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REPORT No. 461/21
CASE 13.394

REPORT ON ADMISSIBILITY AND MERITS (PUBLICATION)

PETE CARL ROGOVICH
UNITED STATES OF AMERICA

Approved by electronically the Commission on December 31, 2021.

Cite as: IACHR, Report No. 461/21. Case 13.394. Admissibility and Merits (Publication). Pete Carl Rogovich. United States of America. December 31, 2021.

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I. INTRODUCTION

1. On February 19, 2014, the Inter-American Commission on Human Rights (the "Inter-American Commission", "Commission" or "IACHR") received a petition and request for precautionary measures [1] submitted by Sarah Stone from the Arizona's Federal Public Defender's Office (the "petitioner"),[2] alleging the international responsibility of the United States of America (the "State" or "the United States") for the violation of the rights of Pete Carl Rogovich ("Mr. Rogovich"), a United States citizen who is on death row in the state of Arizona.

2. On January 10, 2018, the Commission notified the parties of the application of Article 36 (3) of its Rules of Procedure, since the petition falls within the criteria established in its Resolution 1/16, and placed itself at the disposition of the parties to reach a friendly settlement. The parties enjoyed the time periods provided for in the IACHR's Rules to present additional observations on the merits. All the information received by the Commission was duly transmitted to the parties.

II. POSITIONS OF THE PARTIES

A. Petitioner

3. According to the petitioner, on March 15, 1992, Mr. Rogovich shot and killed four people in the state of Arizona. As a result, he was convicted of four counts of homicide on June 1st, 1994, and was sentenced to death for three of these counts on June 9th, 1995. The petitioner claims that Mr. Rogovich suffers from severe mental illness, hence his death sentence and execution are in violation of international law; that he was provided incompetent legal representation at trial and on direct appeal; that the Antiterrorism and Effective Death Penalty Act ("AEDPA") in practice prevents a review of state courts' decisions; that the method of execution applied in Arizona violates his right to be free from cruel, infamous or unusual punishment; that prison conditions to which he has been subjected are cruel and inhumane; and that Arizona clemency procedures do not comport with minimum standards of due process.

4. The petitioner states that the alleged victim suffers from serious mental illness since a young age, but treatment only started after his arrest. She alleges that the alleged victim was heavily medicated and therefore was unable to follow his own trial. Mr. Rogovich was allegedly diagnosed with schizophrenia, paranoid schizophrenia, organic delusional disorder, schizoaffective disorder, psychotic disorder and severe bipolar disorder with psychosis and, therefore, was classified as "Seriously Mentally Ill" by the Arizona Department of Corrections ("ADOC"). In 2008, his status was reviewed and this classification was removed. According to the petitioner, due to this change, a death warrant may be issued at any time. She concludes that, because of Mr. Rogovich mental disability, his death sentence constitutes a form of cruel, inhuman or degrading punishment.

5. The petitioner argues that the State provided incompetent defense counsel, given that the trial counsel waived Mr. Rogovich's presence during the jury selection stage of his trial and presented a defense of insanity without consulting the alleged victim. The appellate counsel, according to the petitioner, "filed an anemic brief […] and made no arguments on Mr. Rogovich's behalf." She also alleges that appellate counsel did not challenge the constitutionality of the death penalty or the prosecutor's allegations, but confirmed the alleged victim's competency, even though Mr. Rogovich's competency was one of the most controversial questions during trial stage. She states that this situation was aggravated by the failure of the domestic legal system to adequately review Mr. Rogovich's claims due to the AEDPA.

6. According to the petitioner, the lethal injection protocol provides two alternative drugs for executions, but none of them are available in Arizona. She also claims that there is no meaningful federal oversight, because the U.S Food and Drug Administration does not regulate or approve products used in lethal injections.

[1] On March 4, 2014, the IACHR granted precautionary measures on behalf of Mr. Rogovich pursuant to Article 25(1) of its Rules of Procedure and requested the United States to take the measures necessary to preserve his life and physical integrity so as not to hinder the processing of his case before the Inter-American system.

[2] On February 25, 2016, the petitioner informed that Ms. Sarah Stone left the office and that Mr. Rogovich would be represented by Ms. Therese Michelle Day from the Arizona's Federal Public Defender's Office and Ms. Julianne Hill from Reprieve.

Consequently, petitioner argues that Mr. Rogovich execution fails to comply with the "least possible physical and mental suffering" criteria and that it amounts to nonconsensual human experimentation.

7. The petitioner claims that for more than 20 years Mr. Rogovich was held in solitary confinement in a cell without windows and no access to sunlight, where the lights remained on even during the night. She affirms that prisoners could only leave their cells three times a week, for no longer than two hours. On July 18, 2017, Mr. Rogovich was allegedly transferred out of solitary confinement, due to a change in detention policy. The petitioner also points out that there is no psychiatrist in the prison and that there are delays in the provision of Mr. Rogovich's psychiatric medication. According to the petitioner, Mr. Rogovich's prolonged stay on death row violates his human rights.

8. Finally, the petitioner states that the clemency procedure is highly political and therefore ineffective. The petitioner alleges that the clemency board members are trained by the Attorney General whose office assists prosecutors in securing death sentences at the trial level. Further, she states that the board is restricted to the evidence and arguments presented at trial and whether the sentence was excessive. According to the petitioner, the little evidence which can be considered is reviewed by individuals whose job training was conducted solely by the prosecutor's office which has advocated for Mr. Rogovich's execution since 1997.

9. With regard to the requirement of exhaustion of domestic remedies, the petitioner indicates that Mr. Rogovich's conviction and sentence were affirmed on direct appeal. An application for *writ of certiorari* to the United States Supreme Court was denied on October 8th, 2009. They state that post-conviction remedies were also rejected. On October, 22nd, 2009, Mr. Rogovich filed a motion for rehearing on post-conviction relief before the Maricopa County Superior Court, which denied the motion on January 6, 2016. The petitioner concludes that the United States has violated Articles I, II, XI, XXV, XVII, XVIII, XXIV and XXVI of the American Declaration as well as Articles 6 and 7 of the International Convenant of Civil and Political Rights, Articles 1 and 16 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and customary international law norms.

B. State

10. The United Stated alleges that the petitioner has not exhausted domestic remedies and that Mr. Rogovich "[…] is engaged in active domestic litigation, is being afforded due process, has been given access to remedies, and has not experienced substantially unwarranted delays in rendering a final judgement." It also asserts that capital punishment in the United States is compatible with the right to life and does not constitute cruel, infamous, or unusual punishment. Therefore, the State requests that the IACHR rule the petition inadmissible for failure to exhaust domestic remedies and for not stating facts that tend to establish a violation of the American Declaration.

11. The State asserts that the petitioner introduced new claims in the additional observations on the merits not included in the original petition, namely the claims regarding the lethal injection, the alleged lack of appropriate care for the alleged victim's mental illness and health needs, and the prolonged stay on death row. It alleges in this regard that "[a]llowing Petitioner to expand the scope of the Petition by introducing new claims at this stage challenges the integrity of the Commission's practice of joining the admissibility and merits consideration of a petition." It also claims that allowing it would undermine the stated purpose of such joinder because it would require additional submissions on the admissibility of such new claims. Further, the State asserts that those claims that are based in authorities beyond the American Declaration are inadmissible under Article 34(a) as outside the Commission's competence.

12. The State argues that its domestic legislation affords procedural protections that satisfy due process requirements. It asserts that the delays experienced during proceedings before the Maricopa County Superior Court occurred due to changes of counsel as well as several motions by the Petitioner to extend time for filings. It also claims that capital punishment does not constitute cruel, infamous, or unusual punishment, and that there is no international consensus forbidding the execution of seriously mentally ill individuals who are determined not to be insane or suffering from severe mental impairment.

13. The State affirms that the alleged victim's legal representation during trial, appellate, and post-conviction relief proceedings met constitutional standards of competence. It points out that defense counsel was not required to obtain affirmative consent from the client related to strategic decisions, such as presenting an insanity defense at trial and excluding him from jury selection. Regarding the claims that trial counsel violated Mr. Rogovich's rights by presenting an insanity defense at trial without his affirmative consent and by excluding him from jury selection, the State alleges that the allegations are contradictory with the claim of severe mental illness. According to the State, if petitioner's statement about Mr. Rogovich's mental state were true, they are difficult to reconcile with the assertions about his ability to knowingly, willingly, or intelligently consent to such a defense.

14. Regarding Mr. Rogovich's mental competence, the State claims that, during trial, four mental health experts considered his case; two found he might suffer from psychosis while two others found his behavior was the result of a personality disorder, not mental illness, or even just the result of drug intoxication. According to the State, given the ineffectiveness of these efforts, counsel's decision not to raise more evidence of the alleged mental illness was far from unreasonable. Therefore, the State concludes that counsel should not be found to have rendered ineffective assistance for failing to raise issues that would not have reasonably affect the outcome of the case.

15. The State asserts that the use of lethal injection in this case does not constitute cruel, infamous or unusual punishment, because the State of Arizona has sought to ensure that lethal injections are administered as humanely as possible. It also alleges that, when lengthy delays between initial sentencing and execution are caused by a capital prisoner's use of the many avenues open to him for appeal, he cannot then credibly claim that that delay itself amounted to cruel, infamous, or unusual punishment.

16. Further, the United States affirms that solitary confinement does not necessarily violate prisoners' due process rights and, citing the IACHR, indicates that prison conditions should be determined on a case-by-case basis in light of prisoner's physical and mental condition and other personal circumstances. According to the State, Mr. Rogovich "has no incentive to respect other inmates' physical safety, as there is no realistic possibility that he will receive a reduced sentence in exchange for good behavior." In addition, it alleges that the petitioner submits no evidence regarding the alleged negative psychological or physical effects the alleged victim has suffered due to his incarceration. The State concludes that prison conditions were adequate to protect the alleged victim himself, guards and other inmates.

