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## **REPORT No. 185/21**

## **PETITION 294-11**

### REPORT ON INADMISSIBILITY

FERNANDO BEULO LÓPEZ ARIAS  
MÉXICO

Approved electronically by the Commission on August 30, 2021.

**Cite as:** IACHR, Report No. 185/21, Petition 294-11. Inadmissibility. Fernando Beulo López Arias. México. August 30, 2021.

**I. INFORMATION ABOUT THE PETITION**

|                          |   |
|--------------------------|---|
| <b>Petitioner:</b>       | Fernando Beulo López Arias  |
| <b>Alleged victim:</b>   | Fernando Beulo López Arias  |
| <b>Respondent State:</b> | México <sup>1</sup>   |
| <b>Rights invoked:</b>   | Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 24 (Right to Equal Protection) 25 (Right to Judicial Protection), 9 (Freedom from Ex Post Facto Laws), 11 (Right to Privacy, Honor, Dignity), of the American Convention on Human Rights <sup>2</sup> in conjunction with its Article 1.1 (obligation to respect rights). |

**II. PROCEEDINGS BEFORE THE IACHR<sup>3</sup>**

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|--|--|
| <b>Filing of the petition:</b>   | March 8, 2011                                  |
| <b>Additional information received at the stage of initial review:</b> | May 19, 2011, November 7, 2011, March 22, 2016 |
| <b>Notification of the petition to the State:</b>                      | December 22, 2016                              |
| <b>State's first response:</b>   | May 11, 2017                                   |
| <b>Additional observations from the petitioner:</b>                    | July 20, 2017                                  |
| <b>Additional observations from the State:</b>                         | April 19, 2018                                 |

**III. COMPETENCE**

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|--|---|
| <b>Competence <i>Ratione personae</i>:</b> | Yes   |
| <b>Competence <i>Ratione loci</i>:</b>     | Yes   |
| <b>Competence <i>Ratione temporis</i>:</b> | Yes   |
| <b>Competence <i>Ratione materiae</i>:</b> | Yes, American Convention (deposit of ratification instrument on March 24, 1981) |

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

|  |      |
|--|------|
| <b>Duplication of procedures and International <i>res judicata</i>:</b>              | No   |
| <b>Rights declared admissible</b>  | None |
| <b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b> | Yes  |
| <b>Timeliness of the petition:</b>   | No   |

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

<sup>2</sup> Hereinafter "Convention" or "American Convention."

<sup>3</sup> The observations submitted by each party were duly transmitted to the opposing party.

## V. ALLEGED FACTS

1. Fernando Beulo López Arias (hereinafter “the petitioner”) claims to have been wrongly convicted of murder and other offenses based primarily on a confession that was allegedly extracted unlawfully by the prosecuting authorities.

2. The murder was perpetrated on December 12, 2006, in the city of Naucalpan de Juárez in the state of Mexico, which resulted in an investigation by the Office of the Public Prosecutor (*Procuraduría General de Justicia del Estado de Mexico* or “PGJE”). As part of this investigation, on January 29, 2007, the petitioner was summoned as a witness by a citation that required him to appear on January 31, 2007. The petitioner contends that the day before his scheduled appearance he was arrested by Judicial Police agents, who took him initially to the offices of the PGJE in Naucalpan de Juárez, and then subsequently to their offices in the city of Toluca de Lerdo. He was allegedly victim was detained *incommunicado* for 27 hours, during which time he was unable to contact his family or consult with a lawyer of his choice.

3. The police agents who arrested the petitioner claimed that this step was justified principally because he had cursed and threatened them; and that he attempted to bribe them to release him by offering a payment of one million pesos. The petitioner alleges that he was obliged or induced to give a statement that said that he had ordered the above-mentioned murder and arranged for the material perpetrator to carry it out; he emphasizes that his statement was given without of the presence of any lawyers.

4. The criminal proceedings were commenced against the petitioner before the First Instance Criminal Court in February 2007, for the crimes of aggravated homicide (*homicidio calificado*), bribery (*cohecho*) and offenses against the administration of justice (*ultrajes en agravio de la administración de justicia*). The court imposed an order of preventive detention on February 4, 2007, which lasted throughout the trial; on February 29, 2008, the petitioner was convicted of all the above-mentioned crimes and sentenced to 60 years and six months in prison.

