

OEA/Ser.L/V/II.
Doc. 209
26 December 2018
Original: Spanish

REPORT No. 184/18
PETITION 1304-07
REPORT ON INADMISSIBILITY

JUAN CARLOS AGUILERA MALDONADO AND RICARDO
FEDERICO CORTEZ ACOSTA
ARGENTINA

Approved electronically by the Commission on December 26, 2018.

Cite as: IACHR, Report No. 184/18, Petition 1304-07. Inadmissibility. Juan Carlos Aguilera Maldonado and Ricardo Federico Cortez Acosta. Argentina. December 26, 2018.

I. INFORMATION ABOUT THE PETITION

Petitioner:	Carlos Varela Álvarez
Alleged victim:	Juan Carlos Aguilera Maldonado and Ricardo Federico Cortez Acosta
Respondent State:	Argentina
Rights invoked:	Articles 7 (right to personal liberty), 8 (right to a fair trial), 9 (freedom from Ex Post Facto laws), 17 (rights of the family), 24 (right to equal protection) and 25 (right to judicial protection) of the American Convention on Human Rights ¹ in relation to Articles 1.1 and 2 of the same instrument; Articles II, IX, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man ² ; and Article 37 of the Convention on the Rights of the Child

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	October 8, 2007
Notification of the petition to the State:	February 10, 2011
State's first response:	October 3, 2013
Additional observations from the petitioner:	June 28 and September 26, 2011; January 29, 2014
Additional observations from the State:	July 2, 2014; November 9, 2015 and April 7, 2017

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 Declaration (ratification of OAS Charter on April 10, 1956) and American Convention (deposit of instrument 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	None
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, April 16, 2007
Timeliness of the petition:	Yes, October 9, 2007

V. FACTS ALLEGED

1. The petitioner argues that the Argentine State has violated the human rights of Juan Carlos Aguilera Maldonado and Ricardo Federico Cortez Acosta⁴ (hereinafter "Mr. Aguilera" and "the adolescent Cortez", individually, or collectively "the alleged victims") by convicting them of homicide following criminal proceedings that failed to comply with the guarantees of due process and for violating the principle of legality. In this regard, he maintains that the alleged victims were convicted on the basis of evidence obtained

¹ Hereinafter "the Convention" or "the American Convention".

² Hereinafter "the American Declaration".

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

⁴ Ricardo Federico Cortez Acosta was a minor at the time of the events and of the sentencing, and he reached the of majority on April 21, 2006.

or derived from an illegal search and that their sentences were increased by circumstances subsumed in the criminal offense of homicide.

2. He states that following the death of Cristian Córdoba on January 12, 2004, an investigation was initiated to clarify the facts and that on February 19, 2004, the deceased's mother, following the guidance of a police officer involved in the investigation, gave false testimony incriminating the alleged victims as perpetrators of his homicide. On February 20, 2004, Mr. Aguilera was arrested for offenses that, according to the judge, could be classified as aggravated homicide by use of a firearm and with the participation of a minor. On February 24, he ordered the arrest of the adolescent Cortez.

3. According to the petitioner, on March 10, 2004, the police received an anonymous telephone call reporting that the perpetrators involved in Cristian Córdoba's death could be found in a house. As a result of this information, police officers arrived at the place without a search warrant, arbitrarily detained several individuals present, including the adolescent Cortez, and illegally entered the house on two occasions. At first they found no evidence, but the second time they seized a firearm, cocaine and music equipment. He argues that the police tried to legitimize the raid by indicating in the report that the homeowner and one of the relatives of those present had consented. However, this person did not sign the report and could not have consented to the search because she was not the homeowner.

4. He indicates that reliance was placed on this report and the evidence obtained throughout the proceedings as part of the body of evidence against the alleged victims and that, despite attempts to challenge it, the authorities did not exclude it as evidence during the trial. He notes that on December 21, 2004, the alleged victims were convicted of aggravated homicide. Given that Ricardo Federico Cortez Acosta was a minor at the time of the events and at the time of sentencing, the decision on his sentencing was deferred until he attained the age of majority. This occurred on April 21, 2006, when he was sentenced to 12 years in prison for the crime of aggravated homicide for the use of a firearm. On the other hand, Mr. Aguilera Maldonado was sentenced to 17 years in prison for homicide aggravated both by the use of a firearm and the participation of a minor in the crime.

5. A cassation appeal was lodged against their conviction, alleging the unlawfulness of the search conducted on March 10, 2004, and the evidence then obtained, on which reliance had been placed in the indictment, in the order for proceedings and in the deliberations. Likewise, the appeal argued that if the evidence obtained through the illegal search had been excluded, the conviction could not have been sustained on the other evidence, since the deceased's mother's statement was false and contained important contradictions between her statement and that of other witnesses, including that of the deceased's sister.

6. On June 15, 2005, despite acknowledging the nullity of the search, the Supreme Court of Justice of Mendoza (hereinafter, "the Supreme Court") dismissed the appeal and upheld the conviction. In its decision, the Supreme Court, under the hypothetical mental suppression method, considered that a conviction could similarly be reached based on the other evidence obtained. In this regard, it argued that facts determined by the court of first instance could not be reviewed because it had not been proved that said court had committed an error in analyzing and evaluating the other evidence.