17. Finally, the State claims that access to clemency proceedings is not a due process right included in the American Declaration and that international and U.S. law do not grant prisoners a right to clemency proceedings. These proceedings, according to the State, are not judicial proceedings to which due process protections can apply but instead involve an exercise of the discretionary power of the executive that is not subject to judicial review. The State asserts that, although it is not required to do so by international or U.S. law, Arizona affords prisoners a robust clemency process and that its Board members have been trained to properly examine prisoners' trial and sentencing proceedings.

III. ADMISSIBILITY

A. Competence, duplication of procedures and international *res judicata*

Competence *Ratione personae:*	Yes
Competence *Ratione loci*:	Yes
Competence *Ratione temporis*:	Yes
Competence *Ratione materiae*:	Yes, American Declaration of the Rights and Duties of Man (ratification of the OAS Charter on June 19, 1951)
Duplication of procedures and international *res judicata*:	No

18. The IACHR notes that the petitioner alleges the violation of Articles 6 and 7 of the International Convenant of Civil and Political Rights, and Articles 1 and 16 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The IACHR has no jurisdiction to find such provisions violated, although it may use them as an interpretive guideline to determine the scope of the rights established in the American Declaration.

B. Exhaustion of domestic remedies and timeliness of the petition

19. According to the information available, and as established in the facts described below, Mr. Rogovich was sentenced to death by the Superior Court of the State of Arizona on June 9, 1995. The appeal filed before the Arizona Supreme Court was denied on February 4, 1997, and later that year the application for writ of certiorari to the U.S Supreme Court was also denied. On February 4, 1999, Mr. Rogovich filed the first notice for post-conviction relief based on 11 claims. The state trial court denied petitioner's claims and on September 28, 2001, the Arizona Supreme Court affirmed this decision. In 2002, according to the petitioner, Mr. Rogovich filed a second petition for post-conviction relief but withdrew the request after the U.S. Supreme Court refused to apply a precedent retroactively. In 2009, the alleged victim filed a third petition for post-conviction relief before the Maricopa County Superior Court, alleging that his death sentence violated his fundamental rights because of his serious mental illness. After this petition was denied, he filed on October 22, 2009, a motion for rehearing that was dismissed on January 11, 2016. Further, on February 6, 2012 the alleged victim filed a complaint before the United States District Court against the District of Arizona challenging the manner and the means of execution employed by the Arizona Department of Corrections ("ADC"); the complaint was rejected.

20. The IACHR notes that the rule requiring the exhaustion of domestic remedies does not mean that alleged victims have to exhaust every remedy available. In this regard, the Commission has repeatedly held that "the rule which requires the prior exhaustion of domestic remedies is designed for the benefit of the State, for that rule seeks to excuse the State from having to respond to charges before an international body for acts imputed to it before it has had the opportunity to remedy them by internal means."[3] Therefore, if the alleged victim raised the issue by any lawful and appropriate alternative under the domestic juridical system and the State had the opportunity to remedy the matter within its jurisdiction, the purpose of the international rule has thus been served.[4]

21. Based on the available information, the IACHR notes that the alleged victim has not only exhausted all direct review proceeding, but also state and federal post-conviction proceedings. The IACHR also notes that the petitioner raised the lethal injection's claim before domestic courts. Regarding the claim relating to the clemency proceedings and detention conditions, the Commission observes that, in order to accord with generally recognized principles of international law, the State failed to point out the domestic remedies available and to prove they are both adequate, in the sense that they must be suitable to address an infringement of a legal right, and effective, in that they must be capable of producing the result for which they were designed[5].

22. Based on the above factors, the Inter-American Commission concludes that the petitioner properly exhausted domestic remedies available within the domestic legal system and, therefore, that the alleged victims' claims before the Commission are not barred from consideration by the requirement of exhaustion of domestic remedies under Article 31(1) of its Rules of Procedure. The petition before the IACHR was presented on February 19, 2014, and the motion for rehearing filed against the denial of the third petition for post-conviction relief was dismissed on January 11, 2016. Therefore, the Commission also concludes that the requirement specified in Article 32(1) of its Rules of Procedure has been met.

[3] IACHR, Report No. 54/14, Petition 684-14. Admissibility. Russel Bucklew and Charles Warner. United States. July 21, 2014, para. 28.
[4] IACHR, Report No. 54/14, Petition 684-14. Admissibility. Russel Bucklew and Charles Warner. United States. July 21, 2014, para. 28.
[5] IACHR. Report No. 108/00. Case 11.753. Admissibility. Ramón Martinez Villareal. United States. December 4, 2000. para 60.

C. Colorable claim

23. The Commission considers that, if proven, the facts alleged by the petitioner would tend to establish violations of the rights set forth in Articles I, XI, XVIII, XXIV, XXV and XXVI of the American Declaration, to the detriment of Mr. Rogovich.

24. The IACHR finds that the petitioner has not sufficiently substantiated allegations so as to allow the Inter-American Commission to determine that the alleged facts tend to establish a violation of Articles II of the American Declaration.

25. The State alleges that the petitioner introduced new claims in the additional observations on the merits not included in the original petition. The State asserts that this undermines the purpose of the practice of joining the admissibility and merits, as it would require additional submissions on the admissibility of such new claims. The Commission notes in this regard that the purpose of Article 36.3 of the IACHR's Rules is to defer the analysis of the admissibility to the merits stage. At the time of the adoption of the report on the admissibility and merits, the IACHR establishes the object of the case and determines the compliance with the admissibility requirements based on the information received during the processing of the case, information that has been duly forwarded to the other party. Therefore, the IACHR concludes that the State had the opportunity to present observations on the admissibility of all the claims raised by the petitioner.

IV. FINDINGS OF FACT

A. Relevant legal framework

26. Section 104 of the Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996 establishes:[6]

> Section 2254 of title 28, United States Code, is amended—
> […]
> (3) by inserting after subsection (c) the following new subsection:
> (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding;
>
> (4) by amending subsection (e), as redesignated by paragraph (2), to read as follows:
> (e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.
> (2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—
> (A) the claim relies on—
> (i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
> (ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and
> (B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense; […]

27. Article 2 (PARDON. R5-4-201. Pardon) of the Arizona Administrative Code establishes:

> A. Unless prohibited by law, an individual who was convicted of an Arizona felony offense may apply for a pardon.

[6] Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214.

B. To apply for a pardon, an eligible individual shall submit to the Board a completed application form obtained from the Board.
C. In addition to the application form required under subsection (B), an applicant shall submit other information and documents that the Board requests to assist it in deciding whether to recommend a pardon.
D. If an inmate applies for a pardon, the Board shall request that the Department review the application and verify whether the inmate is eligible to apply for the pardon.
E. After receiving a complete application from an eligible applicant, the Board shall schedule a hearing and provide advance written notice to the applicant of the date and location of the hearing.
F. At the hearing, the Board shall take one of the following actions: 1. Vote to deny recommending that the governor grant a pardon and notify the applicant in writing of the Board's decision within 10 work days. 2. Vote to recommend that the governor grant a pardon and notify the applicant in writing of the Board's decision within 10 work days.
G. If the Board votes to recommend a pardon, the Presiding Officer shall designate a Board member to prepare and send to the governor a letter of recommendation. The letter of recommendation may include a statement of individual Board members' reasons for voting to recommend a pardon. Board members who voted not to recommend a pardon may prepare and send letters of dissent to the governor.
H. If the governor denies a pardon, the Board shall notify the applicant in writing of the governor's decision within 10 work days after receiving notice of the governor's decision.
I. If the Board votes not to recommend a pardon for an applicant or if the governor denies a pardon, the applicant shall not apply again for a pardon for three years from the date of the Board's decision[7].

B. Facts of the case

28. According to the information available, on the morning of March 15, 1992, Pete Carl Rogovich shot a shop clerk in the eye from two feet away. Four hours later he left his apartment and began firing randomly into the parking lot of the complex, jumped the fence and entered a nearby trailer park. There, he went on a "homicidal rampage" killing three women and fleeing into an open field. After the shootings, Mr. Rogovich stole a van and robbed a convenience store, both at gunpoint. After a long pursuit, police were able to stop the van using a roadblock and arrested Mr. Rogovich.[8]

29. According to the Deputy Sheriff who arrested Mr. Rogovich, after the alleged victim left the store there was a pursuit against him by several patrol cars. Mr. Rogovich's van then approached one of the police cars about 50 miles an hour, slowed down and the alleged victim leaned over, waved and smiled. After Mr. Rogovich was arrested, he asked if this would "hurt his chances of being a police officer."[9]

C. Mr. Rogovich's detention, trial and death sentence

30. After his arrest, Mr. Rogovich was transported to the Main Station of the Phoenix Police Department, where he was interviewed.[10] In this opportunity, the alleged victim said: "I guess this blows my chances to get on the Phoenix Police Department, huh – I've applied twice" with a humorous expression and said he was suffering a lot of emotional trauma.[11] Mr. Rogovich was held in Maricopa County Madison Street Jail until June 9, 1995, when he was transferred to ASPC Eyman-Browning Unit.[12]

31. On July 28, 1992, Mr. Rogovich was found lying on his back hollering "they are trying to kill me." He had superficial scratches on his arm and hand, was very agitated and it required four to six officers to hold him in place.[13] On the same day, he attempted suicide and was then transferred to the psych unit, where for the next