5. Between 2008 and 2010 the petitioner unsuccessfully invoked several post-trial remedies to challenge his convictions and the circumstances that gave rise to them, including his alleged illegal detention. In this regard, the petitioner filed an appeal to the Second Criminal Collegiate Chamber (*Segunda Sala Colegiada Penal*), which dismissed it on July 1, 2008. Subsequently, the petitioner initiated *amparo* proceedings in the Third Criminal Collegiate Tribunal of the Second Circuit (*Tercer Tribunal Colegiado en Materia Penal del Segundo Circuito* or “Third Tribunal”). The Third Tribunal remitted the matter to the Second Criminal Collegiate Chamber, which ultimately reaffirmed its previous ruling on March 17, 2009. Finally, the petitioner filed a special appeal for review (*recurso de revisión extraordinario*) in February 2010, which was dismissed on April 8, 2010<sup>4</sup>. According to the petitioner, his legal representatives were notified about the dismissal on April 8, 2010, but he was not personally notified until the beginning of 2011. The petitioner contends that he complied with the requirement of exhaustion of domestic remedies prior to presenting his petition to the IACHR.

6. Ultimately, the petitioner submits that he was convicted of a murder that he did not commit, primarily based on a confession that was given in violation of rights, including due process. He further contends that the judicial authorities failed to provide any redress, and that they misapplied or misinterpreted relevant provisions of domestic law, including the Constitution and the Criminal Code of Mexico.

7. For its part, the State contends that the petition is inadmissible primarily based on the failure to exhaust domestic remedies; untimely filing; and that the adjudication of the petition would be contrary to the so-called “fourth instance formula”. The State also alleges that the confession was issued on February 2, 2007, in the presence of two lawyers selected by the petitioner; that he was never detained *incommunicado*; and that he was implicated not only by his confession, but also by other evidence, including a statement by the material perpetrator who admitted to shooting and killing the victim at the instigation of the petitioner. The State further indicates that the petitioner was initially arrested on January 30, 2007, when he allegedly insulted

<sup>4</sup> The petitioner also mentions the filing of *amparo* proceedings in November 2010, which was dismissed on December 3, 2010. However, in his July 20, 2017, response to the State, he appears to acknowledge that the final judicial remedy initiated was the special appeal for review in February 2010.

police agents and attempted to bribe them. Ultimately, the petitioner was prosecuted in February 2007 for aggravated murder, offenses against the administration of justice and bribes to the prejudice of the administration of justice; and his preventive detention was ordered on February 4, 2007.

8. According to the State, on February 29, 2008, the petitioner was convicted of aggravated murder and bribes to the prejudice of the administration of justice; but acquitted of offenses against the administration of justice. The petitioner was sentenced to 55 years imprisonment and a fine for the crime of aggravated murder; and to six years and six months for the bribery. A subsequent appeal affirmed the decision of the trial court on July 1, 2008; the petitioner then invoked *amparo* proceedings, which resulted in the matter being referred to the appellate court for reconsideration on February 12, 2009. On March 17, 2009, the appellate court issued a new judgment that reduced the term of imprisonment and the amount of the fine, but which also retained the conviction for bribery<sup>5</sup>. On February 10, 2010, the petitioner invoked the special appeal for review which was subsequently dismissed as unfounded on April 8, 2010.

9. The State contends that the petitioner failed to exhaust domestic remedies in three respects. First, it holds that the March 17, 2009, decision was open to challenge by way of appeal, and if unsuccessful, by means of an *amparo directo*. Secondly, it submits that the February 4, 2007, preventive detention order was also open to challenge by way of appeal, and failing that, by *amparo directo*. Finally, the State argues that the petitioner could have challenged his initial arrest by *amparo* proceedings and, failing that, an appeal.

