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Decided by:	Chairman: Carlos Ayala Corao; First Vice Chairman: Robert K. Goldman; Second Vice Chairman: Jean Joseph Exume.
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I. THE FACTS

1. On June 14, 1990, the Inter-American Commission on Human Rights (hereinafter, "the Commission") received a complaint against the Republic of Peru (hereinafter, "the Peruvian State," the "State" or "Peru") relating to Mr. Héctor Pérez Salazar, a 66-year-old craftsman. The document stated the following:

A combined General Police and Peruvian Army patrol arrived at six in the morning to the town of Huancaya, Province of Yauyos, Department of Lima.

Once there, the soldiers collected the entire population in the town's central plaza. However, Mr. Héctor Pérez Salazar, an elderly man disabled by polio, was unable to get to the plaza as quickly as others, stopping at the public baths on the other side of town on his way.

It was at this time that the other inhabitants heard the sound of several shots emanating from that place, and later they saw a bulky object wrapped in a plastic bag being lifted into one of the police's pickup trucks.

Upon going to the public baths, a number of inhabitants came upon the elderly man's eye glasses and cane in the middle of a pool of blood.

Area authorities have not responded to the family's pleas, with the result that Mr. Pérez Salazar's status is that of a missing detainee, though the evidence creates the presumption of an extra-judicial execution with an attempted cover-up.

II. THE COMMISSION'S PROCEEDINGS

2. Having received the denunciation, the Commission, without prejudging the admissibility of the matter, sent the relevant sections of the document to the Peruvian State on June 15, 1990, asking the State to supply whatever information it considered appropriate. No answer was received within the time limit specified in the Commission's rules.

3. This request for information was reiterated in a note sent to the Peruvian State on March 18, 1991, and mentioning the potential invocation of article 42 of the Commission's rules, since the time which the rules allow for a response had passed without the receipt of any response.

4. Given the inapplicability of the friendly settlement procedures established in article 48.1.2 of the American Convention, due to the lack of a response from the Peruvian State, the Commission issued its article 50 report on the case.

III. PROCEEDINGS AFTER COMMISSION ADOPTION OF THE ARTICLE 50 REPORT

5. Pursuant to article 50 of the Convention, the Commission on April 22, 1997, during its 96th Special Session, approved report 26/97 concerning the present case based on article 42 of its Regulations, by which the Commission is authorized to presume the facts reported in the petitioner "to be true" in the absence of any response on the part of the State, "as long as other evidence does not lead to a different conclusion."

6. By Note No. 7-5-M/66, dated April 25, 1997, three days after the article 50 report had been adopted, the Permanent Mission of Peru to the OAS informed the Commission that the governmental National Council of Human Rights (Consejo Nacional de Derechos Humanos) had informed that the Joint Command of the Armed Forces had informed that the the Judge of the Province of Yauyos - Lima, Dr. Medina Quispe Zósima had opened a case against Army Captain Alí Pérez Oblitas (Commander of the Military-Police Patrol) which operated in Huancaya on April 25, 1990 for the crime against the life, body and health - homicide of Perez Salazar Héctor, a judicial trial in which the responsibility of the individual officier in question could not be established . . ." In order to obtain further information from this Judge, the National Council of Human Rights requested an extension of time in order to provide further information on the matter.

7. In the interest of receiving a response from Peru on this case, the Commission, on May 7, 1997, informed the State that it had granted an extension of time within which to respond until June 3, 1997.

8. By note dated May 7, 1997 and received at the Commission on May 15, 1997, the Permanent Mission of Peru to the OAS transmitted the response of the National Council of Human Rights on this case. The response stated that the Joint Command of the Armed Forces had carried out an "exhaustive investigation" of the events which occurred in 1990 in Huancaya, Yauyos and given that the body of Héctor Perez Salazar had not been located, it could not establish the responsibility of Captain Pérez Oblitas in his killing.

9. The response of Peru on this case was transmitted to the petitioners on May 20, 1997 and they were asked to submit any observations within a period of 30 days. None were submitted.

10. By letter dated June 18, 1997, the Commission transmitted a copy of Report No. 26/97, its article 50 decision on this case to Peru and requested that the State provide information regarding steps taken to carry out the recommendations of the Commission, and advised them that they were not at liberty to publish the report since it was still confidential.

11. By Note No. 7-5-M/297 dated August 20, 1997, Peru presented its observations on the Commission's confidential report which are discussed below in the analysis of the merits.

