafter "the PRODH Center"), in particular, for the alleged kidnapping and assaults sustained by Mrs. Digna Ochoa y Plácido on August 9 and October 28, 1999 respectively, and the failure of the State to effectively investigate. Following the death of Mrs. Digna Ochoa on October 19, 2001, Mr. Jesús Ochoa y Plácido, CEJIL and the National Association of Democratic Lawyers (hereinafter "the petitioners") continued in the proceedings as petitioners and made their case as to the death of Mrs. Digna Ochoa y Plácido and the failure to effectively investigate and elucidate the truth as to this incident.

2. During the processing of admissibility, the petitioners contended that the Mexican State is responsible for the violation of the right to life, to humane treatment, privacy and judicial protection, as recognized, respectively, in Articles 4, 5, 7, 11, 8 and 25 of the American Convention, all in connection with Article 1 and 2 of this instrument. Additionally, as a consequence of the alleged abduction of and assaults on Mr. Digna Ochoa in 1999, they alleged that the State is responsible for the violation of Articles 1, 2 and 3 of the Inter-American Convention to Prevent and Punish Torture. The petitioners assert that they have pursued and exhausted all available domestic remedies as provided in Article 46 of the Convention, however, these remedies were not adequate and effective

3. In response, the State contends that the petition should not be admitted because the petitioners did not exhaust domestic remedies. Specifically, because they did not challenge the decision to "not bring criminal action" (*no ejercicio de la acción penal*), which concluded that the death of Mrs. Digna Ochoa was a suicide. It further argues that the petitioners are seeking to make the IACHR a "fourth instance" to hand down a *de novo* review of the decision taken by the Office of the Public Prosecutor, which does not state facts that tend to establish violations of the American Convention.

4. Without prejudice to the merits of the matter, after reviewing the positions of the parties and in keeping with the requirements set forth in Articles 46 and 47 of the American Convention, the Commission finds the case admissible for the purpose of examining the alleged violation of the rights enshrined in Article 5, 8 and 25 of the American Convention, in connection with Article 1.1 of said international instrument. The IACHR further deems that the instant petition is inadmissible as to the alleged violations of Articles 2, 4, 7 and 11 of the American Convention and with respect to Articles 1, 2 and 3 of the Inter-American Convention to Prevent and Punish Torture. The Commission also decides to notify the parties of this decision, publish it and include it in the Annual Report to the OAS General Assembly.

II. PROCEEDINGS BEFORE THE COMMISSION

¹ Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, a Mexican national, did not take part in the discussion or the decision-making process of the instant case.

5. On November 2, 1999, the Commission received the petition and assigned it the number 12.229². On November 8, 1999, the IACHR forwarded the relevant portions of it to the Mexican State requesting that it submit its response within a period of 90 days. On March 20, 2000, the State submitted its response, the relevant portions of which were forwarded to the petitioners. Following the State's commitment to continue to report on progress in the investigation pertaining to the death of Mrs. Digna Ochoa, it submitted information on the following dates: March 18, 2002, April 16, 2002, May 13 and 17, 2002, April 17, 2003, April 21, 2003, July 3, 2003, July 29, 2003, December 8, 2003, August 20, 2004, April 14, 2009, September 9, 2009, April 8, 2011, January 18, 2013 and July 8, 2013. These communications were duly forwarded to the petitioners. The IACHR also received information from the petitioners on the following dates: February 26, 2003, May 27, 2003, October 16, 2003, December 16, 2003, December 16, 2003, August 25, 2005, November 21, 2008, June 22, 2009, July 14, 2009, March 18, 2011, December 9, 2011, January 31, 2012 and May 20, 2013. These communications of the petitioners were duly forwarded to the Mexican State.

6. Additionally, at the 113th, 114th, 116th, 117th, 118th, and 147th³ sessions of the IACHR held on November 16, 2001, March 7, 2002, October 18, 2002, February 26, 2003, October 20, 2003 and March 14, 2013, respectively, the IACHR summoned the parties to hearings pertaining to the instant petition.

7. On September 9, 1999, the Commission requested the State to adopt precautionary measures to protect the lives and physical integrity of Digna Ochoa y Plácido, Edgar Cortéz Morales and the staff of the PRODH Center. Subsequent to the granting of the precautionary measures, it came to the attention of the IACHR, among other situations, that: a) on September 14, 1999 two envelopes appeared in the main drawer of the receptionist's desk of the PRODH Center with new death threats; b) on October 13, 1999 another anonymous envelope appeared at the PRODH Center containing a bomb threat; c) on October 8, 1999, at approximately 10:00 P.M., Mrs. Ochoa was abducted from her house and, amidst threats and assaults, she was interrogated on the activities and personal information of every staff member of the PRODH Center, being held captive for approximately nine hours until dawn broke. Her assailants also tied her to her bed, placed an open gas tank beside her and left at approximately 7:00 AM; Mrs. Ochoa managed to untie herself and later found the briefcase that had been stolen from her when she was kidnapped on August 9, 1999; and d) on October 29, that same year, when the staff members of PRODH Center came to work in the Center premises, they found the main door unlocked and several things out of place, such as desks that looked like they had been rifled through, papers scattered across the floor and a file that said "Suicidal Power;" the petitioners also informed the Commission that the precautionary measures adopted by Mexico have not been effective.

