

REPORT N° 45/01
CASE 11.149
AUGUSTO ALEJANDRO ZÚÑIGA PAZ
PERU
March 5, 2001

I. SUMMARY

1. On April 1, 1993, the Inter-American Commission on Human Rights (hereinafter the "Commission," the "Inter-American Commission," or the "IACHR") received a petition that Mr. Augusto Alejandro Zuñiga Paz (hereinafter "the petitioner") filed against the Republic of Peru (hereinafter "Peru," "the State," or "the Peruvian State"). The petition alleged the State's failure to investigate and punish an incident involving the explosion of a letter bomb that the petitioner received at the headquarters of a nongovernmental organization, namely the *Comisión de Derechos Humanos* (COMISEDH) [Human Rights Commission], on March 15, 1991, which caused the petitioner to lose his left arm. The petitioner alleged that this constituted a violation by Peru of the right to life, the right to humane treatment, the right to due process of law and the right to judicial protection, recognized in Articles 4, 5, 8 and 25, respectively, of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"). The Peruvian State, on the other hand, argued that the case was inadmissible because it held the State responsible for the allegations made, even though no such responsibility was established. The Commission hereby decides to admit the case and continue with its analysis of the merits.

II. PROCESSING WITH THE COMMISSION

2. The Commission opened the case on April 27, 1993, forwarded the pertinent parts of the petition to the Peruvian State and asked that it supply information within a period of 90 days. The State responded on July 6, 1993. On July 20, 1993, the Commission forwarded the State's response to the petitioner and requested the petitioner's comments on that response within 45 days.

3. On August 3, 1998, the State sent a communication to the Commission, which the latter forwarded to the petitioner on August 17, 1998, requesting his observations within 30 days. The petitioner presented his observations on October 8, 1998, and the State responded to those observations on December 4, 1998.

4. On January 14, 1999, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement. On January 22, 1999, the petitioner stated that he would be willing to come to a friendly settlement if the State acknowledged its responsibility for the events and took action to make adequate reparations. The State replied on January 27, 1999, and insisted that the case should be declared inadmissible.

5. On February 22, 2001, via a communication that Peru's Minister of Justice, Dr. Diego García Sayán delivered personally to the Commission, in a February 22, 2001 session held with the Commission's full membership during the

IACHR's 110st regular session, Peru announced that it will acknowledge its responsibility in the instant case. It added that "the grave attempt made on the life of Dr. Zúñiga Paz, a distinguished defender of human rights, must not go unpunished. Every measure necessary to ascertain responsibilities will be exhausted and a proposal will be prepared for moral and financial damages."[\[1\]](#)

III. POSITION OF THE PARTIES

A. The petitioner's position

6. The petitioner noted that he was an attorney working as a human rights defender in Peru. He alleged that on March 15, 1991, he received at his office, the nongovernmental organization called the Human Rights Commission (COMISEDH), a manila envelope with the seal of the Secretariat of the Office of the President of the Republic. The envelope contained 50 grams of explosives. The petitioner reported that he lost his left arm in the explosion that went off when he opened the envelope.

7. The petitioner reported that he had been receiving repeated threats, intended to scare him into abandoning his representation in a case involving the forced disappearance of the student Ernesto Rafael Castillo Páez, which the Commission and then the Inter-American Court of Human Rights examined.[\[2\]](#)

8. He pointed out that a number of public figures blamed the security forces for the attack on Dr. Zúñiga Paz, given his connection to the investigation into the case of student Castillo Páez. Another clue was the specifications of the explosive used, which was one whose circulation was controlled exclusively by the armed forces.

9. The petitioner argued that even assuming, for the sake of argument, that the facts recounted did not constitute sufficient evidence to prove the State's responsibility, the State still had an obligation to conduct an impartial and serious investigation of the facts denounced.

