

REPORT N° 83/01

CASE 11.581

ZULEMA TARAZONA ARRIATE, NORMA TERESA PÉREZ CHÁVEZ, AND

LUIS ALBERTO BEJARANO LAURA

PERU

October 10, 2001

I. SUMMARY

1. On January 22, 1996, a petition was filed with the Inter-American Commission on Human Rights (hereinafter the "Commission," the "Inter-American Commission," or the "IACHR") by the *Asociación Pro Derechos Humanos* (APRODEH) and by Mr. Víctor Tarazona Hinostrroza and Mr. Santiago Pérez Vela (hereinafter "the petitioners") denouncing the Republic of Peru (hereinafter "Peru," "the State," or "the Peruvian State") for the murders of Mrs. Zulema Tarazona Arriate and Mrs. Norma Teresa Pérez Chávez and for the personal injuries to Mr. Luis Alberto Bejarano Laura by members of the Peruvian army from the events of August 9, 1994. The petitioners allege that through those events the Peruvian State violated the right to life, the right to humane treatment, the right to a fair trial, and the right to judicial protection enshrined in Articles 4, 5, 8, and 25 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), as well as its obligation to respect the rights contained in Article 1(1) of the Convention.

2. The Peruvian State argued that the petitioners failed to exhaust domestic remedies.

3. The IACHR, in accordance with the provisions of Articles 46 and 47 of the American Convention, decides to admit the petition for the alleged violations of Articles 1(1), 4, 5, 8, 25, and 2 of the American Convention and to begin to examine the merits of the case. The Commission also decides to notify both parties of this decision and to publish and include it in its annual report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

4. On February 20, 1996, the Commission transmitted the pertinent parts of the complaint to the Peruvian State and requested a reply within 90 days, in keeping with the Rules of Procedure of the Commission in effect at that time. The State replied on July 1, 1996. On October 1, 1996 the petitioners presented observations to the State's reply, and on July 18, 1997 they presented additional information. The State presented a written submission on May 21, 1998. On April 26, 1999, the IACHR made itself available to the parties to try to reach a friendly settlement. The State responded on June 25, 1999 and indicated that was refraining from responding to the friendly settlement offer until the Commission had ruled on the admissibility of the case. On September 4, 2000, the petitioners presented additional information. Both parties presented additional documents on different occasions.

III. POSITION OF THE PARTIES

A. The petitioners

5. The petitioners indicate that on August 9, 1994, Mrs. Zulema Tarazona Arriate, Mrs. Norma Teresa Pérez Chávez, and Mr. Luis Alberto Bejarano Laura were

returning to their respective homes in Chosica aboard a public transportation vehicle on line 165 (Lima-Chosica route).

6. They allege that at approximately 8:30 p.m., the vehicle stopped at km 7.8 of the Central Highway at the "La Esperanza" stop (Ate-Vitarte district) for one of the passengers to get off. They say that when the vehicle continued on its way, two soldiers from the Peruvian army approached it from behind and tried to stop the vehicle. They indicate that the driver was not aware of the soldiers' presence and continued on his way.

7. The petitioners say that one of the soldiers, who they identify as Antonio Mauricio Evangelista Pinedo, Sergeant Second Class with the Peruvian Army, then shot directly at the vehicle, killing Mrs. Zulema Tarazona Arriate and Mrs. Norma Teresa Pérez Chávez and injuring Mr. Luis Alberto Bejarano Laura. They add that, rather than helping the victims, the soldiers fled.

8. The petitioners say that two judicial proceedings were launched in relation to these events. The first was in the judicial branch, before the 27th Criminal Court of Lima, for the offenses of murder and inflicting injury, against Sergeant Second Class Antonio Mauricio Evangelista Pinedo; the second was against the same individual in the military courts before the Permanent War Council of the Army's Second Police Zone for negligent homicide.

9. They indicate that on June 20, 1995 the Supreme Council of Military Justice, applying amnesty laws N° 26479 and 26492, enacted by the Peruvian Congress on June 14 and 28, 1995, respectively, granted the defendant amnesty, decided to take no further action in the case, and ordered the release of the defendant.

10. They add that on September 11, 1995, the 27th Criminal Court of Lima definitively tabled the case it was hearing, in response to a *res judicata* exception filed based on the aforementioned decision handed down on June 20, 1995 by the Supreme Council of Military Justice.

11. Regarding the State's allegation that the petitioners failed to exhaust domestic remedies because they did not take judicial action to seek compensation for the victims or their family members for the events that occurred, the petitioners cite that their petition is centered on the failure to investigate and punish the person responsible for violating the victims' rights to life and to humane treatment, among others.

12. They add that, without detriment to the foregoing, the victims' relatives became parties to the criminal case to seek civil compensation, in accordance with the provisions of Article 92 of the Peruvian Penal Code and the provisions of Articles 54 seq. of the Code of Criminal Procedure, but that their action was frustrated when the case was tabled as a result of the amnesty laws. Finally, they indicate that those laws prevent any type of investigation into the alleged events with a view to obtaining civil reparations.