IV. ANALYSIS OF THE MERITS

12. What happened to Héctor Pérez Salazar, as set forth in this case, corresponds in content, nature and characteristics, to the concept of "forced disappearance", as developed in the jurisprudence of the Commission and the Inter-American Court of Human Rights (hereinafter, "the Inter-American Court,") and incorporated into Article II of the Inter-American Convention on the Forced Disappearance of Persons.[FN1]

[FN1] See ANNUAL REPORT 1985-6 of the Inter-American Commission of Human Rights, OEA/Ser.L/V/II.68, Doc. 8 rev. 1, September 26, 1986, pp. 40-41; ANNUAL REPORT 1982-3 of the Inter-American Commission of Human Rights 1982-83, OEA/Ser.L/V/II.61, Doc. 22, rev. 1, September 27, 1983, pp. 48-50; ANNUAL REPORT 1980-1 of the Inter-American Commission of Human Rights 1980-81, OEA/Ser.L/V/II.54, doc. 9 rev. 1, October 16, 1981, pp. 113-14; Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 147; Inter-American Convention on the Forced Disappearance of Persons, Article II. The Inter-American Convention on Forced Disappearance came into effect on March 28, 1996 one month after Argentina and Panama deposited their instruments of ratification (February 28, 1996) at the General Secretariat of the OAS.

13. Article II of the Forced Disappearance Convention defines a "forced disappearance" in the following terms:

For the purposes of this Convention, forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.

14. Peru is not a State Party to the Forced Disappearance Convention but the mere elaboration of the definition of a "forced disappearance" by the drafters of the Convention is useful for the purposes of identifying the distinct elements of the same. What is crucial is that the individual be deprived of his freedom by agents of the state or under the color of law, followed by a refusal or incapacity of the State to explain what has happened to him or to give information about his whereabouts.

15. In this case, in the response dated June 17, 1997, Peru recognized that an army officer, Captain Alí Pérez Oblitas, was tried in 1992 for the suspected murder of Héctor Pérez Salazar. The report of June 17, 1997, prepared by the National Commission on Human Rights affirms that, in accordance with the information provided by the Judiciary and the Attorney General's office in this case, the testimony of the brothers of the victim confirmed the presence of the Army in Huancaya but they could not verify the presumptive homicide except on the basis of rumors. The judge who heard the case issued an opinion in the sense that the responsibility of the accused had not been proven, given that the necessary proofs to establish the homicide had not been presented, not had the body of the victim been found. Consequently the case was closed. Pursuant to the version of the facts presented by Peru, Mr. Héctor Pérez Salazar disappeared as a result of the events of April 25, 1990, but it was not proven that members of the Army or the Police were the cause of his disappearance. By note dated August 20, 1997, the Peruvian Mission to the OAS presented a report prepared by the National Council on Human Rights in response to confidential report No. 26/97 reiterating, in essence, the substance of the previous communication.

16. In Resolution 666 (XIII-O/83), the General Assembly of the Organization of American States declared that "the practice of forced disappearance of persons in America is an affront to the conscience of the Hemisphere and constitutes a crime against humanity".[FN2]

[FN2] Resolution 666 (XIII-O/83) of the General Assembly of the Organization of American States.

17. The Commission's experience has demonstrated that the main cause of forced disappearances derives from abuse of powers conferred on the armed forces of a State during a state of emergency. Under a state of emergency, the number of arbitrary detentions increases, individuals are detained without charges and kept in detention without benefit of trial, deprived of access to judicial remedies, and with no record of having been arrested, all of which is flagrantly at variance with the rule of law.

Right to life (Article 4 of the Convention)

18. In this case, the testimony and evidence offered lead to the conclusion that Héctor Pérez Salazar was killed simply on account of the slow gait which was due to his being elderly and disabled by polio.

19. The killing of Héctor Pérez Salazar was thus an arbitrary and illegal act committed by agents of the Peruvian state, and constitutes a violation of Article 4 of the American Convention, an act committed outside the framework of accepted legal norms and without observing the standards required by law, an act the commission of which exceeds the authority granted to public officials.

20. It has not yet proven possible to find the body of Héctor Pérez Salazar, despite the eight years that have passed since his killing. However, the witnesses did observe the way the police “lifted a bulky object wrapped in a plastic bag into one of the pickup trucks,” which allows the inference that the corpse was hidden to cover up the crime.

21. The Inter-American Court of Human Rights has stated that the secret execution of detainees without legal proceedings is often followed by hiding the corpse in order to erase any physical trace of the crime and to achieve impunity for the perpetrators, which represents a brutal violation of the right to life recognized in Article 4 of the Convention. (Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 157.)

22. The arbitrary deprivation of life by agents of Peru constitutes an extra-judicial execution, a form of judgment without trial, or extralegal punishment, carried out outside the legal process and in contradiction of the principle of legality expressed in article 9 of the Convention, which states that "no one can be sentenced for acts or omissions which at the time of their occurrence were not criminal according to applicable law." Consequently, Peru, in its unjust treatment of Héctor Pérez Salazar, has violated its obligation to respect and protect the right to life and due process.

