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REPORT No. 148/17
PETITION 44-07
REPORT ON ADMISSIBILITY

JULIO ALCÁZAR DOLMOS AND FAMILY MEMBERS
PERU

Approved by the Commission at its session No. 2104 held on October 26, 2017
165th Regular Period of Sessions

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PETITION 44-07
 REPORT ON ADMISSIBILITY
 JULIO ALCÁZAR DOLMOS AND FAMILY MEMBERS
 PERU
 OCTOBER 26, 2017

I. INFORMATION ABOUT THE PETITION

Petitioner:	Human Rights Commission (COMISDEH)
Alleged victim:	Julio Alcázar Dolmos
State denounced:	Peru
Rights invoked:	Articles 4 (life), 5 (humane treatment), 8 (right to fair trial) and 25 (judicial protection) of the American Convention on Human Rights ² in connection with Article 1.1 thereof; and Articles 1, 2, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture

II. PROCEDURE BEFORE THE IACHR³

Date on which the petition was received:	January 12, 2007
Date on which the petition was transmitted to the State:	December 18, 2007
Date of the State's first response:	April 2, 2008
Additional observations from the petitioner:	May 8 and October 28, 2008; July 30, 2009; January 28 and May 29, 2010; and May 14, 2016
Date on which the petitioner was notified of the possible archiving of the petition:	April 4, 2016
Date on which the petitioner responded to the notification regarding the possible archiving of the petition:	May 14, 2016

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 (instrument of ratification deposited on July 28, 1978) and American Convention to Prevent and Punish Torture (March 28, 1991)

¹ In keeping with Article 17.2.a of the Commission's Rules of Procedure, Peruvian national, Commissioner Francisco Jose Eguiguren Praeli, did not take part in the discussion or the decision-making in the instant matter.

² Hereinafter "the American Convention" or "the Convention."

³ The observations presented by each party were duly transmitted to the opposing party.

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

Duplication of procedures and International <i>res judicata</i> :	No
Rights declared admissible	Articles 4 (life), 5 (humane treatment), 8 (right to a fair trial) and 25 (judicial protection) of the American Convention in connection with Article 1.1 thereof (obligation to respect rights); and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, July 12, 2006
Timeliness of the petition:	Yes, January 12, 2007

V. ALLEGED FACTS

1. The petitioner alleges that on May 28, 2003, forty-three year old Mr. Julio Alcázar Dolmos (hereinafter “the alleged victim” or “Mr. Alcázar Dolmos”) was arrested at his residence in a state of intoxication and taken to the police station of Quillabamba as a result of a domestic violence incident. When he was at the Police Station, Mr. Alcázar Dolmos got into another argument with his partner; he was confined to a cell; and his wife provided a statement about the assaults she sustained. She claims that on that same night, the alleged victim was found in the holding cell of the police station with the ties of his jacket around his neck, still showing vital signs and that on the way to Quillabamba hospital, he passed away, according to the medical report made upon his arrival to this hospital. The petitioner further contends that the record written by the police department of Quillabamba concluded that the alleged victim had reportedly committed suicide. However, the petitioner argues that in the first autopsy report it was determined that he died a violent death by strangulation, ruling out the theory of a suicide.

2. Based on the result of the first autopsy report and contradictory versions of the facts provided by the police, on May 30, 2003, the widow of the alleged victim filed a complaint against the two police agents of the police station of Quillabamba reputedly responsible for the death of the alleged victim. Accordingly, the Office of the First Prosecuting Attorney of the Province of Convención of the Department of Cusco, ordered a second autopsy to be performed, which was done on June 1, 2003, confirming the result of the first autopsy. This result was that the alleged victim died a violent death by strangulation and not by suicide and this second autopsy further determined that the body presented recent ecchymosis (or contusions) on the abdomen, thorax, arms and the left leg.

3. The petitioner claims that the Office of the Public Prosecutor brought charges for the crime of serious bodily injury followed by death, but not for the crime of aggravated homicide, against the police agents in charge of the custody of the alleged victim. In the charging document, the Office of the Public Prosecutor notes that “*because of his own state of intoxication [the alleged victim] disobeyed the orders of the police officers, who also showed signs of having consumed alcoholic beverages.*” Based on the foregoing, the widow of Mr. Alcázar Dolmos filed a motion to review the charges, which the Office of the Third Superior Prosecutor of Cusco granted and then also charged the alleged persons responsible with the crime of aggravated homicide. The petitioner notes that the Criminal Court of the Province of Convención ordered a third autopsy to be performed, which was carried out on April 22, 2004, confirming once again that the alleged victim died as a consequence of strangulation, again ruling out suicide as the cause of death.