[7] Arizona Administrative Code. Board of Executive Clemency. Title 5. Corrections. Available at: https://apps.azsos.gov/public_services/Title_05/5-04.pdf. Last access: July 30, 2019.
[8] State v. Rogovich. Supreme Court of Arizona. No. CR-95-0288-AP. February 4, 1997.
[9] Arizona v. Rogovich. Trial Tr. Vol. 8. Direct Examination of Deputy Sheriff William Prather. Appendix 1, submitted with petitioner's original petition on February 19, 2014.
[10] Arizona v. Rogovich. Trial Tr. Vol. 8. Direct examination of Mr. Charles Hodges. Appendix 1, submitted with petitioner's original petition on February 19, 2014.
[11] Arizona v. Rogovich. Trial Tr. Vol. 8. Direct examination of Mr. Charles Hodges. Appendix 1, submitted with petitioner's original petition on February 19, 2014.
[12] Further information regarding the petitioner's place of detention. Incoming correspondence on February 20, 2014.
[13] Arizona v. Rogovich. Trial Tr. Vol. 11. Cross-examination of Dr. Michael Brad Bayless. Appendix 1, submitted with petitioner's original petition on February 19, 2014.

two days was held tied down at his hands and his feet to a bed.[14] On August 7, 1992, Mr. Rogovich was prescribed anti-psychotic medication for the first time.[15] According to a medical report dated August 20, 1992, Mr. Rogovich appeared to have paranoid schizophrenia.[16] Later, another doctor diagnosed the alleged victim's symptoms as "paranoid psychosis."[17] The alleged victim was prescribed psychotic medicine for one month.[18]

32. On December 21, 1992, Mr. Rogovich was discharged from the psych unit. One week later, another psychiatrist concluded that the alleged victim's symptoms came from a long history of drug usage and that he was not suffering from paranoid schizophrenia.[19] On May 21 and 24, 1993, the alleged victim was submitted to psychological tests which concluded that Mr. Rogovich "not only is […] a paranoid schizophrenic, but he has brain damage; the organic mental disorder, which is – which is perhaps one of the reasons that he has, that there has been some controversy about his diagnosis."[20]

33. During his trial, in May 1994, Mr. Rogovich reported he was in a "chemical haze" due to psychotropic medication, which affected his ability to follow the proceedings.[21] The alleged victim was taking four different kinds of medicines at the time.[22] As it was submitted to the United States District Court of Arizona, throughout the trial Rogovich continued to have mental health problems which, coupled with the medicines, made it difficult for him to communicate with his counsel[23]. Mr. Rogovich's counselor waived his presence at the *voir dire* of the jury pool. The issue of Mr. Rogovich's competency was approached during a hearing on November 15, 1994, and the Court ordered a pre-screening.[24] On March 15, 1995, the alleged victim's competency was confirmed.[25] On June 1, 1995, Mr. Rogovich was convicted of four counts of first-degree murder plus two counts of armed robbery and one count of unlawful flight from a police officer, and sentenced to the death penalty on June 9, 1995.[26]

34. Mr. Rogovich's court-appointed appellate counsel filed an appeal raising three issues in ten pages of arguments and, according to the petitioners, only one of these issues was based on Mr. Rogovich's record. Appellate counsel also conceded Mr. Rogovich's competency in his briefing to the court. This information was not contested by the State. The Arizona Supreme Court denied the appeal on February 4, 1997, and the U.S. Supreme Court of Justice denied an application for writ of certiorari on October 6, 1997.[27]

[14] Arizona v. Rogovich. Trial Tr. Vol. 11. Cross-examination of Dr. Michael Brad Bayless. Appendix 1, submitted with petitioner's original petition on February 19, 2014.
[15] Arizona v. Rogovich. Trial Tr. Vol. 11. Cross-examination of Dr. Michael Brad Bayless. Appendix 1, submitted with petitioner's original petition on February 19, 2014.
[16] Arizona v. Rogovich. Trial Tr. Vol. 11. Cross-examination of Dr. Michael Brad Bayless. Appendix 1, submitted with petitioner's original petition on February 19, 2014.
[17] Arizona v. Rogovich. Trial Tr. Vol. 11. Cross-examination of Dr. Michael Brad Bayless. Appendix 1, submitted with petitioner's original petition on February 19, 2014.
[18] Arizona v. Rogovich. Trial Tr. Vol. 11. Cross-examination of Dr. Michael Brad Bayless. Appendix 1, submitted with petitioner's original petition on February 19, 2014.
[19] Arizona v. Rogovich. Trial Tr. Vol. 11. Cross-examination of Dr. Michael Brad Bayless. Appendix 1, submitted with petitioner's original petition on February 19, 2014.
[20] Arizona v. Rogovich. Trial Tr. Vol 9. Direct examination of Dr. Marc Stuart Walter. Appendix 1, submitted with petitioner's original petition on February 19, 2014.
[21] Dr. Barry Morenz Psychiatric Evaluation Report of Pete Rogovich dated July 9, 2003, page 5. Appendix 3, submitted with petitioner's additional observations on the merits on May 11, 2018.
[22] Maricopa County Correctional Health Services, List of medication provided from February 20, 1994 to June 10, 1994. Appendix 7, submitted with additional observations on the merits on May 11, 2018.
[23] Excerpts from First Amended Petition for Writ of Habeas Corpus before the United States District Court of Arizona in the matter of Rogovich v. Stewart et al. Appendix 6, submitted with petitioner's additional observations on the merits on May 11, 2018.
[24] Opening Brief of Petitioner-Appellant before the U.S. Court of Appeals for the Ninth Circuit. Appendix 3, submitted with petitioner's original petition on February 19, 2014.
[25] Excerpts from First Amended Petition for Writ of Habeas Corpus before the United States District Court of Arizona in the matter of Rogovich v. Stewart et al. Appendix 6, submitted with petitioner's additional observations on the merits on May 11, 2018.
[26] Response of the State from February 25, 2016. page 3.
[27] Supreme Court of the United States. Rogovich v. Arizona. 522 U.S. 829. No. 96-9012. Available at: https://cite.case.law/us/522/829/11491468/. Last access: July 30, 2019.

D. Post-conviction proceedings

35. On February 4, 1999, Mr. Rogovich filed a notice for post-conviction relief raising 11 claims, such as ineffective assistance of trial and appellate counsel. A request for an evidentiary hearing was denied, and the Court held oral arguments without the alleged victim's presence. The arguments raised were rejected a few days later. Mr. Rogovich filed a petition for review of this decision to the Arizona Supreme Court, which was denied on September 28, 2001.[28]

36. On October 5, 2000, Mr. Rogovich filed a petition for a writ of habeas corpus and a stay of execution. On June 4, 2001, he filed a first amended petition for writ of habeas corpus and raised eleven claims.[29] Mr. Rogovich filed a series of lawsuits and letters to the judge and to the prosecutor, asking to waive his appeals, followed by letters retracting those requests.[30] The Court, consequently, expressed concern about the petitioner's mental health and his competency to waive appeals. A hearing was ordered and the court stated that his case seemed "as complicated as possible.[31]" According to the petitioner, in 2002 Mr. Rogovich filed a second petition for post-conviction relief and withdrew the request after the U.S. Supreme Court refused to apply a precedent retroactively .[32]

37. In 2003, a psychiatrist appointed by defense counsel evaluated Mr. Rogovich and concluded that he had "a serious mental illness, schizoaffective disorder, which is a combination of symptoms of schizophrenia and bipolar disorder."[33] According to the petitioner, on August 4, 2004, Mr. Rogovich was officially classified as "Seriously Mentally Ill,"[34] and on September 30, 2008, the Arizona Department of Corrections removed the SMI classification.[35] This allegation was not contested by the State. In 2009, the same psychiatrist declared that his "assessment remain[ed] unchanged from [his] prior evaluation" and that Mr. Rogovich "warrant[ed] the diagnosis of schizoaffective disorder, panic disorder without agoraphobia, borderline personality disorder and polysubstance abuse in a controlled environment."[36]

38. The alleged victim filed a third petition for post-conviction relief in 2009 before the Maricopa County Superior Court, challenging the constitutionality of the execution because of his serious mental illness. After this petition was denied, he filed a motion for rehearing on October 22, 2009.[37] According to publicly available information, between October 27, 2009, and April 18, 2013, there was no procedural activity regarding Mr. Rogovich's motion. After this date, the alleged victim filed a request for ruling and, on December 18, 2013, the state court set a status conference for February 21, 2014. On February 28, 2014, one of Mr. Rogovich attorneys withdrew from his case. On May 12 and on June 26, 2015, Mr. Rogovich's counsel filed a request for extension of time, which was granted. The motion for rehearing was finally dismissed on January 11, 2016.

39. On February 6, 2012, the alleged victim filed a complaint for equitable, injunctive and declaratory relief before the United States District Court for the District of Arizona challenging the manner and the means of execution employed by the ADC. Mr. Rogovich claimed that the 2012 protocol for executions eliminated many safeguards that were previously employed and that it gave ADC Director unfettered discretion in determining

[28] Opening Brief of Petitioner-Appellant before the U.S. Court of Appeals for the Ninth Circuit. Appendix 3, submitted with petitioner's original petition on February 19, 2014.
[29] Excerpts from First Amended Petition for Writ of Habeas Corpus before the United States District Court of Arizona in the matter Rogovich v. Stewart et al. Appendix 6, submitted with petitioner's additional observations on the merits on May 11, 2018.
[30] Opening Brief of Petitioner-Appellant before the U.S. Court of Appeals for the Ninth Circuit. Appendix 3, submitted with petitioner's original petition on February 19, 2014.
[31] Transcript from June 9, 2003 Status Hearing regarding Medication in relation to First Amended Petition for Writ of Habeas Corpus (June 4, 2001). Appendix 4, submitted with petitioner's original petition on February 19, 2014.
[32] Opening Brief of Petitioner-Appellant before the U.S. Court of Appeals for the Ninth Circuit. Appendix 3, submitted with petitioner's original petition on February 19, 2014.
[33] Dr. Barry Morenz Psychiatric Evaluation Report of Pete Rogovich dated July 9, 2003, page 5. Appendix 3, submitted with petitioner's additional observations on the merits on May 11, 2018.
[34] Memorandum in Suport of Petition for Post-Conviction Relief before the Superior Court of Arizona, Maricopa County in the matter of *State of Arizona* v. Pete Carl Rogovich. Appendix 5, submitted with petitioner's additional observations on the merits on May 11, 2018.
[35] Petitioner's additional observations on the merits on May 11, 2018. pages 3-4.
[36] Dr. Barry Morenz Psychiatric Evaluation Report of Pete Rogovich dated July 9, 2003, page 5. Appendix 3, submitted with petitioner's additional observations on the merits on May 11, 2018.
[37] Petitioner's original petition from February 19, 2014. page 9. Response of the State from February 25, 2016. page 4.

the manner in which a prisoner would be executed, using non FDA approved drugs.[38] According to the information available, the complaint was rejected.