23. Extra-judicial execution has been defined as a crime against humanity. As a result of this, the states have assumed the obligation to take all necessary measures to prevent and punish such acts. This obligation includes the duty to exercise strict control over security forces so that this type of action is not tolerated.

24. The United Nations’ principles relating to the effective prevention and investigation of extralegal, arbitrary, and summary executions[FN3] say, in this regard (principle a), that an exhaustive, immediate, and impartial investigation shall be undertaken in all cases where there is a suspicion of extralegal, arbitrary, or summary executions. The governments shall take care that persons who are identified as participants in extralegal, arbitrary, or summary executions in any territory under their jurisdiction shall be brought to trial.

[FN3] Adopted by the Economic and Social Council of the U.N. on May 24, 1989, and approved by U.N. General Assembly Resolution 44/162, dated December 15, 1989.

25. It follows that Peru’s senior officials have failed to exercise the control over their security forces needed to prevent these forces from carrying out extra-judicial executions, and they have also refused to investigate such acts. This has led to a situation of impunity, which bespeaks consent to the commission of these crimes on the part of the State’s highest officials.

26. On the problem of impunity in Peru, the U.N.’s Special Rapporteur on Extra-judicial Executions stated that in contrast to its public expressions of concern, officials, particularly those commanding the armed forces, have unmistakably and repeatedly demonstrated their lack of will to clear up human rights violations and punish the guilty. The Rapporteur has received many pieces of testimony and reports on cases in which the authorities have failed to meet their

obligation to investigate alleged human rights violations and to identify the guilty and bring them to justice.[FN4]

[FN4] Report by the Special Rapporteur, Mr. B. W. Ndiaye, on his Peruvian mission, May 24 to June 2 of 1993. E/CN.4/1994/7/Add.2. 1993

27. Official tolerance of extra-judicial executions was written into law in 1995 with Amnesty Law N° 26.479, which grants amnesty to military, police, and civilians who find themselves accused, investigated and tried in relation to, or as a consequence of, the war against terrorism, as of May 1980.

28. This situation of impunity is incompatible with the State's general obligation to respect and protect human rights. The jurisprudence of the Inter-American Court of Human Rights holds in this regard that the State has the legal duty to use the means within its reach to seriously investigate violations committed within its jurisdiction, in order to identify those responsible, impose the appropriate punishment, and ensure the victim adequate compensation. (Velásquez Rodríguez Case. Judgment op.cit., paragraph 174.)

29. The fact of the Peruvian state finding itself in an emergency situation as a result of violence by irregular armed groups cannot be an excuse for, or justification of, these occurrences. Pursuant to the United Nations' principles relating to the effective prevention and investigation of extralegal, arbitrary, and summary executions, extra-judicial executions shall not be carried out in any circumstance, even in situations of armed domestic conflict, nor in any circumstance shall general immunity prior to prosecution be granted to persons allegedly implicated in extralegal, arbitrary, or summary executions. Adopted by the Economic and Social Council of the U.N. on May 24, 1989, and approved by U.N. General Assembly Resolution 44/162, dated December 15, 1989.[FN5]

[FN5] Adopted by the Economic and Social Council of the U.N. on May 24, 1989, and approved by U.N. General Assembly Resolution 44/162, dated December 15, 1989. Principle 19.

On the obligation of the state to guarantee and respect human rights

30. In this case it has been demonstrated that the State of Peru has not complied with the provision in Article 1.1 to respect the rights and freedoms set forth and to guarantee every person subject to its jurisdiction the free and full exercise thereof. Hence, the imputation of having violated the rights provided for in article 4 of the Convention.

31. The State's first obligation, arising out of article 1.1, is to respect the rights and freedoms of all individuals within its jurisdiction. In regard to this obligation, the Court has stated that it is a principle of international law that the State answers for the acts of its agents and for their omissions, even if they are acting outside their sphere of authority or in violation of national law.

Furthermore, according to the Court, any violation of the rights recognized by the Convention is to be imputed to the State if the violation is "carried out by an act of public authority or by persons who use their position of authority." (Velásquez Rodríguez Case. Judgment op.cit. paragraphs 170 and 172.)

32. The Commission concludes that the extra-judicial execution of Héctor Pérez Salazar and the subsequent cover-up are acts that were perpetrated by agents of the State, which means that the Peruvian State thus violated the rights of victims established in article 1.1 and linked to article 4 of the Convention.