4. Accordingly, the Office of the Third Superior Prosecutor’s Office of Cusco brought charges against seven police agents for the crime of aggravated homicide. On October 12, 2005, the Rotating Criminal Chamber of Cusco convicted four of the seven police officers charged, sentencing them to sixteen years of incarceration and payment of twelve thousand soles (the approximate equivalent of \$6060.00 USD at that

time⁴) as civil reparation to the widow of the alleged victim, Mrs. Silvia Campana. The convicted men filed an appeal to set aside the judgment with the First Transitory Criminal Chamber of the Supreme Court of the Republic, which acquitted them on April 28, 2006, on the grounds that there was no suitable evidence to determine that Mr. Alcázar Dolmos had died as a consequence of the actions of the police officers charged with the crime. According to the petitioner, all domestic proceedings in this case concluded with this decision of the Supreme Court.

5. The petitioner contends that, contrary to the arguments put forward by the State, the investigations aimed at getting to the bottom of the facts and the alleged physical assaults leading to the death of the alleged victim, were opened as a result of the complaint, and not *ex officio*, as local legislation establishes it should be. It further alleges that the investigation to get to the bottom of the facts was ineffective, inasmuch as the State did not determine the identity of the police officers responsible for the death of Mr. Alcázar Dolmos. The petitioner also alleges that the death of Mr. Alcázar Dolmos not only generated a deep-seated sense of loss in his partner, Silvia Campana, and in their 9 and 7-year-old children, but also had a heavy impact on the family finances, because he was the sole provider of income for the family. Additionally, the petitioner claims that at the time the incidents occurred, both the Office of the Ombudsman, and civil society organizations, such as the National Human Rights Coordinating Committee, had documented that a context of widespread police torture existed in Peru.

6. In response, the State argues that it complied with the obligation to investigate and prosecute the events, which gave rise to the instant petition, and that the circumstances in which the alleged victim died were investigated as part of the proceedings. It contends that the appropriate investigations were conducted using the means provided by law, but that it was not possible to irrefutably prove any criminal liability of the police agents identified as alleged perpetrators. It claims that in said proceeding, the parties fully exercised their right of defense and to offer evidence to counter the opposing party's contentions, as protected and ensured under the laws on the subject matter, in keeping with the principle of legality. Additionally, it argues that under domestic legislation, the judgment to set aside the conviction issued by the First Transitory Criminal Chamber of the Supreme Court of Justice of the Republic has the status of *res judicata*, and cannot be contested, inasmuch as it is the ultimate level of review by a competent authority within the scope of its jurisdiction and by operation of and respect for the American Convention.

7. Similarly, with respect to the allegations of acts of torture, Peru believes that it is not the job of any agency of the State to make a pronouncement on the considerations of the Office of the Public Prosecutor and the courts as to whether or not to file charges or to issue a conviction or acquittal, much less when a peremptory judgment has been issued in the case, rendering it *res judicata*. Consequently, with regard to the duty to investigate and punish the alleged crime of torture, the State contends that there was no violation of the Convention.

8. In conclusion, the State maintains that the instant petition deals with events that were previously heard by domestic courts and were properly investigated at the proper time by the appropriate authorities. In this regard, it contends that the Inter-American Commission may not act as a "court of review" to reexamine alleged errors of fact or of law committed by national judicial authorities.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

9. The petitioner contends that domestic remedies were exhausted with the decision handed down by the Supreme Court of Justice of the Republic on April 28, 2006, notice of which was served on July 12, 2006. For its part, the State is not arguing a failure to exhaust domestic remedies. In this regard, given the information available in the case file and since there is no dispute between the parties on this issue, the Inter-American Commission on Human Rights (hereinafter, the "Inter-American Commission" or the "IACHR") finds that domestic remedies were definitively exhausted with the aforementioned ruling of the Supreme Court of

⁴ Based on the exchange rate in effect on that date. Source: <http://larepublica.pe/economia/735275-evolucion-del-tipo-de-cambio-en> -

Justice of the Republic. Likewise, the IACHR notes that the petition was received on January 12, 2006, the final decision was notified on July 12 of this year and, therefore, the Commission concludes that the instant petition fulfills the requirements of admissibility set forth in Articles 46.1.a and 46.1.b of the American Convention.

VII. COLORABLE CLAIM

10. In light of the facts and legal arguments introduced by the petitioner, essentially regarding the alleged bodily harm sustained by the alleged victim, reportedly inflicted upon him by state agents and leading to his death, as well as the alleged failure to conduct an effective criminal investigation to identify and punish those responsible for these events, the Inter-American Commission finds that, should these acts be proven as true, they could tend to establish violations of the rights set forth in Articles 4 (right to life) and 5 (humane treatment) of the American Convention, in connection with Article 1.1 of said instrument to the detriment of Mr. Alcázar Dolmos; as well as Articles 5, 8 (right to a fair trial) and 25 (judicial protection), in connection with Article 1.1 of said instrument, to the detriment of Mrs. Silvia Prescilda Campana Becerra and her children. As well as Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

VIII. DECISION

1. To declare the instant petition admissible as for Articles 4, 5, 8 and 25 of the American Convention in connection with the obligation established in Article 1.1 of the same instrument, as well as Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture;

2. Notify the parties of the instant decision;

3. Proceed to examine the merits of the matter; and

4. Publish this decision and include it in the Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Montevideo, Uruguay on the 26th day of the month of October, 2017. (Signed): Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; José de Jesús Orozco Henríquez, Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.