E. Detention Conditions

40. The petitioner alleges that Mr. Rogovich was held for more than 20 years in solitary confinement, in a cell without windows and no access to sunlight,[39] where the lights remained on even during the night.[40] The petitioner also affirms that prisoners could only leave their cells three times a week, for no longer than two hours. The State did not contest these allegations.

41. According to the information available, medication at the ASPC – Eyman Unit is not provided on a regular basis[41] and there is a shortage of qualified mental health staff.[42] According to reports, of a phychiatrist and an expert on prison-correctional medicine, submitted before domestic courts, "there is failure to see patients at appropriate intervals, patient encounters that are insufficiently thorough (for example, failure to perform a mental status exam or a suicide risk assessment); and inadequate documentation in the medical record."[43] Further "ADC's delivery of mental health services and its conditions of confinement for prisoners with mental illness fall below the standard of care and create a substantial risk of serious harm or death."[44]

F. Method of execution

42. The current protocol from the Arizona Department of Corrections establishes:[45]

> Charts for all chemical protocols follow. The Director shall have the sole discretion as to which drug protocol will be used for the scheduled execution. This decision will be provided to the inmate and their counsel of record in writing at the time the state files a request for Warrant of Execution in the Arizona Supreme Court. If the Department is able to obtain the chemical pentobarbital in sufficient quantity and quality to successfully implement the one-drug protocol with pentobarbital set forth in Chart A, then the Director shall use the one-drug protocol with pentobarbital set forth in Chart A as the drug protocol for execution. If the Department is unable to obtain such pentobarbital, but is able to obtain the chemical sodium pentothal in sufficient quantity and quality to successfully implement the one-drug protocol with sodium pentothal set forth in Chart B, then the Director shall use the one drug protocol with sodium pentothal set forth in Chart B as the drug protocol for execution.

43. According to publicly available information, in 2014 Arizona executed Joseph Wood, by administering 15 doses of a two-drug cocktail of midazolam and hydromorphone over two hours. This execution led to a lawsuit challenging the way the state carried out the death penalty and the difficulty of finding lethal injection drugs. A federal judge subsequently issued a stay on executions in Arizona. On June 22, 2017, the judge lifted the stay following a settlement agreement between the Corrections Department and the prisoners' attorney. On July 26, 2019, Arizona's Attorney General sent a letter to Arizona's Governor indicating that the now-resolved lawsuit removed legal barriers to carrying out executions and that in a recent opinion the U.S. Justice Department

[38] Complaint for Equitable, Injunctive, and Declaratory Relief. Appendix 5, submitted with petitioner's original petition on February 19, 2014.
[39] Petitioner's original petition from February 19, 2014. page 45.
[40] Dr. Barry Morenz Addendum to Psychiatric Evaluation Report of Pete Rogovich, pages 3-4. Appendix 4, submitted with petitioner's additional observations on the merits on May 11, 2018.
[41] Declaration of Todd R. Wilcox, 4/11/2016. Attachment E, submitted with petitioner's observations on the Government's reply on May 25, 2017.
[42] Declaration of Pablo Stewart, 4/11/2016. Attachment F, submitted with petitioner's observations on the Government's reply on May 25, 2017.
[43] Declaration of Todd R. Wilcox, 4/11/2016. Attachment E, submitted with petitioner's observations on the Government's reply on May 25, 2017.
[44] Declaration of Pablo Stewart, 4/11/2016. Attachment F, submitted with petitioner's observations on the Government's reply on May 25, 2017. Page 249.
[45] Arizona Department of Corrections. Department Order Manual. June 13, 2017. Available at: https://files.deathpenaltyinfo.org/legacy/files/pdf/ExecutionProtocols/ArizonaProtocol_06.17.17.pdf. Last access: July 30, 2019.

cleared the way for states to import pentobarbital. There is no information regarding when the next execution will be scheduled.[46]

V. ANALYSIS OF LAW

A. Preliminary considerations

44. Before embarking on its analysis of the merits in the case of Pete Carl Rogovich, the Inter-American Commission believes it should reiterate its previous rulings regarding the heightened scrutiny to be used in cases involving the death penalty. The right to life has received broad recognition as the supreme human right and as a sine qua non for the enjoyment of all other rights.

45. That gives rise to the particular importance of the IACHR's obligation to ensure that any denial of life that may arise from the enforcement of the death penalty strictly abides by the requirements set forth in the applicable instruments of the Inter-American human rights system, including the American Declaration. That heightened scrutiny is consistent with the restrictive approach adopted by other international human rights bodies in cases involving the imposition of the death penalty,[47] and it has been set out and applied by the Inter-American Commission in previous capital cases brought before it.[48] As the Inter-American Commission has explained, this standard of review is the necessary consequence of the specific penalty at issue and the right to a fair trial and all attendant due process guarantees, among others.[49] In the words of the Commission:

> due in part to its irrevocable and irreversible nature, the death penalty is a form of punishment that differs in substance as well as in degree in comparison with other means of punishment, and therefore, warrants a particularly stringent need for reliability in determining whether a person is responsible for a crime that carries a penalty of death.[50]

46. The Inter-American Commission will therefore review the petitioner's allegations in the present case with a heightened level of scrutiny, to ensure in particular that the rights to life, not to receive cruel, infamous or unusual punishment, to due process, and to a fair trial as prescribed under the American Declaration, have been respected by the State. With regard to the legal status of the American Declaration, the IACHR reiterates that:[51]

> [t]he American Declaration is, for the Member States not parties to the American Convention, the source of international obligations related to the OAS Charter. The Charter of the Organization gave the IACHR the principal function of promoting the observance and protection of human rights in the Member States. Article 106 of the OAS Charter does not, however, list or define those rights. The General Assembly of the OAS at its Ninth Regular Period of Sessions, held in La Paz, Bolivia, in October 1979, agreed that those rights are those enunciated and defined in the American Declaration. Therefore, the American Declaration crystallizes the fundamental principles recognized by the American States. The OAS General Assembly has also repeatedly recognized that the American Declaration is a source of international obligations for the member states of the OAS.

[46] Death Penalty Information Center. Arizona. Available at: https://deathpenaltyinfo.org/state-and-federal-info/state-by-state/arizona. Last access: August 6, 2019. CBS News. Arizona to resume executions for first time since 2014 lawsuit over alleged botched lethal injection. July 26, 2019. Available at: https://www.cbsnews.com/news/arizona-to-resume-executions-for-first-time-since-2014-lawsuit-announced-today-2019-07-26/. Last access: August 6, 2019.

[47] See, for example: I/A Court H. R., Advisory Opinion OC-16/99 (October 1, 1999), *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, para. 136; United Nations Human Rights Committee, *Baboheram-Adhin et al. v. Suriname*, Communications Nos. 148-154/1983, adopted on April 4, 1985, para. 14.3; *Report of the United Nations Special Rapporteur on Extrajudicial Executions*, Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights Resolution 1994/82, Question of the Violation of Human Rights and Fundamental Freedoms in any part of the World, with particular reference to Colonial and Other Dependent Countries and Territories, UN Doc.E/CN.4/1995/61 (December 14, 1994), para. 378.

[48] IACHR, Report No. 57/96, Andrews, United States, IACHR Annual Report 1997, para. 170-171; Report No. 38/00 Baptiste, Grenada, IACHR Annual Report 1999, paras. 64-66; Report No. 41/00, McKenzie *et al.*, Jamaica, IACHR Annual Report 1999, paras. 169-171.

[49] IACHR, The death penalty in the Inter-American System of Human Rights: From restrictions to abolition, OEA/Ser.L/V/II.Doc. 68, December 31, 2011, para. 41.

[50] IACHR, Report No. 78/07, Case 12.265, Merits (Publication), Chad Roger Goodman, The Bahamas, October 15, 2007, para. 34.

[51] IACHR, Report No. 44/14, Case 12,873, Report on Merits (Publication), Edgar Tamayo Arias, United States, July 17, 2014, para. 214.

47. Finally, the Commission recalls that its review does not consist of determining that the death penalty in and of itself violates the American Declaration. What this section addresses is the standard of review of the alleged human rights violations in the context of criminal proceedings in a case involving the application of the death penalty.