7. He states that he filed an extraordinary appeal that was dismissed in June 2006. As a result of this decision, he filed a motion for review with the National Supreme Court of Justice, which was dismissed on April 10, 2007, and served on October 16, 2007, on the grounds that the defects in the proceedings did not have a significant impact on the judgment. Subsequently, the deceased's mother made a notarial affidavit acknowledging that she had lied in her previous statements and the alleged victims filed an appeal for review, which was also dismissed on June 19, 2012, by the Supreme Court.

8. The petitioner adds that the sentence imposed on the alleged victims violated the principle of legality. In this regard, he indicates that the use of a firearm could not be invoked as an aggravating circumstance when the offense of homicide already provides for a high degree of violence and the aggravating circumstance is subsumed in the main offense. He also indicates that the illegal detention of the adolescent

Cortez Acosta on March 10, 2004, was used as an aggravating factor to increase Mr. Aguilera Maldonado's sentence.

9. The State argues that the petition is inadmissible. On the one hand, it argues that the alleged victims have not exhausted domestic remedies regarding the alleged human rights violations related to the application of aggravating factors to the sentences and the alleged illegal detention of the adolescent Cortez Acosta during the search conducted on March 10, 2004. Regarding the first point, it indicates that the application of aggravating circumstances was not raised in the appeals filed before the national judicial authorities. On the second point, it emphasizes that, despite the illegality of the search, the documentary evidence on the operation shows that the individuals at the house were not detained inside thereof, but were apprehended when they came outside voluntarily. It also added that no appeal has been filed to question the alleged illegality of these detentions. Therefore, it maintains on these points the petition fails to satisfy the requirement of Article 46.1.a of the Convention.

10. On the other hand, it indicates that the national judicial authorities have already considered and recognized the illegality of the search carried out on March 10, 2004, and decided that the alleged victims' conviction can be sustained on the basis of the remaining evidence. Similarly, it argues that the deceased's mother's alleged false statement has been investigated by the public prosecutor and considered by the judicial authorities. In this regard, it argues that the investigation for false testimony was archived by the public prosecutor on the grounds that there was insufficient evidence demonstrating that the initial statement had been false, and that on account of the archiving of the investigation, the judicial branch acted correctly in rejecting the appeal for reconsideration, because the exclusion of the deceased's mother's statement depended on her conviction for the offense of perjury. Therefore, it argues that the alleged victims had recourse to various instances of the judiciary to have their claims decided in proceedings that observed the guarantees of due process. It indicates that the alleged victims are appealing to the IACHR as a court of fourth instance because they disagree with the decisions of the judicial branch.

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

11. With regard to the alleged victims' conviction on the basis of evidence obtained or derived from an illegal search, the IACHR observes that the alleged victims filed several appeals; the latter being a motion for reconsideration with the National Supreme Court of Justice, which was dismissed on April 10, 2007, and served on April 16, 2007. The State, at one point questioned the exhaustion of remedies with regard to the conviction of the alleged victims because the appeal for review was still pending resolution. However, the Commission observes that this remedy was not aimed at analyzing the evidence obtained or derived from the illegal search, but rather sought to review the conviction on the basis of new alleged evidence and, in addition, was resolved in 2012. In view of the foregoing, the IACHR considers that domestic remedies regarding the alleged use of illegally obtained evidence to convict the alleged victims were exhausted on April 16, 2007. Considering that the petition was received by the IACHR on October 9, 2007, it complies with the requirements of Articles 46.1.a and 46.1.b of the Convention.

12. With regard to the petitioner's statements in relation to the alleged illegal detention of the adolescent Cortez Acosta surrounding the events of the March 10, 2004 search and the violation of the principle of legality based on the application of aggravating circumstances to the conviction, the IACHR considers that the information presented by the petitioner fails to demonstrate that these issues have been examined internally. Therefore, the Commission concludes that, in this regard, the petition does not satisfy the requirement of Article 46.1.a of the Convention.

VII. ANALYSIS OF COLORABLE CLAIM

13. With respect to the use of illegally obtained evidence to prosecute and convict the alleged victims, the IACHR notes that national courts addressed this claim, excluded the evidence obtained through an illegal seizure and found that the convictions should stand on the basis of the remaining evidence. In light of the foregoing, the IACHR considers that the alleged victims come before the Commission as a fourth

instance tribunal because they do not agree with the decisions of the national courts. The Commission recalls that it is not competent to review judgments handed down by national courts acting within the scope of their competence and applying due process and judicial guarantees. Therefore the Commission considers that the alleged facts do not tend to characterize violations of the rights enshrined in articles 7 (right to personal liberty), 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention. Similarly, the IACHR considers that the petitioner has not presented sufficient evidence to demonstrate a possible violation of the rights enshrined in Articles 17 (rights of the family) and 24 (right to equal protection) of the American Convention.

14. With respect to the petitioners' allegations regarding the violation of the rights enshrined in the American Declaration of Human Rights, the Commission reiterates that once the American Convention enters into force for a State, the Convention - and not the Declaration - becomes the primary source of law applicable by the Commission, provided that the petition alleges violations of substantially identical rights enshrined in the two instruments.

15. Finally, with respect to Article 37 of the Convention on the Rights of the Child, the Commission recalls that it does not have competence to declare violations of rights enshrined in this treaty.

VIII. DECISION

1. To find the present petition inadmissible; and
2. To notify the parties of this decision; to publish it 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 26 day of the month of December, 2018. (Signed): Margarete May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President (dissident vote); Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.