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REPORT No. 25/21
PETITION 673-09
REPORT ON ADMISSIBILITY

CLAUDIO ALBERTO OGOLMA AND FAMILY
ARGENTINA

Approved electronically by the Commission on March 2, 2021.

Cite as: IACHR, Report No. 25/21, Petition 673-09. Admissibility. Claudio Alberto Ogolma and family. Argentina. March 2, 2021.

I. INFORMATION ABOUT THE PETITION

Petitioner	Mercedes Ogolma
Alleged victim	Claudio Alberto Ogolma and family
Respondent State	Argentina
Rights invoked	Articles 4 (right to life), 17 (rights of the family), 19 (rights of the child), 24 (right to equal protection), 25 (right to judicial protection) of the American Convention on Human Rights ¹

II. PROCEEDINGS BEFORE THE IACHR²

Filing of the petition	May 25, 2009
Notification of the petition	October 1, 2014
State's first response	February 6, 2017
Notification of the possible archiving of the petition	November 16, 2018
Response to the notification regarding the possible archiving of the petition	December 17, 2018

III. COMPETENCE

<i>Ratione personae:</i>	Yes
<i>Ratione loci:</i>	Yes
<i>Ratione temporis:</i>	Yes
<i>Ratione materiae:</i>	Yes, American Convention (deposit of instrument of ratification made on September 5, 1984)

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), 8 (Fair Trial), 17 (rights of the family), 19 (Rights of the Child), 24 (right to equal protection) 25 (Judicial Protection) of the Convention, in connection with Article 1.1 (Obligation to respect rights) of the same instrument
Exhaustion or exception to the exhaustion of remedies	Yes, in terms of Section VI
Timeliness of the petition	Yes, in terms of Section VI

V. SUMMARY OF ALLEGED FACTS

1. The petition alleges that in the early morning of January 5, 2008, Claudio Alberto Ogolma, a 15 year-old (the alleged victim) was fatally shot by a police officer attached to the Santa Fe Police (in the province of Santa Fe, Argentina). According to the petition, the fatal shooting of the alleged victim was a result of excessive force used by the police. In this regard, the petition further alleges that contrary to the narrative of the police, the shooting was unwarranted; and that the subsequent judicial proceedings (that investigated the shooting) were vitiated by arbitrariness.

2. According to the petition, the narrative presented by the police affirmed that four police officers in two police cars were on patrol on Juan Jose Paso Street when they observed two males in a confrontation with a couple – (Carolina Elsa Gerez and Juan Angel González). On seeing the police officers, the couple asked for help from the police, indicating that two youths had attempted to rob them. According to this account, Mr. Gonzalez had sustained a cut to his face as a result of the encounter. The petition further states that the police narrative claims that one of the youths (who turned out to be the alleged victim) ran in a easterly direction on Juan Jose Paso Street, pursued by police officers. Subsequently, according to the police narrative,

¹ Hereinafter “the Convention” or “the American Convention”.

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

(a) one of the police officers – Laura Lovera accosted the alleged victim, calling out to him in a loud voice; (b) in response, the alleged victim attacked Laura Lovera – punching her with one hand, stabbing her in the neck, shirt, and bullet-proof vest with a piece of glass, and attempted to take away Laura Lovera’s firearm. In the struggle, the firearm was discharged – resulting in a fatal wound to the alleged victim. Prior to, or during this struggle, another police officer called for reinforcements. Following the shooting, the alleged victim was ultimately taken by the police to a hospital (Hospital de Emergencias Clemente Alvarez- HECA) which refused to accept him because he was already dead. The body was subsequently taken by the police to *El Instituto Médico Legal*.

3. According to the record, a judicial investigation was initiated by a *Jueza de Instrucción* (Examining Judge) to determine whether there was a case of simple homicide against Laura Lovera. On August 12, 2008, the judge held that the use of lethal force by Laura Lovera was justified and that there were no other less aggressive means of repelling the attack from the alleged victim. The judge noted that Laura Lovera faced an imminent threat to her life by virtue of the attack.

4. Dissatisfied with this ruling, the petitioner persuaded the prosecutor (*La Fiscalía de Cámara N 3*) to appeal to *La Sala I de la Cámara de Apelaciones en lo Penal de Rosario*. On November 20, 2008, this court affirmed the ruling of the lower court, that the fatal shooting of the alleged victim was justified as a matter of self-defense. According to the petitioner, she received notification of this judgment on December 2, 2008. The petitioner impugns the judicial proceedings, principally because of the failure of the courts to address or reconcile conflicting or contradictory testimony. In this regard, the petitioner contends, for example, that Laura Lovera claimed that the alleged victim held a piece of glass in his left hand, whereas Juan Angel Gonzalez states that the alleged victim had the glass in his right hand. The petitioner also mentions contradictions in statements made by other police officers who were allegedly present during the incident. In this regard, the petitioner mentions two officers. In relation to one of the police officers, the petitioner states that in his initial statement he stated he was the first to pursue the alleged victim, but in the subsequent official police report, it is stated that he was the last person (police officer) to pursue the alleged victim. Regarding the other police officers, the petitioner contends that he initially stated that, on seeing a struggle between the alleged victim and Laura Lovera that he remained in his patrol car to call for support from other police units. However, in a subsequent statement, the petitioner claims that this officer said that he did not see the struggle.