B. The State

13. In its initial reply on July 1, 1996, the State neither expressly accepted nor contradicted the petitioners' allegations. The State's reply read as follows:

The Permanent Mission of Peru presents its compliments to the honorable Executive Secretariat of the Inter-American Commission on Human Rights regarding case N° 11.581. It is attaching to this note a copy of the main decisions handed down by the judiciary against citizen Evangelista Pinedo Antonio, prosecuted for the negligent homicide of Zulema Tarazona Arriarte *et al.* (File N° 431-94-EDT). This information was remitted by the National Human Rights Council through communication N° 405-96-JUS/CNDH of June 10 of this year.

14. In a letter dated May 21, 1998, Peru stated the following:

The Peruvian State reiterates the points expressed in its reply to the pertinent parts of the complaint, i.e. that the petitioners have not exhausted domestic remedies, and specifically have not sought compensation, which is a necessary step for persons who wish to obtain civil reparations for damages, as provided for in Article 1969 of the Civil Code of Peru.

15. It adds that the Peruvian Constitutional Court interpreted Law N° 26479 (Amnesty Law) as follows: "regarding the right to civil reparations, Article 58 of the Code of Military Justice stipulates that amnesty and pardons do not affect legal actions to seek civil reparations. As a result, persons who feel they were injured in events for which amnesty has been granted can exercise their rights to due civil reparations against the perpetrators of those offenses or against the State, as is its duty stemming from its residual liability (...). If some injured parties do not obtain these reparations, they can make their claim before the competent authorities."

16. Finally, its letter submitted to the Inter-American Commission on May 21, 1998 states that:

For the reasons given, which corroborate the arguments contained in its previous reply, the Peruvian State requests that the Inter-American Commission on Human Rights proceed with the examination of the case, pursuant to Article 35(a) of the Commission's Rules of Procedure, and find inadmissible Case N° 11.581-Zulema Tarazona Arriate *et al.*, referred to in the Peruvian reports pursuant to Article 47(a), consistent with Article 46(1)(a) of the American Convention on Human Rights and Articles 32(d), 37(1) and 41(a) in the aforementioned Rules of Procedure.

IV. ANALYSIS

17. The Commission will now examine the admissibility requirements for petitions set forth in the American Convention.

A. Competence *ratione personae*, *ratione loci*, *ratione temporis*, and *ratione materiae* of the Commission

18. The petitioners are authorized to present complaints to the IACHR under Article 44 of the American Convention. The petition indicates that the alleged victims were individuals and that Peru undertook to respect and guarantee the rights

of those individuals enshrined in the American Convention. The Commission notes that Peru has been a State Party to the American Convention since July 28, 1978, when it deposited the respective instrument of ratification. The Commission therefore has competence *ratione personae* to examine the petition.

19. The Commission has competence *ratione loci* to hear the petition, because it alleges the violation of rights protected under the American Convention that might have occurred in the territory of a State Party to the Convention.

20. The IACHR has competence *ratione temporis* because the obligation to observe and guarantee the rights enshrined in the American Convention was already in effect in the State on the date of the events alleged in the petition.

21. Finally, the Commission has competence *ratione materiae*, because the petition denounces violations of human rights protected under the American Convention.

B. Admissibility requirements

1. Exhaustion of local remedies

22. The Commission observes that the petition deals with the murder of two persons and the injuries caused to a third, attributed to an agent of the Peruvian state. The parties agree that two investigations were launched into the events denounced, one in regular criminal courts, and the other in the military courts. The same member of the Peruvian army was charged in the two cases, both of which were dismissed as a result of the amnesty laws.

23. The Peruvian State has not disputed the petitioners' allegations regarding the start and end of the civil and military proceedings for the denounced events. Nonetheless, Peru alleges that the petition is inadmissible because the petitioners failed to exhaust domestic remedies to seek compensation for the victims or their relatives.

24. To decide on the exception opposed by the State, the Commission must establish which domestic remedies must be exhausted in relation to the events alleged in the petition under study. In this regard, the Inter-American Court has indicated that only adequate remedies for the violations allegedly committed must be exhausted and clarified that:

Adequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted.[\[1\]](#)

25. The Inter-American Commission has indicated that whenever a prosecutable offense is committed, the State has the obligation to promote and advance the criminal proceedings through to the end[\[2\]](#) and that, in these cases, this is the ideal way to clarify events, judge those responsible, and establish the corresponding criminal sanctions, as well as allow for other modes of pecuniary reparations.

26. This interpretation is consistent with the Inter-American Court of Human Rights' explanation of Article 1(1) of the American Convention on Human Rights, in which it states that "[t]he States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition." In this regard, the Inter-American Court explained that the aforementioned obligation to guarantee the free and full exercise of the human rights mentioned in the Article mentioned above implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.[\[3\]](#)

27. States' international obligation to compensate victims of human rights violations committed by their agents is therefore one of its direct, main responsibilities, i.e. it is a direct responsibility of the State and does not require that victims first take personal action against those agents, regardless of the content of domestic provisions on the matter.