8. Based on the foregoing, on November 11, 1999, the Commission submitted a request for provisional measures to the Inter-American Court of Human Rights on behalf of Digna Ochoa y Plácido, Edgar Cortéz Morales, Mario Patrón Sánchez and Jorge Fernández Mendiburu. On November 17, 1999, the Inter-American Court ordered the State of Mexico, among other operative measures, to:

1. [...] adopt, without delay, as many measures as may be necessary to protect the life and integrity of Digna Ochoa y Plácido, Edgar Cortéz Morales, Mario Patrón Sánchez and Jorge Fernández Mendiburu, members of the Miguel Agustín Pro Juárez Human Rights Center.
2. [...] adopt, without delay, as many measures as may be necessary to ensure that the persons who work at or go to the offices of the Miguel Agustín Pro

² Initially, the petition was filled alleging the violation of several rights provided for in the American Convention on Human Rights to the detriment of the members of "Miguel Agustín Pro Juárez" Center for Human Rights, particularly, the alleged threats and harassment perpetrated against Mrs. Digna Ochoa. Following the death of Mrs. Digna Ochoa the petitioners submitted their arguments as to the death of Mrs. Digna Ochoa y Plácido and the failure to effectively investigate and elucidate the truth as to this incident as well as the pain suffered by her family members. Therefore, according to the allegations of the petitioners in their communications the Commission finds that the alleged victims in the case are Ms. Digna Ochoa and her family members.

³ See hearings (audio and/video) at: <http://www.oas.org/es/cidh/audiencias/default.aspx?Lang=es>

Juárez Human Rights Center may perform their duties or business without risking their lives or personal integrity.

3. [...] investigate the events alleged in the petition that gave rise to the instant measures in order to uncover those responsible and punish them.

9. On August 28, 2001, the Inter-American Court lifted the provisional measures at the request of the Mexican State.⁴

Technical Verification Mission of the IACHR

10. At the hearing held during the 113th session, the proposal was made to the Commission for an independent expert selected by the IACHR itself to examine the preliminary investigation into the death of Mrs. Digna Ochoa. After the State and the petitioners reached a consensus on the independent expert to be appointed, the initial mission began on February 22, 2002 and was completed on March 2, 2002. Additionally, the State requested the IACHR to "appoint a team of experts to evaluate the investigations conducted by the Office of the Attorney General of the Federal District (PGJDF)." With the consent of the petitioners, on June 7, 2002, the IAHR informed the State that "it had accepted the suggestion to appoint independent specialists to conduct technical studies as agreed upon within the investigation of the matter of reference."

11. On October 3, 2002, the IACHR informed the petitioners and the State of the terms of reference of the technical evidence verification mission:

"it shall be conducted in the areas of forensic sciences, ballistics and forensic pathology. The result of the expert verification does not affect or bind in any way the decision that the IACHR may take on the matter that has been submitted for it to hear, which shall continue to be processed in keeping with the rules prescribed in the American Convention on Human Rights and the Rules of Procedure, and other applicable instruments."

12. Furthermore, prior to the commencement of the work of the team of experts for technical verification, the IACHR stated:

It is not up to the Inter-American Commission nor the International experts to determine the circumstances in which attorney Digna Ochoa died, nor to identify or try those who may be responsible, which are tasks exclusively of the responsibility of the Mexican authorities.

13. The mission visited Mexico City from January 11 until January 24, 2003 to perform the task entrusted to it.⁵ On June 16, 2003, the IACHR forwarded to the petitioners and the State the "Report of verification of the technical evidence in the criminal investigation into the death of Digna Ochoa y Plácido, conducted by the Office of the Special Prosecuting Attorney of the Office of the Attorney General of the Federal District of Mexico" prepared and submitted by the international verification mission.

III. POSITION OF THE PARTIES

A. The petitioners

14. Petitioners claim that Mrs. Digna Ochoa y Plácido was an accomplished human rights defender whose work had garnered her several national and international awards. They note that she was linked to the PRODH Center where she took part in defending cases of national consequence such as the massacre of "Aguas Blancas;" the "Massacre of Acteal" and the case

⁴ I/A Court H.R., *In the Matter of Digna Ochoa y Plácido et al v. Mexico*. Decision of the Court November 17, 1999, and Decision of the Court August 28, 2001.

⁵ The IACHR appointed Dr. Pedro Díaz Romero, international consultant of the Inter-American Commission and Coordinator of the Group of Experts; Mr. Alan John Voth, expert in ballistics of the Royal Canadian Mounted Police; and Dr. Maria Dolores Morcillo Méndez, specialist in forensic medicine at the National Institute of Forensic Medicine of Colombia.

of the human rights violations of ecologists Teodoro Cabrera and Rodolfo Montiel in the Sierra of Petatlán, Guerrero.

15. They assert that on August 9, 1999, Mrs. Digna Ochoa was kidnapped for a short time by unidentified individuals, who stole several personal items of hers. They contend that on September 3, 1999, written threats were sent to the PRODH Center and addressed to the staff of the Center. They claim that one of the threatening letters was written on one of Mrs. Digna Ochoa's own personal calling cards that had been unlawfully taken from her when she was kidnapped. They note that the foregoing events prompted the IACHR to issue precautionary measures on behalf of Mrs. Digna Ochoa and other staff members of the PRODH Center.

16. The petitioners claim that during September and October 1999, staff members of the PRODH Center received threatening letters and Mrs. Ochoa found a voter identification card at her residence that had been unlawfully taken from her during the kidnapping. They contend that on October 13, 1999, an anonymous message containing a bomb threat appeared at the PRODH Center. They further note that on October 28, 1999, Mrs. Ochoa was held for a few hours by unidentified individuals at her own residence, blindfolded, tied to her bed with an open gas tank left by her side. The petitioners allege that the day after this incident, members of the PRODH Center found a file in the office that said "Suicidal Power." They note that, as a result of the aforementioned incidents, the IACHR requested the Inter-American Court to order provisional measures on behalf of Mrs. Digna Ochoa and several staff members of the PRODH Center, which were issued under a decision on November 17, 1999 and remained in force until August 28, 2001.