B. Right to a fair trial,[52] right of petition,[53] and right to due process of law[54]

1. Ineffective assistance of court-appointed counsel

48. Adequate legal representation is a fundamental component of the right to a fair trial. The IACHR has found that "[t]he right to due process and to a fair trial includes the right to adequate means for the preparation of a defense, assisted by adequate legal counsel."[55] According to the Commission, "[t]he State cannot be held responsible for all deficiencies in the conduct of State-funded defense counsel. National authorities are, however, required [...] to intervene if a failure by legal aid counsel to provide effective representation is manifest or sufficiently brought to their attention. Rigorous compliance with the defendant's right to competent counsel is compelled by the possibility of the application of the death penalty."[56]

49. The appointment of an attorney by the state does not, in and of itself, ensure effective assistance of counsel. At the same time, while the state is responsible for ensuring that such assistance is effective, it is not responsible for what may be understood as decisions of strategy or for every possible shortcoming. Rather, the Commission must evaluate whether the assistance of counsel was effective in the overall context of the process and taking into account the specific interests at stake. In the present case, the interests at stake included the potential application of the death penalty, and the assistance of counsel must be evaluated in that context.[57]

50. The Commission has established that "the fundamental due process requirements for capital trials include the obligation to afford a defendant a full and fair opportunity to present mitigating evidence for consideration in determining whether the death penalty is the appropriate punishment in the circumstances of his or her case."[58] The Commission has also indicated that due process protections, under the Declaration:

> guarantee an opportunity to make submissions and present evidence as to whether a death sentence may not be a permissible or appropriate punishment in the circumstances of the defendant's case, in light of such considerations as the offender's character and record, subjective factors that might have motivated his or her conduct, the design and manner of execution of the particular offense, and the possibility of reform and social readaptation of the offender.[59]

51. It may be noted that the fundamental nature of this guarantee has been reflected in practice guidelines for lawyers. The American Bar Association has prepared and adopted guidelines and related commentaries that emphasize the importance of investigating and presenting mitigating evidence in death penalty cases.[60]

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[52] Article XVIII of the American Declaration establishes: Every person may resort to the courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

[53] Article XXIV of the American Declaration establishes: Every person has the right to submit respectful petitions to any competent authority, for reasons of either general or private interest, and the right to obtain a prompt decision thereon.

[54] Article XXVI of the American Declaration establishes: Every accused person is presumed to be innocent until proved guilty.
Every person accused of an offense has the right to be given an impartial and public hearing, and to be tried by courts previously established in accordance with pre-existing laws, and not to receive cruel, infamous or unusual punishment.

[55] IACHR, The death penalty in the Inter-American System of Human Rights: From restrictions to abolition, OEA/Ser.L/V/II.Doc. 68, December 31, 2011, p. 123.

[56] IACHR, The death penalty in the Inter-American System of Human Rights: From restrictions to abolition, OEA/Ser.L/V/II.Doc. 68, December 31, 2011, p. 123.

[57] IACHR, Report No. 79/15, Case 12.994. Merits (Publication). Bernardo Aban Tercero. United States. October 28, 2015, para. 111.

[58] IACHR, Report No. 90/09, Case 12.644, Admissibility and Merits (Publication), Medellín, Ramírez Cárdenas and Leal García, United States, August 7, 2009, para. 134.

[59] IACHR, Report No. 90/09, Case 12.644, Admissibility and Merits (Publication), Medellín, Ramírez Cárdenas and Leal García, United States, August 7, 2009, para. 134.

[60] American Bar Association, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (Revised editions) (February 2003), Guideline 10.7 – Investigation. Available at: http://www.abanet.org/legalservices/downloads/sclaid/deathpenaltyguidelines.pdf.

According to these guidelines, the duty of counsel in the United States to investigate and present mitigating evidence is now well-established and "[b]ecause the sentencer in a capital case must consider in mitigation, anything in the life of the defendant which might militate against the appropriateness of the death penalty for the defendant," penalty phase preparation requires extensive and generally unparalleled investigation into personal and family history.[61] The Guidelines also emphasize that the "mitigation investigation should begin as quickly as possible, because it may affect the investigation of first phase defenses (e.g., by suggesting additional areas for questioning police officers or other witnesses), decisions about the need for expert evaluations (including competency, mental retardation, or insanity), motion practice, and plea negotiations."[62]

52. In the instant case, the petitioner claims that Mr. Rogovich was provided incompetent legal representation at trial and on direct appeal. The State alleges that legal representation during trial, appellate, and post-conviction relief proceedings met constitutional standards of competence.

53. The petitioner argues that the State provided incompetent defense counsel, given that trial counsel waived Mr. Rogovich's presence during the jury selection stage and presented a defense of insanity without consulting the alleged victim. The IACHR notes in this regard that, throughout the proceedings before the Commission, the petitioner consistently alleged that Mr. Rogovich suffered at the time, and still suffers, from severe mental illness, an allegation that will be analyzed below. The Commission agrees with the State in the regard that there could be a contradiction between both allegations. The IACHR also notes that the petitioner asserted before the Commission that defense counsel raised "numerous issues" during trial.[63] Therefore, the IACHR does not have sufficient factual elements to determine whether this action was compatible with the State's international obligations regarding the legal capacity of persons with disabilities.

54. With regard to Mr. Rogovich's legal representation on direct appeal, from the information provided by the petitioner which has not been contested by the State, the Commission notes that appellate counsel raised three issues in ten pages of arguments, two of those being generic claims. Appellate counsel not only failed to thoroughly challenge the conviction and sentence, but also conceded Mr. Rogovich's competency, one of the most contested issues during trial. Further, there is no indication in the record before the IACHR that appellate counsel hired additional experts, especially considering the divergent opinions regarding Mr. Rogovich's mental health.

55. Considering that the fundamental due process and fair trial requirements for capital trials include the obligation to afford adequate legal representation, and that the failure to adequately challenge the conviction and sentence in a capital case would constitute inadequate representation, the Inter-American Commission concludes that the United States violated Mr. Rogovich's right to due process and to a fair trial under Articles XVIII and XXVI of the American Declaration.

2. Right to appeal and procedural bars

56. The right to appeal a judgment is a basic guarantee of due process to prevent consolidation of a situation of injustice. In this respect, the IACHR has stated that "[t]he due process guarantees should also be interpreted to include a right of effective review or appeal from a determination that the death penalty is an appropriate sentence in a given case."[64] The aim of the right to appeal is to protect the right of defense by creating a remedy to prevent a flawed ruling, containing errors prejudicial to a person's interests, from becoming final.[65]

57. According to the standards developed by the inter-American human rights system, a remedy must be effective, i.e., it must provide results or responses to the end that it was intended to serve, which is to prevent

[61] American Bar Association, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (Revised editions) (February 2003), Guideline 10.7 – Investigation, at 82.
[62] American Bar Association, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (Revised editions) (February 2003), Guideline 10.7 – Investigation, at 83.
[63] Opening Brief of Petitioner-Appellant before the U.S. Court of Appeals for the Ninth Circuit. Appendix 3, submitted with petitioner's original petition on February 19, 2014. p. 34
[64] IACHR, Report No. 48/01, Case 12.067 and others, Michael Edwards *et al.*, The Bahamas, April 4, 2001, para. 149.
[65] IACHR, Report No. 53/13, Case 12.864, Ivan Teleguz, United States, July 15, 2013, para. 101.

consolidation of an unjust situation. It must also be accessible, without requiring the kind of complex formalities that would render this right illusory.[66]

58. Finally, the Commission must underscore that it has an enhanced obligation to ensure that any deprivation of life which may occur through the application of the death penalty is in strict compliance with the right to a timely, effective and accessible appeal.

59. The Inter-American Commission has previously established the following regarding the AEDPA:

> Before 1996, state court interpretations or applications of federal law were not binding in subsequent federal habeas proceeding. With the passage of AEDPA the exhaustion doctrine was modified to permit federal courts to dismiss groundless petitions notwithstanding the fact that state courts have not been afforded the opportunity to find them without merit.[67] Therefore, the Act "limits the introduction of evidence not previously presented to the state courts to cases where either the evidence supports a newly recognized, retroactively applicable constitutional claim or was not reasonably discoverable earlier, however only if the petitioner clearly and convincingly shows that but for the constitutional error established by the newly presented evidence no reasonable jury would have found the petitioner guilty." [68]
>
> Further, in Cullen v. Pinholster, the United States Supreme Court held that review under AEDPA sets several limits on a federal court's power to grant habeas relief to a state prisoner and that this review is limited to the record that was before the state court that adjudicated the claim on the merits. The ruling also establishes that "[a]lthough state prisoners may sometimes submit new evidence in federal court; AEDPA's statutory scheme is designed to strongly discourage them from doing so." In addition, the Supreme Court, referring to Strickland v. Washington, states that "[t]o overcome the strong presumption that counsel has acted competently, id., at 690, a defendant must show that counsel failed to act "reasonabl[y] considering all the circumstances," id., at 688, and must prove the "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different," id., at 694."[69]

60. In light of the standards described above, the IACHR reiterates that it is incompatible with the rights to a fair trial and to due process of law set forth in the American Declaration for the review by a federal court to be exceedingly limited. Considering the irreversible nature of the death penalty, a federal post-conviction review limited by state court interpretations and by the state factual determination does not comply with the inter-American standards, according to which the right to appeal is part of the body of procedural guarantees that ensures the due process of law. [70]

61. The Inter-American Commission concludes that, given the limitations imposed by the AEDPA, Mr. Rogovich did not get a thorough review of his conviction in order to correct possible errors, and the State therefore violated to his detriment the right established in Articles XVIII and XXVI of the American Declaration.

3. Right to be tried without undue delay

62. According to inter-American human rights' standards, the duration of internal proceedings is an essential component of due process and effective access to justice.[71] The IACHR has also considered that the burden of proof ought to be on the State to justify the delay in light of the following elements: a) the complexity of the matter; b) the procedural activity of the interested party; c) the conduct of the judicial authorities; and d) the impact of the legal situation on the person involved in the proceedings.[72]

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[66] IACHR, Report No. 53/13, Case 12.864, Ivan Teleguz, United States, July 15, 2013, para. 102.
[67] Antiterrorism and Effective Death Penalty Act of 1996: A Summary, Charles Doyle, Senior Specialist, American Law Division. June 3, 1996. Available at: http://www.fas.org/irp/crs/96-499.htm.
[68] Antiterrorism and Effective Death Penalty Act of 1996: A Summary, Charles Doyle, Senior Specialist, American Law Division. June 3, 1996. Available at: http://www.fas.org/irp/crs/96-499.htm.
[69] IACHR, Report No. 53/13, Case 12.864, Ivan Teleguz, United States, July 15, 2013, paras. 109 and 110.
[70] IACHR, Report No. 53/13, Case 12.864, Ivan Teleguz, United States, July 15, 2013, paras. 112 and 113.
[71] IACHR, Report No. 24/17, Case 12.254. Merits. Victor Saldaño. United States. March 18, 2017, para. 227.
[72] IACHR. Application of the Inter-American Commission on Human Rights before the Inter-American Court of Human Rights in the Case of Hilaire v. Trinidad and Tobago. May 25, 1999, p. 45; and IACHR, Report No. 130/17, Case 13.044. Merits. Gustavo Francisco Petro Urrego. Colombia. October 25, 2017, para. 138.