10. The petitioner added that the investigation being conducted by the Office of the 19th Provisional Prosecutor for Criminal Cases had produced sufficient evidence to show that circulation of the explosive used was controlled by the armed forces. However, on January 3, 1992, the investigation was transferred to the Office of Lima's 10th Provisional Prosecutor, on the grounds that the mandate of the 19th Provisional Prosecutor had ended. A decision of April 27, 1992 ordered the case provisionally closed. The petitioner noted that on September 16, 1992, the Office of the Special Superior Court Prosecutor for Terrorism-related Matters confirmed the decision to close the case.

B. The State's position

11. The State argued that the petition was inadmissible because it contained unfounded allegations as to the authorship of the attack perpetrated on the petitioner.

12. It pointed out that having studied the case file on the complaint filed by the petitioner, it found no reason or evidence to suggest that the assault made against the petitioner was the work of police or military troops.

13. It reported that through Notice No. 2901-D2 DINCOTE, the Anti-Terrorism Office concluded that an attempt had been made on the life of the petitioner and that the corresponding investigations were conducted and found that there was no possible way to locate or identify those responsible.

14. The State asserted that the competent organs did conduct serious and responsible investigations to shed full light on the facts, and found that the forces of law and order (the armed forces and police) were not responsible for the attempt made on the petitioner's life.

15. On February 22, 2001, the State reported that it would acknowledge responsibility in the present case and added that "the grave attempt made on the life of Dr. Zúñiga Paz, a distinguished defender of human rights, must not go unpunished. Every measure necessary to ascertain responsibilities will be exhausted and a proposal will be prepared for moral and financial damages." (*supra*, paragraph 5).

IV. ANALYSIS

16. The Commission will now examine the requirements established in the American Convention for a petition's admissibility.

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

17. Under Article 44 of the American Convention, the petitioner is authorized to lodge petitions with the IACHR. The petition names a natural person as the alleged victim, whose Convention-recognized rights Peru has undertaken to respect and ensure. The Commission further observes that Peru is a State party to the American Convention, having ratified it on July 28, 1978. The Commission therefore has competence *ratione personae* to examine the petition.

18. The Commission has competence *ratione materiae* because the facts alleged in the petition could constitute violations of rights protected by the American Convention.

19. The Commission has competence *ratione temporis* by virtue of the fact that the facts in question were alleged to have occurred as of March 1991, when Peru's obligation to respect and ensure the rights recognized in the American Convention was already in force.

B. The petition's admissibility requirements

1. Exhaustion of domestic remedies and deadline for filing

20. Article 46 of the American Convention stipulates that "Admission by the Commission of a petition or communication lodged in accordance with Articles 44

and 45 shall be subject to the following requirements: a. That the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law; b. that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment (...)"

21. As for the exhaustion of the remedies under domestic law, the petition is alleging that the Public Prosecutor's Office learned of the facts from a complaint filed with the Attorney General on March 19, 1991. The Attorney General assigned the investigation to the Office of the 3rd Provisional Criminal Prosecutor. On June 28, 1991, the Senior Superior Court Prosecutor designated the Office of the 19th Provisional Criminal Prosecutor for Lima to continue the inquiry. Later, on January 3, 1992, the Senior Superior Court Prosecutor decided to hand the investigation over to the Office of the 10th Provisional Criminal Prosecutor on the grounds that the mandate of the Office of the 19th Provisional Prosecutor as an *ad hoc* prosecutorial office had ended. On April 27, 1992, the Office of the 10th Provisional Criminal Prosecutor ordered that the case be temporarily stayed, a decision confirmed by the Special Superior Court Prosecutor for Terrorism Matters on September 16 of that year.

22. For its part, the State did not enter any objection invoking the rule requiring exhaustion of the remedies under domestic law. Here, the Inter-American Court has held that "the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed."[\[3\]](#)

23. For these reasons, the Commission concludes that the requirement concerning exhaustion of remedies under domestic law has been met. Concerning the filing deadline, the Commission notes that nothing in the case file indicates a failure to comply with Article 46(1)(b) of the Convention.