28. In situations like the one in the petition under study, which denounces the murder of two persons and injuries to a third, the domestic remedies that must be taken into account for the purposes of determining the petition's admissibility are those related to investigating and punishing the perpetrators.[\[4\]](#) [\[5\]](#)

29. The Commission considers that the events alleged by the petitioners in the complaint under examination involve the alleged violation of basic rights such as the right to life and humane treatment, which in domestic law are prosecutable offenses. Therefore, it is the homicide and injury trial in the civil jurisdiction of the 27th Criminal Court of Lima against Antonio Mauricio Evangelista Pinedo, Sergeant Second Class of the Peruvian Army, that must be considered to determine whether or not domestic remedies were exhausted here.

30. Those judicial proceedings concluded with a ruling on September 11, 1995, through the 27th Criminal Court of Lima, deciding to definitively table the trial. The IACHR therefore feels that domestic remedies were exhausted.

31. As a result, the Commission rejects the State's argument that domestic remedies were not exhausted in seeking compensation for the events denounced.

2. Deadline for presentation

32. The Commission observes that the decision that exhausted domestic remedies, as explained above, was handed down on September 11, 1995, while the complaint was lodged on February 20, 1996. Therefore, the requirement established in Article 46(1)(b) of the American Convention has been met.

3. Duplication of proceedings and *res judicata*

33. The Commission understands that the matter in the petition is not pending in another international proceeding for settlement and is not substantially the same as a petition previously examined by this or another international organization. Therefore, the requirements established in Articles 46(1)(c) and 47(d) of the American Convention have been met.

4. Characterization of the events

34. The Commission considers that the petition refers to events that, if confirmed, could constitute a violation of the rights to life, humane treatment, a fair trial, and judicial protection enshrined in Articles 4, 5, 8, and 25 of the American Convention, as well as the obligation to observe the rights contained in Article 1(1) of the Convention. The Commission also observes that the criminal proceedings under domestic law were tabled based on amnesty laws N° 26479 and 25492. In exercise of its authority stemming from the principle of *iura novit curia*, the Commission decides of its own initiative to study whether or not the denounced events could be a violation by the Peruvian State of the provisions of Article 2 of the American Convention.

V. CONCLUSIONS

35. The Commission concludes that it is competent to hear this petition and that it is admissible, in keeping with Articles 46 and 47 of the American Convention.

36. Based on the foregoing *de facto* and *de jure* arguments and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition admissible as regards the alleged violations of Articles 1(1), 4, 5, 8, 25, and 2 of the American Convention on Human Rights.
2. To notify the parties of this decision.
3. To begin to examine the merits of the case.
4. To publish this decision and include it in the annual report of the Commission to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in Washington, D.C., on October 10, 2001. Signed by Claudio Grossman, President; Juan Méndez, First Vice-President; Marta Altolaguirre, Second Vice-President; and Commissioners Hélio Bicudo, Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.

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[1] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 63.

[2] See, for example, IACHR, 1997 Annual Report, Report N° 52/97 - Arges Sequeira Mangas, Case 11.218, (Nicaragua), paragraphs 96 and 97.

[3] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, para. 166.

[4] Notwithstanding, in the petition under study, the alleged victims were plaintiffs in the aforementioned criminal suit before the 27th Criminal Court of Lima, in accordance with the provisions of the Penal Code and Code of Criminal Procedure of Peru; however, they were not able to obtain any reparations because the case was tabled. In this regard, Article 92 of the Penal Code of Peru stipulates that "civil reparations are determined at the same time as the punishment," while Articles 54 and 57 of the Code of Criminal Procedure state that: "the injured party, ancestors or descendants, spouse, collateral kinsmen, and related family once removed... can become plaintiffs [and]...offer the evidence they deem appropriate to clarify the offense..."

[5] In cases where it has been argued to the Commission that a given administrative-contentious remedy available under the domestic law of another State Party to the American Convention must be exhausted as part of the domestic remedies, the IACHR has repeatedly indicated that: "As regards exhaustion of the contentious-administrative jurisdiction, the Commission has already indicated that this type of proceeding is exclusively a mechanism for supervising the administrative activity of the State aimed at obtaining compensation for damages caused by the abuse of authority. In general, this process is not an adequate mechanism, on its own, to make reparation for human rights violations; consequently, it is not necessary for it to be exhausted when, as in this case, there is another means for securing both reparation for the harm done and the prosecution and punishment demanded." IACHR, 2000 Annual Report, Report N° 57/00 - La Granja, Ituango, Case 12.050 (Colombia) para. 41. See also: IACHR, 1995 Annual Report, Report N° 15/95, para. 71; 1999 Annual Report, Report N° 61/99, para. 51; and 1997 Annual Report, Report N° 5/98, para. 63.