17. They state that, on October 19, 2001, Mrs. Digna Ochoa y Plácido was found dead in her office. They note that it was established in the investigation report on the removal of the body that the body presented bruising injuries from fire arm projectile shots in the left temporal region, on the anterior-internal face of the left thigh and on the posterior face of the left thigh. It further stated that the body of Mrs. Ochoa presented "two irregular-shaped dark ecchymosis' on the anterior-internal face, middle third of the right thigh" and that it was established that a shot had been fired into one of the chairs that was located near the place where the body was found. They assert that the body of Mrs. Ochoa had red-color latex gloves on her hands, and a white powder, apparently flour, on both hands, was also scattered around the scene. They assert that a note was also found at the scene that read "PROS SONS OF BITCHES, IF YOU CONTINUE ANOTHER ONE WILL GET KNOCKED OFF, WARNING THIS IS NO LIE."

18. The petitioners note that in the forensic expert's report conducted by PGDJ experts on December 20, 2001, it was concluded that there was a struggle at the scene of the crime, because a button of Mrs. Ochoa's shirt was pulled off and her hairband was lying on the ground. They also claim that in the preliminary findings and reenactment of the events conducted by the PGJDF experts, it was established that Mrs. Digna Ochoa had been the victim of a homicide. Nonetheless, they assert that on June 28, 2002, one of the PGJDF experts conducted a psychological analysis of Mrs. Digna Ochoa and came to the conclusion that "she was in a vulnerable enough state to attempt to take her own life." They contend that according to the report of official experts, the suicide theory was boosted by the fact that the weapon used in the homicide was alleged to belong to Mrs. Ochoa herself.

19. The petitioners claim that the preliminary investigation was transferred on August 1, 2002 to a Special Prosecuting Attorney in order to specifically investigate the death of Mrs. Digna Ochoa. They allege that on May 6, 2003, the representative of the family of Mrs. Digna Ochoa offered forensic chemical and crime scene evidence to the experts, which was rejected on May 7, 2003, and they were required to clarify the purpose or objective that they were pursuing in offering such evidence. They claim that after clarifying the purpose of the evidence they were introducing, on May 19, 2003, the Office of the Special Prosecuting Attorney once again refused to accept said evidence noting that it should have been approved by the official experts previously. The petitioners note that despite the refusal to accept the additional evidence, the official experts determined that it would be irrelevant to examine the new

evidence. They note that on July 9, 2003, the Office of the Public Prosecutor stated that the additional evidence being offered was unnecessary.

20. The petitioners assert that subsequently, a new official experts report concluded with regard to the theory and the reenactment of events, that Mrs. Ochoa had "staged a suicide." They contend that based on the foregoing conclusion, on July 18, 2003, the Office of Special Prosecutor conferred with the Coordinators of the Office of the Public Prosecutor about the proposal to "not bring criminal action", and this proposal was approved on September 17, 2003. They note that on October 3, 2003, the family members, who had offered the new evidence, filed a motion for reconsideration of the decision with the Coordinator of Prosecuting Attorneys of the Office of the Public Prosecutor, which was denied on October 29, 2003, and the decision to "not bring criminal action" was authorized. They state that the same appellants filed for special constitutional relief through *amparo* proceedings against this ruling on November 19, 2003 before Chamber "B" of the First District Court for *Amparo* in Criminal Matters, which was denied on July 22, 2004. They further note that an appeal was filed against the denial of *amparo* with the Second Panel for Criminal Matters of the First Circuit Court, which was adjudicated on February 24, 2005, granting the constitutional relief (*amparo*) against the effects of the ruling of October 29, 2003.

21. They contend that under the *amparo* judgment, the decision giving the authorization to "not bring criminal action" was vacated and the expert evidence offered by the family members was admitted. They also state that on April 21, 2006, the experts nominated by the family members issued their respective opinions that it was likely that Mrs. Digna Ochoa had been the victim of a homicide.

22. The petitioners contend that in May 2006, the Office of the Public Prosecutor scheduled a hearing for the introduction of new evidence to be introduced by official experts. In light of this situation, they claim that the family members brought an appeal before the Seventh Chamber for Criminal Matters of the District Court arguing that the *amparo* had been granted in order to process the evidence introduced by them and not to hear additional evidence. They allege that on May 31, 2006, the Judge of the Seventh Chamber for Criminal Matters of the District Court denied the appeal and, therefore, on June 5, 2006, another appeal was filed, which was adjudicated by the Second Panel for Criminal Matters of the First Circuit Court in favor of the appellants, ordering the Seventh Chamber of the District Court to grant leave to appeal.

23. The petitioners note that on October 31, 2006, the Seventh Chamber of the District Court for *Amparo* in Criminal Matters ordered the expert evidence offered by the appellants to be admitted and that no additional evidence be introduced. Notwithstanding, the petitioners contend that, on May 12, 2007, after failing to conduct an adequate examination of the evidence offered by the family members, the Coordinator of Prosecuting Attorneys of the Office of the Public Prosecutor once again proposed to "not bring criminal action."

24. They allege that on August 19, 2007, Javier Torres Cruz and his uncle Isaías Torres, both peasant farmers from the state of Guerrero, made statements to the Office of the Prosecuting Attorney naming individuals involved in the murder of Mrs. Digna Ochoa, including, as the mastermind behind the crime, a local political boss and rancher of Sierra de Petatlán, Guerrero, who allegedly had Mrs. Digna Ochoa murdered for having uncovered a clandestine "saw mill" located on the *ejido* [community property] that was part of his property. They assert that after filing the complaint, Mr. Javier Torres was kidnapped and reappeared days later with signs of torture on his body. The petitioners contend that as a result of the aforementioned incidents, a request was made to the IACHR to issue precautionary measures on behalf of Mr. Javier Torres and his family and that, even though the IACHR did grant the measures that were requested, the State did not provide effective protection of the witness.