2. Duplication of proceedings and *res judicata*

24. It is the Commission's understanding that the subject matter of the petition is not pending in another international proceeding for settlement and is not substantially the same as one previously examined by the Commission or by another international organization. Therefore, the requirements set forth in Articles 46(1)(c) and 47(d) have been met.

3. Characterization of the facts

25. The Commission considers that the facts alleged, if proven, could constitute violations of rights recognized in the American Convention on Human Rights.

26. In this regard, the Commission is confirming that it is very grateful for the statement that Peru made on February 22, 2001, to the effect that it will take responsibility in the present case and that "the grave attempt made on the life of Dr. Zúñiga Paz, a distinguished defender of human rights, must not go unpunished. Every measure necessary to ascertain responsibilities will be exhausted and a proposal will be prepared for moral and financial damages." (*supra*, par. 5).

V. CONCLUSIONS

27. The Commission therefore concludes that it has competence to consider this case and that the petition is admissible under Articles 46 and 47 of the American Convention. Furthermore, inasmuch as the State has indicated that it will acknowledge its international responsibility in the instant case, the Commission decides to reiterate to both parties its willingness to serve as an organ of conciliation for a friendly settlement of the present case.

28. Based on these arguments of fact and of law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible with respect to the possible violations of Articles 1(1), 5, 8 and 25 of the American Convention on Human Rights.
2. To reiterate to both parties its willingness to serve as an organ of conciliation in reaching a friendly settlement.
3. To notify the parties of this decision.
4. To publish this decision and include it in the Commission's Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in Washington, D.C., on the fifth day of March in the year 2001. Signed by Claudio Grossman, Chairman; Juan Méndez, First-Vice Chairman; Marta Altolaquirre, Second-Vice Chairman, and Commission members Hélio Bicudo, Robert K. Goldman, Julio Prado Vallejo and Peter Laurie.

[1] At that time, the IACHR issued a joint press communiqué with the Permanent Mission of Peru to the OAS to the following effect: "The Inter-American Commission on Human Rights reiterated its appreciation of the promising measures being taken by the transition Government headed up by the President of Peru, the Honorable Valentín Paniagua, by the distinguished members of his cabinet, and by the Congress of the Republic of Peru, in efforts to redefine and strengthen the fundamental institutions of the State. The IACHR added that the present action is one of a group of highly positive measures that the present Peruvian Government has taken and reinforces other equally important measures that have been adopted, such as normalization of the situation of Peru with respect to the contentious jurisdiction of the Inter-American Court of Human Rights, Peru's recent signing of the Inter-American Convention on Forced Disappearance of Persons, and the action taken on the recommendations and precautionary measures requested by the Inter-American Commission. The IACHR praised and welcomed the Peruvian Government's plan to propose solutions to a significant number of cases (...)". IACHR and Permanent Mission of Peru to the OAS, Joint Press Communiqué, February 22, 2001.

[2] See, for example, Inter-American Court of Human Rights, *Castillo Páez Case*, Preliminary Objections, Judgment of January 30, 1996.

[3] IACTHR, *Velásquez Rodríguez Case*, Preliminary Objections, Judgment of June 26, 1987, Series C Nº 1, par. 88; *Fairén Garbí and Solís Corrales Case*, Preliminary Objections, Judgment of June 26, 1987, Series C No. 2, par. 87. *Godínez Cruz Case*, Preliminary Objections, Judgment of June 26, 1987, Series C Nº 3, par. 90. IACTHR, *Gangaram Panday Case*, Preliminary Objections, Judgment of December 4, 1991, Series C Nº 12, par.38. IACTHR, *Neira Alegria et al. Case*, Preliminary Objections, Judgment of December 11, 1991, Series C Nº 13,

par.30. IACtHR, *Castillo Páez Case*, Preliminary Objections, Judgment of January 30, 1996, Series C Nº 24, par. 40, and IACtHR, *Loayza Tamayo Case*, Preliminary Objections, Judgment of January 31, 1996, Series C Nº 25, par. 40.