63. According to the facts established in this report, Mr. Rogovich filed a third petition for post-conviction relief in 2009, challenging the constitutionality of the execution because of his serious mental illness. After this petition was denied, he filed a motion for rehearing on October 22, 2009, which was dismissed on January 11, 2016. The State alleges that the delay was due to changes of counsel as well as several motions by the defense to extend time for filings.

64. According to publicly available information, between October 27, 2009, and April 18, 2013, there was no procedural activity regarding Mr. Rogovich's motion for rehearing. After the alleged victim filed a request for ruling, on December 18, 2013, the state court set a status conference for February 21, 2014. On February 28, 2014, one of Mr. Rogovich's attorneys withdrew from his case. On May 12 and on June 26, 2015, Mr. Rogovich's counsel filed a request for extension of time, which was granted.

65. Based on this information, the IACHR notes that it took more than six years for the court to rule on the motion for rehearing. The Commission also notes that there was no procedural activity for the first three and a half years and that the proceedings were reactivated due to the impulse of Mr. Rogovich's counsel. Further, the requests for extensions submitted by the defense were filed a few months before the motion was finally denied. Thus, the procedural activity of the interested party was not the cause of the delay as alleged by the State. The Commission also considers that the motion for rehearing filed against the denial of the third petition for post-conviction relief is not a complex matter.

66. Therefore, the Commission concludes that the conduct of the judicial authorities resulted in an undue delay in the resolution of the motion. In addition, as it will be discussed below, the length of the proceedings had an impact on the death row phenomenon, aggravated by Mr. Rogovich's underlying mental condition. In light of the above considerations, the IACHR concludes that the unwarranted delay in the processing of the motion for rehearing amounts to a violation of Mr. Rogovich's rights under Articles XVIII and XXIV of the Declaration.

4. Clemency proceedings

67. The petitioner alleges that the clemency board members are trained by the Attorney General whose office assists prosecutors in securing death sentences at the trial level and that they are restricted to the evidence and arguments presented at trial. The State, for its part, claims that access to clemency proceedings is not a due process right.

68. The Inter-American Commission has concluded the right to apply for pardon or commutation of sentence is subject to certain minimal fairness guarantees in order for the right to be effectively respected and enjoyed. These procedural protections have been held to include "the right on the part of condemned prisoners to submit a request for amnesty, pardon or commutation of sentence, to be informed of when the competent authority will consider the offender's case, to make representations, in person or by counsel to the competent authority, and to receive a decision from that authority within a reasonable period of time prior to his or her execution." In particular, the IACHR has previously held that "[i]n the case of Clemency proceedings pending the execution of a death sentence, the minimal fairness guarantees afforded to the applicant should include the opportunity to receive an impartial hearing."[73]

69. From the available information, the clemency process in Arizona does not appear to guarantee the minimal procedural protections abovementioned. In particular, the fact that the persons vested with the power to commute Mr. Rogovich's capital punishment sentence are trained by the same office that was in charge of his prosecution, does not satisfy the minimal fairness guarantees such as the right to be heard by an impartial authority. Based upon the foregoing, the Inter-American Commission concludes that the clemency procedures in Arizona fail to guarantee the right to minimal fairness guarantees pursuant to Article XXVI of the American Declaration.

[73] IACHR, Report No. 53/13, Case 12.864, Merits (Publication), Ivan Teleguz, United States, July 15, 2013, para. 116.

C. Right to humane treatment during custody,[74] right to health,[75] and not to receive cruel, infamous or unusual punishment

1. Right of every person with mental disabilities not to be subject to death penalty

70. The IACHR has established that, while the American Declaration does not expressly prohibit the imposition of the death penalty in the case of persons with mental and intellectual disabilities, such a practice is in violation of the rights and basic principles recognized in Articles I and XXVI of the American Declaration.[76] The IACHR has also ruled that:

> States have a special duty to protect persons with mental and intellectual disabilities, a duty that is reinforced in the case of persons under State custody. Moreover, it is a principle of international law that persons with mental and intellectual disabilities, either at the time of the commission of the crime or during trial, cannot be sentenced to the death penalty. Likewise, international law also prohibits the execution of a person sentenced to death if that person has a mental or intellectual disability at the time of the execution.[77]

71. In a case involving Trinidad and Tobago, the Human Rights Committee held that the reading of a death warrant to a person with a mental disability, even if that person had been competent at the time of his or her conviction, is a violation of the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment.[78] The United Nations "Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty" provide that a death sentence shall not be carried out on […] "persons who have become insane."[79] The United Nations Commission on Human Rights called upon all States that still have the death penalty "[n]ot to impose the death penalty on a person suffering from any mental or intellectual disabilities or to execute any such person."[80]

72. Also, the U.N. Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment indicated that international law considers the imposition and enforcement of the death penalty in the case of persons with mental disabilities as particularly cruel, inhuman and degrading, and in violation of Article 7 of the International Covenant on Civil and Political Rights and Articles 1 and 16 of the Convention against Torture.[81] Likewise, the U.N. Special Rapporteur on arbitrary executions stated that "[i]t is a violation of death penalty safeguards to impose capital punishment on individuals suffering from psychosocial disabilities."[82]

73. In *Atkins v. Virginia*,[83] the United States Supreme Court held that "executions of mentally retarded criminals are cruel and unusual punishments prohibited by the Eighth Amendment" of the U.S. Constitution. In its ruling, the Supreme Court traced the history of the concept of "excessive" sanctions and underscored the fact that the consensus today unquestionably reflects widespread judgment about the relative culpability of "mentally retarded offenders."[84]

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[74] Article I of the American Declaration establishes: Every human being has the right to life, liberty and the security of his person. Article XXV of the American Declaration provides: "[…] Every individual who has been deprived of his liberty has the right […] to humane treatment during the time he is in custody."

[75] Article XI of the American Declaration establishes: "Every person has the right to the preservation of his health through sanitary and social measures relating to food, clothing, housing and medical care, to the extent permitted by public and community resources.

[76] IACHR, Report No. 44/14, Case 12,873. Merits (Publication). Edgar Tamayo Arias. United States, July 17, 2014, para. 152.

[77] IACHR, Report No. 44/14, Case 12,873. Merits (Publication). Edgar Tamayo Arias. United States, July 17, 2014, para. 109.

[78] Human Rights Committee, Sahadath v. Trinidad and Tobago, Communication No. 684/1996, April 2, 2002, CCPR/C/74/D/684/1996, para. 7.2.

[79] Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, E.S.C. res. 1984/50, annex, 1984 U.N. ESCOR Supp. (No. 1) at 33, U.N. Doc. E/1984/84 (1984).

[80] United Nations Commission on Human Rights, Promotion and Protection of Human Rights, The question of the death penalty, E/CN4/2005/L.77, April 14, 2005, paragraph 7(c).

[81] Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/67/279, August 9, 2012, para. 58.

[82] Office of the High Commissioner for Human Rights, "Death row: U.N. expert urges U.S. authorities to stop execution of two persons with psychosocial disabilities," July 17, 2012.

[83] *Atkins v. Virginia*, 536 U.S. 304 (2002).

[84] *Atkins v. Virginia*, 536 U.S. 304 (2002) at 311-317.

74. There is no information in the file before the IACHR regarding the reasons that led the jury to conclude that Mr. Rogovich was competent to stand trial. However, the Commission notes that, on July 28, 1992, a few months after his arrest, Mr. Rogovich was found lying on his back hollering "they are trying to kill me" and later that day he attempted suicide. He was subsequently transferred to the psych unit where he stayed until December 21, 1992. Mr. Rogovich was diagnosed with paranoid schizophrenia and was prescribed psychotic medicine for one month. Psychological tests conducted in May, 1993, concluded that he also suffered from brain damage.

75. Further, according to the facts established in this report, during trial Mr. Rogovich was taking four different psychotropic medications which affected his ability to follow the proceedings and, coupled with the mental health problems, made it difficult to communicate with his counsel. After a pre-screening, Mr. Rogovich's competency was confirmed on March 15, 1995. According to the State, four mental health experts considered his case; two found he might suffer psychosis while two others found his behavior was the result of personality disorder or drug intoxication.

76. In 2001, during post-conviction proceedings, Mr. Rogovich filed a series of letters to the judge and to the prosecutor asking to wave his appeals, followed by letters retracting those requests. The court expressed concern about his mental health and his competency to waive appeals, and order a hearing. In 2003, a psychiatrist concluded that Mr. Rogovich had "a serious mental illness, schizoaffective disorder, which is a combination of symptoms of schizophrenia and bipolar disorder." Between August 4, 2004, and September 30, 2008, he was officially classified as "Seriously Mentally Ill." In 2009, the same psychiatrist declared that his assessment remained unchanged and diagnosed Mr. Rogovich with schizoaffective disorder, panic disorder without agoraphobia, borderline personality disorder and polysubstance abuse in a controlled environment.

77. Therefore, there is evidence that, during trial and post-conviction proceedings there were sufficient elements to raise a reasonable doubt as to Mr. Rogovich's competence to stand trial and to be subject to the death penalty. Given the procedural limitations established above, this issue was not duly considered by domestic courts during post-conviction proceedings. Based on the above considerations, the available information, and given the heightened degree of scrutiny that it has applied in death penalty cases, the IACHR concludes that the United States violated Articles I and XXVI of the American Declaration to the detriment of Mr. Rogovich.