25. They allege that on September 17, 2007, the review unit of the Coordinating Office of Prosecuting Attorneys of the Office of the Public Prosecutor of the PGJDF rejected the proposal to "not bring criminal action" and issued instructions to continue the investigation. They note that on August 14, 2008, the preliminary investigation was transferred to the Central Office of

the Assistant Attorney General for Preliminary Investigations, and was ultimately sent to the Central Office of the Prosecuting Attorney for Homicide Investigations of the PDJDF.

26. The petitioners assert that on February 12, 2010, an alleged mastermind of the murder of Mrs. Digna Ochoa was arrested. They claim that the Office of the Public Prosecutor interviewed him and showed him three newspaper clippings that referred to his involvement, to which the alleged mastermind responded "that it was false and that I have nothing to add." The petitioners contend that the Office of the Public Prosecutor did not thoroughly interview him based on the version of the facts that appeared in the case file linking him to the incidents.

27. They argue that on August 20, 2010, the deputy of the Office of the Public Prosecutor proposed for the third time to "not bring criminal action." They state that the family members filed a motion for reconsideration of decision against this proposal. They note that on March 14, 2011, they were notified of the decision of the Coordinator of the Prosecuting Attorneys of the Office of the Public Prosecutor, which rejected their arguments and authorized for the third time the decision to "not bring criminal action." They note that they filed a new *amparo* claim for constitutional relief against this decision before the Seventh Chamber of the District Court for *Amparo* in Criminal Matters in the Federal District [of Mexico City], which was denied on August 19, 2011 stating that the obligation of the Office of the Public Prosecutor was to receive and examine evidence and that the Office of the Public Prosecutor still has the monopoly over bringing criminal actions.

28. The petitioners state that they pursued and exhausted all domestic remedies available to them as required under Article 46 of the Convention; however, these remedies were not adequate or effective. They claim that the State violated Articles 8 and 25 of the American Convention inasmuch as it did not ensure a serious and thorough investigation within a reasonable period of time, in order to determine the causes and circumstances of the threats leveled at Mrs. Ochoa and her eventual death. They contend that ever since the initial investigations, multiple irregularities linked to the examination of the crime scene and the handling of the body were committed and that the State has not duly investigated a variety of leads that emerged over the course of the investigation.

29. With respect to the irregularities at the scene of the crime, the petitioners note, among other things, that there were failures in the control over the scene of the crime; the experts made farfetched interpretations of their test results; the authorities did not establish whether the scene of the crime had been tampered with nor did they establish with accuracy what persons had entered the crime scene prior to the arrival of the assistant attorneys of the Office of the Public Prosecutor. As to the examination of the body of Mrs. Ochoa, they argue that no appropriate description was taken of the cadaveric phenomena nor of the body temperature in order to know whether or not the body had been moved from its original position. They contend that no detailed description of the injuries was recorded, such as those noticed on the thighs and neck, which would have made it possible to determine whether Mrs. Ochoa was assaulted prior to her death. They also claim that the exact spots where the blood was located was not determined either, nor was a suitable examination conducted either to verify whether the blood was the result of splattering as a consequence of the body being moved or of a sudden shot.

30. They assert that the authorities consistently refused to admit the evidence offered by the family as an aid in solving the case and that, consequently, the family members were compelled by the Office of the Public Prosecutor to pursue legal remedies to question the refusal to continue the investigation. They contend that the proceedings were marred by bias and partiality. Specifically, they claim that the Office of the Public Prosecutor issued several decisions to "not bring criminal action," and every time this was done, even though doubt was cast on these decisions by the additional evidence offered by the family members, the decision would be reviewed by the Office of the Public Prosecutor itself, which is the body of final review of the decision, and therefore the full range of evidence could not come to be examined in the case by any criminal court judge.

31. The petitioners allege that the official expert opinions supporting the theory of suicide are based on Mrs. Ochoa presenting a neurological disturbances; that in the library of her office a book dealing with issues of death was found and that she had given instructions to her sister as to how to dispose of her estate in the event of her death. The petitioners allege that that evidence is not technically enough to discard the theory of homicide and that said information was inappropriately leaked to the media. They argue that the authorities did not thoroughly investigate the origin of the weapon that caused the death of Mrs. Ochoa and that they arrived at the conclusion that the weapon belonged to her because she had mentioned to her brother that she had acquired a weapon in order to protect her residence. The petitioners claim that there is expert testimony that flatly rules out that Mrs. Digna Ochoa committed suicide because no exploded gunpowder residue was found on her hands or her gloves.

32. The petitioners contend that the Mexican State has violated Article 4 of the Convention to the detriment of Mrs. Digna Ochoa, because it did not create the necessary conditions to effectively ensure the enjoyment of this right and once she was dead, the State is responsible for several failures, irregularities and acts of negligence that prevented the true causes of her death and punishment of those responsible for it to be determined.

33. The petitioners further submit that the State violated Article 5 of the Convention, in light of the pain and suffering inflicted upon her family members as a result of the failure to effectively investigate and because it did not adequately investigate the threats that Mrs. Digna Ochoa had been subjected to. The petitioners assert that as a result of the failure to adequately investigate, the family has been compelled to shoulder the burden of proof and introduce expert evidence to disprove the groundless conjecture and speculation positing that Mrs. Digna Ochoa had committed suicide.

B. The State

34. The State recognizes that the case has been highly sensitive for Mexican society and the international community and reiterates its respect and recognition of the efforts of Mrs. Digna Ochoa y Plácido as a human rights defender. It notes that as soon as it learned of her death, it informed the IACHR of its commitment to investigate this incident. It asserts that it has participated in all of the hearings on the case and complied with reporting on progress made in the investigations and highlights how it was receptive to allowing experts appointed by the IACHR to become involved, which according to the State, shows transparency and that the investigation was conducted with strict adherence to the law.