5. The petitioner complains that there are contradictions regarding the time that the body of the alleged victim was taken from the scene of the incident. In this regard, the petitioner indicates that the testimony presented indicates two different times: 2:15 and 5:00. More generally, the petitioner complains that the court failed to require or consider other evidence (to clarify the facts) such as a report from the HECA to determine the time of arrival of the body of the alleged victim. The petitioner also mentions that the court did not request or take into account any police reports to establish or corroborate the existence of any request by Giovinetto to call for reinforcements. The petitioner also points to the absence of any finding as to whether the alleged victim was right-handed or left-handed, or whether he had a piece of glass in either his right or left hand. Further, the petitioner alleges that it was never proved that the alleged victim attacked Laura Lovera or attempted to take her firearm.

6. The State argues that the complaint of the petitioner amounts to no more than a disagreement with decisions of the domestic courts, and that to entertain the petitioner’s claim would violate the Commission’s fourth instance formula. In this regard, the State emphasizes that criminal proceedings were initiated against Laura Lovera, which examined all of the relevant evidence before concluding that Laura Lovera’s use of lethal force was justified. The State emphasizes that the domestic proceedings took place in accordance with its international guarantees of due process and judicial protection; and that it is not for the Commission to act as superior tribunal to review the decisions of domestic tribunals which have complied with these international guarantees.

7. As for the processing of the petition, the State observes that the Commission’s delay in forwarding the complaint once it was submitted by the petitioner. Referring to arguments presents in other

petitions³, the State believes that the Commission should refrain from further analysis of the petition and archive the case.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

8. It appears that the principal complaint of the petitioner relates to the process and outcome of the judicial criminal proceedings that took place against the police officer responsible for fatally shooting the alleged victim. In that respect, there is no disagreement that these proceedings culminated in a ruling by the *Sala I de la Cámara de Apelaciones en lo Penal de Rosario* on November 20, 2008 and notified to the petitioner on December 2, 2008. The IACHR therefore concludes that this judicial decision represents the exhaustion of domestic remedies, in keeping with Article 46.1 (a) of the American Convention. Further taking into account that the petition was received by the IACHR on May 25, 2009, the IACHR concludes that the petition was submitted within the six-month time-limit prescribed by the Article 46.1 (b) of the American Convention.

9. As to the arguments of the States with regard to the time for the processing of the petition, the Commission wishes to clarify that according to the rules of the inter-American system, the time lapsed between the Commission's receipt of a petition and its transmission to the State does not, in and of itself, constitute grounds for the archiving of a case. In this regard, in the processing of individual petitions before IACHR, there is no statute of limitations *ipso iure* based on the passage of time. It also notes that all information furnished by the parties has been forwarded to the other party for comment, in accordance with the pertinent conventional and regulatory provisions. Accordingly, the due process rights of the parties in the Commission's processing of the case have not been impaired.⁴

VII. COLORABLE CLAIM

10. The petitioner complains that the domestic courts dismissed the criminal investigation related to the death of the alleged victim without (a) properly taking into account certain discrepancies and contradictions in testimonies presented by police witnesses and other witnesses; (b) properly taking into account other evidence that might have served to clarify the facts leading to the fatal shooting of the alleged victim. The State insists that the use of lethal force against the alleged victim was justified, and that this has been upheld by the courts.

11. In light of those considerations, and after examining the elements of fact and law set out by the parties, the Commission believes that the petitioner's claim regarding the judicial treatment of contradictory and other evidence in the dismissal of the criminal case is not manifestly groundless. If these alleged facts are determined to be true, they could tend to establish violations of Articles 4 (right to life), 8 (right to fair trial), (17) rights of the family, 19 (rights of the child) 24 (right to equal protection), and 25 (right to judicial protection) of the American Convention in relation to its Article 1(1) to the detriment of the alleged victim and his surviving family.

12. With regard to the State's allegations concerning the so-called "fourth instance" formula, the Commission reiterates that, for the purposes of admissibility, it must decide whether the facts alleged may characterize a violation of rights, as stipulated in Article 47(b) of the American Convention, or whether the petition is "manifestly unfounded" or is "manifestly inadmissible", pursuant to paragraph (c) of that Article. The criterion for evaluating these requirements differs from that used to decide on the merits of a petition. Likewise, within the framework of its mandate, it is competent to declare a petition admissible when it refers to domestic proceedings that could violate rights guaranteed by the American Convention. In other words, in accordance with the aforementioned treaty rules, and pursuant to Article 34 of its Rules of Procedure, the analysis of admissibility focuses on the verification of such requirements, which refer to the existence of elements that, if true, could constitute *prima facie* violations of the American Convention.⁵

³ In its communication of February 6, 2017, the State indicated: " The State notes with concern that the initial presentation of the petitioner, received by the Executive Secretary of that illustrious Commission on May 25, 2009, was brought to the attention of the State more than five years later. In previous responses ["Memoli", "Trevisi", "Lynn", "Ortiz", "Sicolo"and others], the Argentine State has reflected on the problematic rave generated by this question, statements that are requested to be considered reproduced *brevitatis causae*".

⁴ IACHR, Report No. 105/13, Petition 514-00. Admissibility. Oscar Alfonso Morales Díaz and family. Colombia. November 5, 2013, para. 26.

⁵ IACHR, Report No. 143/18, Petition 940-08. Admissibility. Luis Américo Ayala Gonzales. Peru. December 4, 2018, para. 12.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles 4, 8, 17, 19, 24, and 25 of the Convention, in connection with Article 1.1 of the same instrument; and
2. To notify the parties of this decision; 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 2nd day of the month of March, 2021. (Signed): Joel Hernández (dissenting opinion), President; Antonia Urrejola (dissenting opinion), First Vice President; Flávia Piovesan, Second Vice President; Margarete May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Julissa Mantilla Falcón (dissenting opinion), and Stuardo Ralón Orellana, Commissioners.