2. Death row confinement conditions

78. According to international human rights standards, persons deprived of liberty on death row should not be subjected to solitary confinement as a regular condition of imprisonment, but only in exceptional circumstances and solely as a disciplinary punishment in those instances and under the same conditions in which these measures apply to the rest of the inmates.[85]

79. The IACHR has established that solitary confinement should only be used on an exceptional basis, for the shortest amount of time possible and only as a measure of last resort.[86] The Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas underscore the exceptional nature of the practice of solitary confinement:

> Solitary confinement shall only be permitted as a disposition of last resort and for a strictly limited time, when it is evident that it is necessary to ensure legitimate interests relating to the institution's internal security, and to protect fundamental rights, such as the right to life and integrity of persons deprived of liberty or the personnel.[87]

80. In assessing whether solitary confinement falls within the ambit of Article 3 (Prohibition of torture) in a particular case, the European Court of Human Rights will consider "the stringency of the measure, its duration,

[85] IACHR, *Report on the human rights of persons deprived of liberty in the Americas*, OEA/Ser.L/V/II.Doc.64., December 31, 2011, paragraph 517.
[86] IACHR, *Report on the human rights of persons deprived of liberty in the Americas*, OEA/Ser.L/V/II.Doc.64., December 31, 2011, paragraph 411.
[87] IACHR, Resolution 1/08, Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, Principle XXII (3).

the objective pursued and its effects on the person concerned."[88] At the same time, it has found that "where conditions of detention comply with the Convention and the detainee has contact with the outside world, through visits and contact with prison staff, the prohibition of contact with other prisoners will not breach Article 3 provided that the regime is proportional to the aim to be achieved, and the period of solitary detention is not excessive."[89] Similarly, the United Nations Human Rights Committee has concluded that solitary confinement is justifiable only in case of urgent need, in exceptional circumstances and for limited periods of time.[90]

81. On October 18, 2011, the U.N. Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment called for the prohibition of indefinite solitary confinement and prolonged solitary confinement, which he defined as for any period in excess of 15 days.[91] The Special Rapporteur concluded that 15 days "is the limit between 'solitary confinement' and 'prolonged solitary confinement' because at that point, according to the literature surveyed, some of the harmful psychological effects of isolation can become irreversible." The U.N. Special Rapporteur also observed that "even a few days of solitary confinement will shift an individual's brain activity towards an abnormal pattern characteristic of stupor and delirium."[92] Also, the Rapporteur has stated that, consistent with human rights standards, "no prisoner, including those serving life sentence and prisoners on death row, shall be held in solitary confinement merely because of the gravity of the crime."[93]

82. With regard to the cell size, the U.N. Special Rapporteur indicates that, while there is no universal instrument that specifies a minimum acceptable size, domestic and regional jurisdictions have sometimes ruled on the matter. According to the European Court of Human Rights in Ramírez Sanchez v. France, a cell measuring 6.84 square meters (73.6 square feet) is "large enough" for single occupancy. However, the Special Rapporteur disagrees, "especially if the single cell should also contain, at a minimum, toilet and washing facilities, bedding and a desk."[94]

83. Solitary confinement can have serious psychological effects, ranging from depression to paranoia and psychosis, as well as physiological effects such as cardiovascular problems and profound fatigue.[95] The European Court has held that protracted sensory isolation, coupled with social isolation, can destroy the personality and constitutes a form of inhuman treatment.[96] The United Nations Human Rights Committee has expressed its concern over the practice in some maximum security prisons in the United States "to hold detainees in prolonged cellular confinement, and to allow them out-of-cell recreation for only five hours per week, in general conditions of strict regimentation in a depersonalized environment."[97] For its part, in a death penalty case in which the victims were held in solitary confinement for protracted periods, the Inter-American Commission established that the State failed to ensure respect for the inherent dignity of the human person, regardless of the circumstance, and the right not to be subjected to cruel, inhuman or degrading treatment or punishment.[98]

[88] European Commission of Human Rights, Dhoest v Belgium, Application No. 10448/83, May 14, 1987, para. 118.
[89] Torture in International Law: a guide to jurisprudence, APT and CEJIL, 2008, p. 81.
[90] Human Rights Committee, Concluding Observations on Denmark, UN Doc. CCPR/CO/70/DNK, 2000, para. 12.
[91] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, January 18, 2010, A/HRC/19/61, para. 26.
[92] United Nations, General Assembly, Torture and other cruel, inhuman or degrading treatment or punishment, August 5, 2011, A/66/268, paragraphs 26 and 55.
[93] Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, August 9, 2013, A/68/295, para. 61.
[94] United Nations, General Assembly, Torture and other cruel, inhuman or degrading treatment or punishment, August 5, 2011, A/66/268, para. 49.
[95] Shalev, Sharon, *A sourcebook on solitary confinement*, Mannheim Centre for Criminology, LSE, 2008, pp. 15 and 16. Available at: http://solitaryconfinement.org/uploads/sourcebook_web.pdf, cited in IACHR, Report on the human rights of persons deprived of liberty in the Americas, OEA/Ser.L/V/II.Doc.64., December 31, 2011, para. 492.
[96] *European Court of Human Rights, Case of Ramírez Sánchez v. France, (Application no. 59450/00), Judgment of July 4, 2006, Grand Chamber*, para. 120-123.
[97] United Nations, Human Rights Committee, CCPR/C/USA/CO/3, September 15, 2006, para. 32.
[98] I/A Court H.R., *Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago Case.* Judgment of June 21, 2002. Series C No. 94, paragraphs 154-156.

84. The Inter-American Commission reaffirms that all persons deprived of liberty must receive humane treatment, commensurate with respect for their inherent dignity. This means that the conditions of imprisonment of persons sentenced to death must meet the same international norms and standards that apply in general to persons deprived of liberty. In this regard, the duties of the State to respect and ensure the right to humane treatment of all persons under its jurisdiction apply regardless of the nature of the conduct for which the person in question has been deprived of his liberty.[99]

85. According to the information available, until July 18, 2017, Mr. Rogovich was held in solitary confinement, in a cell without windows and no access to sunlight, where the lights remained on even during the night. Prisoners could only leave their cells three times a week, for no longer than two hours. Further, according to the information provided, there is a shortage of qualified mental health staff at the ASPC – Eyman Unit and medication is not provided on a regular basis.

86. Therefore, based on the information available, the IACHR considers that, for over 20 years, Mr. Rogovich was held under prolonged solitary confinement mainly due to the fact that he had been sentenced to death. Based on international human rights standards, the Inter-American Commission concludes that by keeping the alleged victim in prolonged solitary confinement, the United States subjected him to inhumane treatment during his incarceration and imposed cruel, infamous and unusual punishment, in violation of Articles XXV and XXVI of the American Declaration. Also, considering Mr. Rogovich's mental health as well as the reinforced obligation of the State vis-à-vis of persons in its custody, the lack of adequate medical care and lack of medication constitute a violation of Article XI of the American Declaration.

3. Method of execution

87. In capital cases the State has an enhanced obligation to ensure that the person sentenced to death has access to all the relevant information regarding the manner in which he or she is going to die. In particular, the convicted person must have access to information related to the precise procedures to be followed, the drugs and doses to be used in case of executions by lethal injection, and the composition of the execution team as well as the training of its members.[100]

88. Any person subjected to the death penalty must have the opportunity to challenge every aspect of the execution procedure and such information is necessary to file a challenge. The IACHR notes in this regard that the due process requirement is not limited to the conviction and post-conviction proceedings.[101] Therefore, the State has the duty to inform the person sentenced to death, in a timely manner, about the drug and method of execution that will be used, so he or she is not precluded from litigating the right to be executed in a manner devoid of cruel and unusual suffering.

89. Further, the IACHR highlights the reinforced special duty of the State to ensure that the method of execution does not constitute cruel, infamous or unusual punishment. In this regard, the U.N. Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated that "[t]he fact that a number of execution methods have been deemed to constitute torture or CIDT, together with a growing trend to review all methods of execution for their potential to cause severe pain and suffering, highlights the increasing difficulty with which a state may impose the death penalty without violating international law."[102]

90. The IACHR also notes that the United Nations Committee Against Torture received substantiated information indicating that executions in the United States can be accompanied by severe pain and suffering and requested the State to "carefully review its execution methods, in particular lethal injection, in order to prevent severe pain and suffering."[103]

[99] IACHR, *Report on the human rights of persons deprived of liberty in the Americas*, OEA/Ser.L/V/II.Doc.64. December 31, 2011, para. 513.
[100] IACHR, Report No. 44/14, Case 12.873 . Merits (Publication). Edgar Tamayo Arias. United States. July 17, 2014, para. 189.
[101] IACHR, Report No. 44/14, Case 12.873 . Merits (Publication). Edgar Tamayo Arias. United States. July 17, 2014, para. 190.
[102] The death penalty and the absolute prohibition of Torture and Cruel, Inhuman, and Degrading Treatment or Punishment, Juan E. Mendez, Human Right Brief, Volume 20, Issue 1, Article 1, p. 3.
[103] Committee Against Torture, Considerations of Reports submitted by State Parties under Article 19 of the Convention, United States, CAT/C/USA/CO/2, July 25, 2006, para. 31.

91. According to the current protocol, the Director of the Arizona Department of Corrections has the sole discretion as to which drug will be used for the scheduled executions, which will depend on the availability of either pentobarbital or sodium pentothal in sufficient quantity and quality to successfully implement the one-drug protocol. As of the time of adoption of the present report, there is no information regarding when executions will resume in Arizona after a five-year hiatus brought on by an execution that critics said was botched. There is also no information regarding the origins of the drugs that will be used, the composition of the execution team or the training of its members.