35. The State claims that once the assaults made against Mrs. Digna Ochoa came to its attention, it provided adequate protection to Mrs. Ochoa and the offices of the PRODH Center, while the protection measures issued by the bodies of the Inter-American system were in force and, during that time, Mrs. Digna Ochoa accepted this protection. It contends that it adequately investigated the alleged threats leveled at her; however, an incident, such as the alleged kidnapping of Mrs. Digna Ochoa, that was reported to the Office of the Public Prosecutor almost one month after it occurred, is difficult to investigate. Additionally, with regard to Mrs. Digna Ochoa being held captive at her residence, the State notes that followed several investigation leads and undertook to obtain expert analysis in order to determine what happened. As to the threats on the PRODH Center, the State claims that based on the opinions from forensic experts, it was determined that, in light of an absence of any signs of forced entry into the premises, it was likely that the alleged culprits were persons close to the PRODH, who were aware of their comings and goings and schedules.

36. Following the death of Mrs. Digna Ochoa, the State notes that in order to investigate her death, a special prosecutorial unit was created, which exhausted all hypothesis of investigation, particularly, one linked to the alleged involvement of the military, another linked to the State of Guerrero, another to the social, family and personal circumstances of Mrs. Digna Ochoa and the possibility that she may have put an end to her own life. It specifically notes that, with regard to the alleged existence of a mastermind behind a murder, this story appeared in newspaper articles based on the testimony of an "anonymous" witness and that, additionally, at the time when said articles were released, the persons who were presumably

sent by the alleged mastermind to take the life of Mrs. Digna Ochoa had also been murdered. It stated that when Mr. Jesús Ochoa appeared and also filed a complaint against the same alleged mastermind, he did so based on "hearsay testimony" and, after the office of the prosecuting attorney undertook several inquiries with the State of Guerrero, it established that there was no apparent reason or motive to presume that the person accused of being the alleged mastermind could have ever viewed his interests prejudiced by Mrs. Ochoa professional pursuits.

37. The State asserts that even though some mistakes may have been made during the investigation, they were detected and did not have any bearing on how the case unfolded and concluded. It notes that during the investigation, more than 1500 steps were taken to gather evidence, which included 282 statements, 269 expert examinations and 595 reports from the police and other authorities.

38. The State argues that it has laid out in detail the motives, legal reasons and grounds that led it to determine that the cause of death of Mrs. Digna Ochoa was suicide. According to the State, the theory of suicide, which was the finding of the Office of the Public Prosecutor, is supported by a psychodynamic study of Mrs. Digna Ochoa's personality, based on material that made it possible to establish a "psychodynamic logic" based on analysis of different documents that were gathered, such as her personal diary, correspondence, interviews and other significant elements, in combination with the scientific and technical examination of the evidence gleaned from the preliminary investigation which proved without a shadow of a doubt that it was not a homicide.

39. It contends that the alleged tampering with the scene of the crime cannot be attributed to the investigating authority inasmuch as the first person to arrive on the scene was an individual who identified himself as a medical doctor and inspected the body of Mrs. Ochoa y Plácido prior to the authorities doing so. It argues that the expert testimony offered by the petitioners did not comport with the facts, their approach was based on an erroneous theory and they committed methodological errors in collecting their evidence and, therefore, their evidence lacked technical scientific value. It claims that in comparing and contrasting the expert testimony offered by the family members to the other evidence that was collected during the preliminary investigation conducted by the Office of the Public Prosecutor, no evidence can be found to support the theory of homicide.

40. The State provided a similar account to the one provided by the petitioners as to the different prosecutorial and judicial decisions that led to the Office of the Public Prosecutor's determination to "not bring criminal action." It claims that said remedies were properly heard respecting the right to due process of the law and that just because in the end the petitioners did not win the day, does not mean that there was a violation of the American Convention.

41. It asserts that the decisions of the Office of the Public Prosecutor can be subject to judicial oversight, which was always available to the family members during the entire proceeding to challenge any acts of the PGJDF that it deemed prejudicial to its rights. Specifically, the State maintains that the Federal Judge who denied on August 19, 2011, the latest *amparo* request for constitutional relief, did so on the basis of legal deficiencies on the part of the petitioners, inasmuch as they raised the same arguments as they had done for the "motion for reconsideration", without laying out any logical and legal reasoning to support the concepts of violation of rights or the specific reasons why the decision of March 14, 2011 infringed their rights.

42. The State claims that in the latest *amparo* ruling, after examining the exhibits, the judge drew the conclusion that based on the analysis that had been conducted by the Office of the Public Prosecutor, the claims of the family members were erroneous as to the involvement of a third assailant at the scene of the crime, as well as the alleged *ante mortem* injuries on the body of Mrs. Digna Ochoa. The State notes that in the view of the authority in charge of the investigation, the different expert witness opinions that were offered during the investigation is not evidence in and of itself, but is rather a group of technical opinions, which is useful as

guidance at the discretion of the authority. However, the State argues that such testimony pointing in a particular direction is by no means compelling.

43. The State submits that the *amparo* proceeding judge examined all of the different statements, testimonies and expert opinions appearing in the case investigation file, specifically citing the relevant portions that address the reasons for disagreement put forth by the appellant. It notes that the judge fulfilled his duty by citing both the arguments of fact and of law on which the investigating authority based its decision.