10. According to the State, the petition was filed outside of the six-month period prescribed by the IACHR's Rules of Procedure. In this regard, the State considers that the final decision regarding the petitioner's claims was that of March 17, 2009, by the appellate court, which was allegedly notified to the petitioner on the same day. The State further contends that the petitioner's petition was not filed until March 8, 2011, one year, 11 months and three weeks after notification of the final decision. The subsequent proceedings initiated by the petitioner in February 2010 was not an appropriate remedy for addressing his complaints because it did not allege the unconstitutionality of any law, but violations of his human rights. In any event, the State notes that the petitioner was notified of the dismissal of his application on April 8, 2010, eleven months before he filed his petition before the IACHR. It further argues that the petitioner's representatives were notified about this dismissal on April 8, 2010; and that the fact that he was not personally notified until much later is not the fault of the State. It points out that whether it is calculated from March 2009 or April 2010, the petition is untimely.

11. As to the so-called "fourth instance formula", the State contends that the petitioner's complaints have been ventilated and resolved before the domestic tribunals and that it is not the role of the IACHR to review their decisions, or to entertain the petitioner's allegations of jurisprudential errors. In essence, it contends that mere disagreement with the decisions of the domestic courts is not a basis for the intervention of the Inter-American Commission. The State considers that the petitioner's rights were duly protected by the domestic authorities and emphasizes that the petitioner's arrest and subsequent detention were lawful, and that his self-incriminating statement was done in the presence of his lawyers. The State also reiterates that the conviction was based not only on the self-incriminating statement but on other evidence.

12. In response to the State, the petitioner does not deny that his statement was given in the presence of two lawyers of his choice; however, he rejects the State's contention that he failed to exhaust domestic remedies and specifically mentions that it was not juridically possible to appeal the appellate decision of March 2009. He further submits that the preventive detention order of February 4, 2007 was interlocutory, and therefore not susceptible to appeal or other legal challenge. The petitioner rejects the State's fourth instance argument and reiterates that there were jurisprudential errors, irregularities and due process violations in the criminal proceedings that remain unremedied by the domestic courts.

<sup>5</sup> The State does not quantify the reduction in the prison sentence or the time.

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

13. The petitioner claims that domestic remedies were exhausted with the dismissal of the appeal for review on April 8, 2010; the State argues that he failed to comply with said requisite and that, in any event, the judgment of March 17, 2009, by the appellate court effectively put an end to the criminal proceedings against him. The State further contends that the appeal for review was not a suitable remedy to address the petitioner's claims.

14. The rule set forth in Article 46.1(a) of the American Convention determines that remedies generally available and appropriate in the domestic legal system must be pursued first. Such remedies must be secure enough; that is, accessible and effective in resolving the situation in question. The IACHR has established that the requirement does not necessarily mean that alleged victims are obligated to exhaust all remedies at their disposal; and that if one of the valid and appropriate options in accordance with the domestic legal system is pursued and the State had the opportunity to solve the matter in its jurisdiction, the objective of international law has been achieved. Based on the available information, the Inter-American Commission considers that domestic remedies concerning the alleged victim were exhausted in April 2010 by the dismissal of the appeal for review; and that the petition thus meets the requirement established in Article 46.1(a) of the American Convention.

15. The requisite of timeliness was not met, according to the State, whether the filing is calculated from the appellate decision of March 2009 or the dismissal of the appeal for review in April 2010. The petitioner acknowledges that his legal representatives were notified of the latter decision in April 2010, but that he did not become aware of it until the beginning of 2011; the State contends that it is not responsible for the failure of the petitioner's lawyers to notify him personally. The IACHR notes that the petitioner has not provided any specific date on which he was personally notified; or any information to corroborate or explain the alleged late notification. In these circumstances, the Inter-American Commission considers that the April 8, 2010, notification to his legal representatives effectively extends to the petitioner for the purpose of determining compliance with the requisite of timeliness. As mentioned before, the petition was not filed until March 8, 2011; consequently, the IACHR considers that its presentation was untimely pursuant to Article 46.1(b) of the American Convention.

16. Accordingly, the Inter-American Commission refrains from ruling on the colorable claim, as the petition does not meet the admissibility requirements in accordance with Article 47(a) of the American Convention.

## **VII. DECISION**

1. To declare the present petition inadmissible.
2. To notify the parties of this decision; to publish this decision, and to 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 30<sup>th</sup> 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.