92. Based on the above considerations, and the uncertainty surrounding death penalty executions in Arizona, the IACHR concludes that the State is exposing Mr. Rogovich to anguish and fear that amount to a violation of his right to humane treatment and not to receive cruel, infamous or unusual punishment set forth in Articles XXV and XXVI of the Declaration.

4. The deprivation of liberty on death row and the right of protection against cruel, infamous or unusual punishment

93. In both international human rights law and comparative law, the issue of long term deprivation of liberty on death row, known as the "death row phenomenon," has been developed for decades, in light of the prohibition of cruel, inhuman or degrading punishment in Constitutions and in multiple international treaties, including the American Declaration (Articles XXV and XXVI).[104] Based on those standards, in the case of Russell Bucklew the IACHR found that "the very fact of spending 20 years on death row is, by any account, excessive and inhuman."[105]

94. Specifically regarding the matter of prolonged solitary confinement on death row, the Inter-American Commission has determined that deprivation of liberty under certain conditions on death row, including solitary confinement for four years, constituted inhuman treatment.[106]

95. The UN Special Rapporteur on Torture has found that:

> Individuals held in solitary confinement suffer extreme forms of sensory deprivation, anxiety and exclusion, clearly surpassing lawful conditions of deprivation of liberty. Solitary confinement, in combination with the foreknowledge of death and the uncertainty of whether or when an execution is to take place, contributes to the risk of serious and irreparable mental and physical harm and suffering to the inmate. Solitary confinement used on death row is by definition prolonged and indefinite and thus constitutes cruel, inhuman or degrading treatment or punishment or even torture.[107]

96. As established in this report, Mr. Rogovich has been deprived of his liberty on death row for 27 years. The Commission notes that the very fact of spending 27 years on death row is, by any account, excessive and inhuman, and is aggravated by Mr. Rogovich's mental health condition as well as by the prolonged expectation that the death sentence could be executed. The IACHR notes in this regard that Mr. Rogovich was held for more than 20 years in solitary confinement, in a cell without windows and no access to sunlight, where the lights remained on even during the night, and where prisoners could only leave their cells three times a week, for no longer than two hours. Consequently, the United States is responsible for violating, to the detriment of Mr. Rogovich, the right to humane treatment, and not to receive cruel, infamous or unusual punishment established in Articles XXV and XXVI of the American Declaration.

[104] IACHR, Report No. 71/18, Case 12.958. Merits. Russell Bucklew. United States, May 10, 2018, paras. 86-90. In this report the Commission has cited a number of developments in the inter-American and other protections systems, including the regional and United Nations systems.
[105] IACHR, Report No. 71/18, Case 12.958. Merits. Russell Bucklew. United States, May 10, 2018, para. 83.
[106] IACHR, Report No. 24/17, Case 12.254. Merits. Victor Saldaño. United States. March 18, 2017, para. 246, citing IACHR, Report No. 58/02. Merits. Case 12.275. Denton Aitken. Jamaica. October 21, 2002, paras. 133 and 134.
[107] United Nations. Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment of punishment. 9 August 2012. A/67/279. para 48.

D. Right to life[108] and to protection against cruel, infamous or unusual punishment with respect to the eventual execution of Pete Carl Rogovich

97. As indicated above, the Inter-American Commission considers that it is incumbent upon the national courts, not the Commission, to interpret and apply national law. Nevertheless, the IACHR must ensure that any deprivation of life resulting from imposition of the death penalty complies with the requirements of the American Declaration.[109]

98. Throughout this report, the Commission established that Mr. Rogovich, *inter alia*, was not afforded with adequate legal representation on direct appeal, did not get a thorough review of his conviction, was disadvantaged by doubts as to his competence to stand trial; and that the 27 years that Mr. Rogovich has been on death row constitute cruel and inhumane treatment.

99. Under these circumstances, the IACHR has maintained that executing a person, after proceedings that were conducted in violation of his rights, would be extremely grave and constitute a deliberate violation of the right to life established in Article I of the American Declaration.[110] Further, based on the conclusions regarding the deprivation of liberty on death row, the eventual execution of Mr. Rogovich would constitute, by any account, a violation of the right to protection against cruel, infamous or unusual punishment. In light of the foregoing and taking into account the determinations made throughout this report, the IACHR concludes that the execution of Mr. Rogovich would constitute a serious violation of his right to life established in Articles I of the American Declaration.

VI. REPORT No. 154/19 AND INFORMATION ABOUT COMPLIANCE

100. On September 28, 2019, the Commission approved Report No. 154/19 on the admissibility and merits of the instant case, which encompasses paragraphs 1 to 99 supra, and issued the following recommendations to the State:

1. Grant Pete Carl Rogovich effective relief, including the review of his trial and sentence in accordance with the guarantees of fair trial and due process set forth in Articles XVIII, XXV and XXVI of the American Declaration, and the payment of pecuniary compensation. Taking into account the conclusions of the IACHR on the time Pete Carl Rogovich has been held on death row, the Commission recommends that his sentence be commuted.

2. Review its laws, procedures, and practices at the state, and if applicable, at the federal level to ensure that persons accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, XVIII, XXV and XXVI thereof, and, in particular, that no one with a mental disability at the time of the commission of the crime or execution of the death sentence receives the death penalty or is executed.

3. Ensure that court-appointed appellate counsel provides adequate legal representation in death penalty cases.

4. Ensure that conditions on death row are compatible with international human rights standards and that solitary confinement is only used in exceptional circumstances, for the shortest period possible.

5. Review its laws, procedures, and practices to ensure that the persons sentenced to the death penalty have access to effective judicial remedies to challenge the possible impact of the method of execution on their fundamental rights in accordance with the standards set forth in this merits report.

[108] Article I of the American Declaration establishes: Every human being has the right to life, liberty and the security of his person.
[109] IACHR, Report No. 53/13, Case 12.864, Merits (Publication), Ivan Teleguz, United States, July 15, 2013, para. 129.
[110] IACHR, Report No. 11/15, Case 12.833, Merits (Publication), Félix Rocha Díaz, United States, March 23, 2015, para. 106.

6. Given the violations of the American Declaration the IACHR has established in the present case and in others involving application of the death penalty, the Inter-American Commission also recommends to the United States that it adopt a moratorium on executions of persons sentenced to death.[111]

101. On December 2, 2020 the IACHR transmitted the report to the State with a time period of two months to inform the Commission on the measures taken to comply with its recommendations. To date, the Commission has not received any response from the United States regarding report No. 154/19.

VII. ACTIONS SUBSEQUENT TO REPORT No. 329/21

102. On November 19, 2021, the Commission approved Final Merits Report No. 329/21, which encompasses paragraphs 1 to 101 *supra*, and issued its final conclusions and recommendations to the State. On November 29, 2021, the Commission transmitted the report to the State and the petitioners with a time period of three weeks to inform the Inter-American Commission on the measures taken to comply with its recommendations. To date, the IACHR has not received any response from the United States or the petitioners regarding Report No. 329/21.

VIII. FINAL CONCLUSIONS AND RECOMMENDATIONS

103. On the basis of determinations of fact and law, the Inter-American Commission concludes that the State is responsible for the violation of Articles I (life, liberty, and security), XI (preservation of health), XVIII (fair trial), XXV (protection from arbitrary detention), and XXVI (due process) of the American Declaration.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS REITERATES THAT THE UNITED STATES OF AMERICA,

1. Grant Pete Carl Rogovich effective relief, including the review of his trial and sentence in accordance with the guarantees of fair trial and due process set forth in Articles XVIII, XXV and XXVI of the American Declaration, and the payment of pecuniary compensation. Taking into account the conclusions of the IACHR on the time Pete Carl Rogovich has been held on death row, the Commission recommends that his sentence be commuted.

2. Review its laws, procedures, and practices at the state, and if applicable, at the federal level to ensure that persons accused of capital crimes are tried and, if convicted, sentenced in accordance with the rights established in the American Declaration, including Articles I, XVIII, XXV and XXVI thereof, and, in particular, that no one with a mental disability at the time of the commission of the crime or execution of the death sentence receives the death penalty or is executed.

3. Ensure that court-appointed appellate counsel provides adequate legal representation in death penalty cases.

4. Ensure that conditions on death row are compatible with international human rights standards and that solitary confinement is only used in exceptional circumstances, for the shortest period possible.

5. Review its laws, procedures, and practices to ensure that the persons sentenced to the death penalty have access to effective judicial remedies to challenge the possible impact of the method of execution on their fundamental rights in accordance with the standards set forth in this merits report.

[111] See in this regard, IACHR, The death penalty in the Inter-American Human Rights System: From restrictions to abolition, OEA/Ser.L/V/II.Doc 68, December 31, 2011.

6. Given the violations of the American Declaration the IACHR has established in the present case and in others involving application of the death penalty, the Inter-American Commission also recommends to the United States that it adopt a moratorium on executions of persons sentenced to death.[112]

IX. PUBLICATION

104. In light of the above and in accordance with Article 47.3 of its Rules of Procedure, the IACHR decides to make this report public, and to include it in its Annual Report to the General Assembly of the Organization of American States. The Inter-American Commission, according to the norms contained in the instruments which govern its mandate, will continue evaluating the measures adopted by the United States with respect to the above recommendations until it determines there has been full compliance.

Approved by the Inter-American Commission on Human Rights on the 31st day of December 2021. (Signed): Antonia Urrejola Noguera, President; Julissa Mantilla Falcón, First Vice President; Flávia Piovesan, Second Vice President; Margarette May Macaulay, Esmeralda E. Arosemena Bernal de Troitiño, Joel Hernández García and Edgar Stuardo Ralón Orellana, Commissioners.

[112] See in this regard, IACHR, The death penalty in the Inter-American Human Rights System: From restrictions to abolition, OEA/Ser.L/V/II.Doc 68, December 31, 2011.