44. It argues that the petition must be found inadmissible because the petitioner did not exhaust the remedies available to him in the domestic legal system. It notes that the motion for review of the denial of the *amparo* was available to the petitioners, and that it is a domestic remedy that is suitable and effective to keep the investigation open. However, the petitioners inexplicably did not challenge the decision, which culminated with the *amparo* decision and that is why this latest decision became *res judicata* after a period of ten days elapsed from the date that the family members were notified of the decision. The State further alleges that the petition must be found inadmissible as well because the IACHR may not supersede the interpretations and rulings of domestic courts with its own. The State raises the point that an unfavorable ruling is insufficient to find a petition admissible since the decision was not arbitrary nor did it tend to establish violations of the rights set forth in the American Convention.

45. The State maintains that over the course of the investigation the conduct of the prosecutorial bodies and the judicial apparatus adhered to the standards set by the Commission and has even allowed for the scrutiny of domestic proceedings by international experts with regard to all evidence of the preliminary investigation.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence of the Inter-American Commission *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae*

46. The petitioners are entitled, in principle, under Article 44 of the American Convention to lodge petitions before the Commission. The petition identifies as the alleged victims individuals, for whom the Mexican State undertook to respect and ensure the rights enshrined in the American Convention. As for the State, the Commission notes that Mexico has been a State Party to the American Convention since March 24, 1981, when it deposited the respective instrument of ratification. Likewise, Mexico has been a party to the Inter-American Convention to Prevent and Punish Torture since June 22, 1987. Therefore, the Commission is competent *ratione personae* to examine the petition. The Commission is also competent *ratione loci* to hear the petition, inasmuch as violations of rights protected in the American Convention are alleged therein to have taken place within the territory of Mexico, a State Party to these treaties.

47. The Commission is competent *ratione temporis* because the obligation to respect and ensure the rights protected in the American Convention was already in effect on the State at the time when the facts alleged in the petition took place. Lastly, the Commission is competent *ratione materiae* being that the petition charges potential violations of human rights protected under the American Convention and the Inter-American Convention to Prevent and Punish Torture.

A. Other Admissibility Requirements

1. Exhaustion of domestic remedies

48. In order for the IACHR to admit a petition, the requirement of prior exhaustion of available domestic remedies, as prescribed in Article 46.1.a of the American Convention, must be met in accordance with generally recognized principles of international law. Article 46.2 of the American Convention provides that the prior exhaustion of domestic remedies requirement

shall not be applicable when the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated, the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them or when there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

49. In the instant case, the Commission notes that the State contends it has properly investigated the facts pertaining to the petition and that domestic remedies have not been exhausted because, after the *amparo* decision of August 19, 2011, a “motion for review” of judgment was available to the petitioners, which in the judgment of the State, constitutes a simple and accessible remedy that could have been pursued by the family members in order to challenge the *amparo* ruling and reopen the investigation. The petitioners, however, argue that the State has not diligently investigated the alleged attacks, which took place prior to the death of Mrs. Digna Ochoa and that remedies have been exhausted with regard to the investigation conducted into her death.

50. In view of the parties’ allegations, the IACHR must first clarify what domestic remedies must be exhausted in a case such as the instant one, in light of the legal precedents of the Inter-American system. According to precedents set by the Commission, whenever a alleged criminal offense is committed that is subject to ex officio prosecution, the State has the obligation to bring forward and further an investigation and that, in those instances, this is the suitable procedure to clarify the facts and, as the case may warrant, to bring those responsible to trial and establish the appropriate criminal sanction.⁶ Concretely, in cases such as this one, the Commission notes that the European Court has also held that authorities are obligated to investigate the circumstances in which deaths occur, particularly when a suicide or a homicide is involved.⁷

51. The IACHR notes that in the instant case, the State brought forward an investigation into the alleged abductions of and assaults on Mrs. Digna Ochoa, as well as into the circumstances of her death, and these incidents could entail violations of fundamental rights such as the right to life and humane treatment and, in domestic law, amount to criminal offenses subject to ex officio prosecution. Consequently, in the view of the Commission, independently of the findings reached by the investigating authority, this investigation was brought on the State’s own initiative, which must be considered for the purpose of determining the admissibility of the instant claim.

52. As reported by the parties, regarding the investigation into the alleged abductions of and assaults on Mrs. Digna Ochoa on August 9 and October 28, 1999, the IACHR notes that even though the State reported on several steps it took in a preliminary investigation upon learning of these crimes, in the course of the processing of admissibility, it has not reported on any further progress in the investigations and the possible link thereof to the subsequent death of Mrs. Digna Ochoa in the more than ten years that have elapsed since her death occurred and, therefore, said circumstances, solely for purposes of admissibility, would constitute prima facie evidence of unwarranted delay in the investigations into that count of the claim.

53. Moreover, as to the investigation conducted into the death of Mrs. Digna Ochoa, the Commission notes that there is no dispute between the parties that after the denial of the *amparo* claim brought by the family members, on August 19, 2011, the decision of the Office of the Public Prosecutor to “not bring criminal action” brought to an end the investigation, which had been furthered by the State, at the point in time when the case became *res judicata*. Taking into account that the investigation into the death of Mrs. Digna Ochoa was brought forward and furthered by the State and that it is closed, the Commission concludes that the prior exhaustion requirement has been met.

⁶ IACHR, Report No. 99/09, Petition 12.335, *Gustavo Giraldo Villamizar Durán*, Colombia, October 29, 2009, par. 33.

⁷ Concretely, in the case of *Masneva v. Ukraine*, pertaining to the alleged death of Mr. Marnev as a result of a suicide, the Court determined that “the authorities had the procedural obligation to investigate the circumstances of Mr. Masnev, particularly, to determine whether a murder or a suicide had taken place.” Cfr. ECHR, *Masneva v. Ukraine*, no. 5952/07, § 52.

54. Regarding the motion to review, as raised by the State, the Commission notes that it is a remedy that would be pursued against the decision denying the *amparo* claim filed by the family members to challenge the decision to “not bring criminal action” and, therefore, it is of a special or extraordinary nature. Additionally, the effect of this remedy, in the event that they had won, could have been to reopen the investigation. The Inter-American Court has held that even though all criminal investigations must fulfill several legal requirements, the rule of prior exhaustion of domestic remedies must never lead to a halt or delay that would render international action in support of the defenseless victim ineffective.⁸ Moreover, the IACHR has held that while in some instances special or extraordinary appeals or remedies are suitable for addressing human rights violations, as a general rule, the only remedies that need be exhausted are those whose function, within the domestic legal system, is appropriate for providing protection to remedy an infringement of given legal right.⁹

55. Taking into consideration that as a general rule of thumb, an investigation into the alleged death of a person must be conducted promptly in order to protect the interests of the victims, preserve the evidence and even safeguard, as the case may be, the rights of everyone in the context of the investigation who may be suspect, the Commission considers that the procedural burden to keep the investigation open should not be shifted to the family members by compelling them to pursue remedies of an extraordinary nature, such as the motion for review, in order to assert their claim. The Commission notes that for the more than 10 years that the investigation has been open, the Office of the Public Prosecutor has had more than sufficient opportunity to investigate and clarify the facts and arrive at a final conclusion and that, additionally, the next-of-kin of Mrs. Ochoa actively took part over the course of the whole investigation challenging both the decision to “not bring criminal action” as well as other decisions of the prosecutorial authorities. Consequently, the motion for review is not a suitable remedy for the purposes of examining the admissibility of the instant case.

56. Accordingly, based on the foregoing explanation and given the profile of the instant case, the Inter-American Commission finds that the remedies provided for by Mexican legislation have been exhausted and rules that the petition under consideration does meet the requirements prescribed in Article 46 of the Convention.

2. Timeliness of the Petition

57. Pursuant to Article 46.1.b of the American Convention, in order for a petition to be admitted, it must be lodged within a period of six months from the date on which the alleged victim was notified of the final judgment exhausting domestic remedies. In the instant case, the IACHR received the petition regarding the alleged violation of the rights of Mrs. Digna Ochoa on November 2, 1999, after the alleged acts of assault were perpetrated against her and prior to her death. The Commission notes that during the processing of admissibility, both the State and the petitioners have been providing information on developments in the investigations. Consequently, the Commission deems that the requirement prescribed in Article 46.1.b of the Convention pertaining to the deadline for submission has been met.

3. Duplication and Res Judicata in International Proceedings

58. Nothing in the case file indicates that the subject of the petition is pending decision in another international settlement proceeding, or that it duplicates a petition already examined by this or any other international body. Therefore, the requirements of Articles 46.1.c and 47.d have been met.

4. Colorable Claim

⁸ IA/Court of HR, *Case of Velásquez Rodríguez. Preliminary Objections*. Judgment June 26, 1987. Series C No. 1, para. 93.

⁹ IACHR, Report No 51/03, case 11.819, Christian Daniel Domínguez Domenchetti (Argentina), October 24, 2003, paragraph 45; IACHR, Report No 68/01 Case 12.117, Santos Soto Ramírez et al (Mexico) June 14, 2001, paragraph 14; IACHR, Report No 83/01 Case 11.581, Zulema Tarazona Arriate et al (Peru) October 10, 2001,

59. For the purposes of admissibility, the Commission must decide whether the petition states facts that could tend to establish a violation, as provided in Article 47.b of the American Convention, and whether the petition is “manifestly groundless” or “obviously out of order,” in accordance with paragraph (c) of the same Article. The standard for evaluating these requirements is different from the one used to judge the merits of a complaint. The IACHR must undertake a *prima facie* evaluation to determine whether the complaint demonstrates an apparent or potential violation of a right protected by the American Convention, but not whether such a violation occurred. Such an evaluation is a summary review that does not prejudice or advance an opinion on the merits.

60. Neither the American Convention nor the Rules of Procedure of the Inter-American Commission on Human Rights requires petitioners to identify the specific rights allegedly violated by the State in matters submitted to the Commission, even though the petitioners may do so. However, it is the duty of the Commission, in following the system of legal precedents, to determine in its admissibility reports, what provision of relevant Inter-American instruments is applicable and could be concluded to have been violated, should the alleged facts be proven by means of sufficient evidence and legal argument.

61. In this regard, the IACHR notes that the investigation into the death of Mrs. Digna Ochoa y Plácido has been open for more than 10 years. The petitioners allege that during the investigation several irregularities were committed that have impeded a determination of the truth and affected the relatives of Mrs. Ochoa. These irregularities include the failure to investigate the threats and assaults prior to the death of Mrs. Ochoa, irregularities at the scene of the crime and in the investigation of logical leads that emerged in the investigation. The Commission notes as well that the petitioners claim that the evidence offered by them during the investigation was repeatedly rejected; that the expert opinions appearing in the case file are contradictory and that the investigating authority acted with partiality in the evaluation thereof. The Commission also notes that the petitioners have contended that no judge has been able to evaluate the evidence in the case file and that the final decision was taken by the investigating authority, which recommended and authorized on several occasions to “not bring criminal action,” even though the investigation had yielded information on individuals who testified to knowing about the alleged perpetrators of the murder of Mrs. Ochoa.

62. The Commission does not concur with the State in its claim that in analyzing the merits of this petition it would be acting as a “third instance,” thus overstepping the sphere of its competence. In this regard, the IACHR reiterates that “the Commission cannot review the judgments issued by the domestic courts acting within their competence and with due judicial guarantees,”¹⁰ nor “serve as an appellate court to examine alleged errors of internal law or fact that may have been committed by the domestic courts acting within their jurisdiction,”¹¹ however, as part of its mandate to ensure observance of the rights provided for in the Convention, the Commission is necessarily competent to find a petition admissible and examine the grounds thereof, when the petition involves a domestic decision that is alleged to not adhere to the principles of due process of the law, or is an apparent violation of any other right protected by the Convention.

63. Additionally, the Commission notes that in similar cases pertaining to due diligence in the investigation of deaths where the theory of the investigating authority is suicide and the petitioners allege irregularities in the investigation, the European Court of Human Rights has found admissible and heard the merits of the petitions establishing that there is a positive obligation of the State to conduct an effective investigation of the circumstances of what appears to be a suicide.¹² The IACHR has also found admissible a petition alleging violations in

¹⁰ See, in general, IACHR, Report Nº 101/00, Case 11.630 Arauz et al (Nicaragua), October 16, 2000, in *Annual Report of the IACHR, 2000*, paragraph 56, citing IACHR, Report Nº 39/96, Case 11.673, Marzioni (Argentina), October 15, 1996, in *Annual Report of the IACHR, 1996*, paragraphs 50 and 51.

¹¹ IACHR, Report Nº 7/01, Case 11.716 Güelfi (Panama), February 23, 2001, Report Nº 39/96, Case 11.673, Marzioni (Argentina), October 15, 1996, in *Annual Report of the IACHR, 1996*, paragraphs 50 and 51.

¹² So, for example, the European Court has found a case admissible in which the theory of the investigating authority was suicide noting that one of several obligations of the State is “an effective investigation into the circumstances of what appears to be a suicide” See ECHR, *Sergey Shevchenko vs. Ukraine*, no. 32478/02, § 56. Additionally, in the case of *Masneva v. Ukraine*, the European Court held that in examining the merits of this type of case, it must be

the investigation into a violent death for which the theory of the investigating authority is suicide.¹³

64. Accordingly, the Commission finds that based on the submissions of both parties, the allegations of the petitioners are not “manifestly groundless” nor “obviously out of order.” Therefore, in keeping with precedents and the arguments of the parties in the instant case, it finds that the arguments put forth regarding the alleged violations of the right to judicial protection and a fair trial, as well as the right to humane treatment, should they be proven during the merits stage, could tend to establish a violation of the rights protected under Articles 5, 8, 25 and 1.1 of the American Convention.

65. However, the IACHR finds that the petitioners have not put forward arguments of fact or law to substantiate and presume in this stage of the proceedings, an alleged violation of the right to life, personal liberty and privacy, as enshrined in Articles 4, 7 and 11 of the American Convention on Human Rights and the duty to adopt domestic measures as protected under Article 2 of the same instrument. Likewise, the Commission finds that the petitioners have not offered arguments that could tend to establish alleged violations of Articles 1, 2 and 3 of the Inter-American Convention to Prevent and Punish Torture.

V. CONCLUSIONS

66. The Commission concludes that it is competent to hear the merits of this case and that the petition is admissible in keeping with Articles 46 and 47 of the American Convention and decides to proceed to the analysis of the merits with regard to the alleged violation of Articles 5, 8 and 25 of the American Convention, in connection with Article 1.1 of said international instrument, with respect to Mrs. Digna Ochoa y Plácido and her next-of-kin. In the merits stage, the IACHR shall assess, to the extent that it may be relevant, the results of the “Report on the verification of the technical evidence in the criminal investigation into the death of Digna Ochoa y Plácido, conducted by the Office of the Special Prosecutor of the Office of the Attorney General of the Federal District of Mexico” prepared and submitted by the international verification mission.

67. Based on the foregoing arguments of fact and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To find the instant petition admissible as to the alleged violations of the rights recognized in Articles 5, 8 and 25 of the American Convention, in conjunction with Article 1.1 of said treaty to the detriment of Mrs. Digna Ochoa y Plácido and her family members.
2. To find the instant petition inadmissible as to the alleged violations of Articles 2, 4, 7 and 11 of the American Convention on Human Rights and as to Articles 1, 2 and 3 of the Inter-American Convention to Prevent and Punish Torture.
3. To notify the parties of this decision.

analyzed whether “all the evidence is properly analyzed and the conclusions are consistent and reasoned.” In said case, the European Court stressed that it would be “it would be inappropriate and contrary to its subsidiary role under the Convention to attempt to establish the facts of this case on its own, duplicating the efforts of the domestic authorities which are better placed and equipped for that purpose.” It further stated: “Following its well-established practice, it will confine the examination of this application to an evaluation of the domestic investigation into the matter as regards its overall compliance with the aforementioned standards [referring to the legal precedents of the European Court regarding Article 2 of the Convention].” Cfr. ECHR, *Masneva v. Ukraine*, no. 5952/07, § 49 ,51.

¹³ In this regard, the IACHR found admissible a case in which the State, in contradiction to the petitioners, claimed that the alleged victim had committed suicide, taking into consideration how long the investigation has been going on, as well as arguments of the petitioners pertaining to alleged irregularities in the investigation, such as some of the evidence pointing to the death not being a suicide; that the statements of eye witnesses were conflicting and that some forensic tests performed on the body of the alleged victim showed that the injuries of the alleged victim were compatible with the theory of homicide. See IACHR, Report No. 83/07, *José Iván Correa Arévalo*, October 16, 2007, par. 54.

4. To publish this decision and include it in the IACHR Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 16th day of July 2013. (Signed): Tracy Robinson, First Vice-President; Rosa María Ortiz, Second Vice-President; Dinah Shelton, Rodrigo Escobar Gil and Rose-Marie Antoine, Commissioners.