33. The second obligation established in article 1.1 is to guarantee the free and full exercise of the rights and freedoms recognized in the Convention. In this regard, the Court's jurisprudence states that this obligation implies that each State which is a party to the Convention has a duty "to organize the governmental apparatus and, in general, all the structures through which public power is exercised, 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." (Velásquez Rodríguez Case. Judgment op.cit., paragraph 166.)

34. The response of the State to the Commission's confidential article 50 report is designed to afford the State an opportunity to demonstrate how it is complying with the Commission's recommendations.[FN6] As the Inter-American Court recently stated in the Loayza Tamayo Case "...if a State signs and ratifies an international treaty, especially if it deals with human rights, as is the case of the American Convention, it is obliged to use its best efforts in carrying out the recommendations of an organ of protection such as the Inter-American Commission which is, furthermore, one of the principal organs of the Organization of American States. . .".[FN7]

[FN6] See I/A Court H.R. Certain Attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 44, 46, 47, 50 and 51 of the American Convention on Human Rights), Advisory Opinion OC-13/93 of July 16, 1993. Series A No. 13.

[FN7] Loayza Tamayo Case, Judgment of September 17, 1997, paragraph 80. Free translation from the Spanish original.

35. Peru, in its response dated August 25, 1997, informed the Commission that it could not prove the responsibility of the accused, Captain Alí Pérez Oblitas, who had been tried for the homicide of Héctor Pérez Salazar in 1992. As a consequence, the case was closed and no new investigation was undertaken to find those who had committed the crime.

36. The Peruvian Amnesty Laws, Laws Nos. 26479 and 26492, effectively tie the hands of the State from undertaking any investigation of any forced disappearance case or any other human rights violation committed by a member of the Armed Forces, or any other perpetrator, during the period May 1980 - June 14, 1995. The Amnesty Laws cover all military, police and

civilian officials, whether they have been arraigned, investigated, tried, indicted or convicted before a regular or special court for common or military crimes for any event, stemming from or originating on the occasion of, or as a consequence of, the struggle against terrorism, that may have been committed individually or by a group during this period.[FN8] An amnesty, by its nature, removes the criminal element from the conduct and the penalty, if the individual has been convicted or served a sentence, is considered never to have been enforced.[FN9]

[FN8] See, IACHR, ANNUAL REPORT 1996, pp. 739-741.

[FN9] See UN STUDY ON AMNESTY LAWS, Report by Mr. Louis Joinet, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1985/16/Rev.1 (June 21, 1985).

37. In the case of the Peruvian Amnesty Law No. 26479, article 6 provides:

The facts or crimes covered by the present amnesty, as well as the dismissals and acquittals, are not susceptible of investigation, inquiry or summary procedure; resulting in the definitive filing of all judicial proceedings in process or pending enforcement. (Emphasis added)

In summary, this Law provides that the instant case is not susceptible of investigation, in flagrant disregard of the Peruvian State's obligations under the American Convention and the jurisprudence of both the Commission and the Inter American Court of Human Rights.

38. Amnesty Laws frustrate and run contrary to a State's obligation to investigate and punish those responsible for human rights violations whether those responsible be members of the military or civilians. The expectation of an eventual amnesty casts a blanket of impunity over the Armed Forces or any non-military perpetrator, enabling them to commit any atrocity in the name of their cause, and such a climate breeds inevitable excess and contempt for the rule of law.[FN10] An amnesty in one country in the region which has ended its civil conflict, breeds the expectation of an amnesty in a second, albeit the latter is still in a state of internal conflict. A state policy of impunity, enshrined in amnesty laws, eventually leads to a loss of prestige and professionalism of the military in the eyes of the rest of the population.

[FN10] See Report No. 36/96, Case 10.843 (Chile), 15 October 1996 in the Commission's ANNUAL REPORT 1996, p. 156.

39. In the case of an extrajudicial execution, the State has the duty to investigate the way in which the killing occurred, identify the agents responsible, punish the guilty, and indemnify the family of the victim. In the case with which we are concerned, these obligations have not been met, by reason of which the Commission concludes that the State of Peru has violated article 1.1 because it did not guarantee the enjoyment of Héctor Pérez Salazar's rights.

40. Based on the considerations laid out in this report, the Commission has come to the following conclusion and recommendations:

V. CONCLUSION

i. That agents of the security forces of the State of Peru proceeded arbitrarily to deprive Héctor Pérez Salazar of his life, by virtue of which the State of Peru is guilty of violating the right to life (Article 4) as well as the general obligation to respect and ensure the exercise of this right established article 1.1 of the Convention.

VI. RECOMMENDATIONS

i. The Commission recommends to the State of Peru that through the appropriate agencies it initiate a serious, impartial and effective investigation of the case with the aim of locating the remains of Héctor Pérez Salazar as well as identifying those guilty of his extra-judicial execution, and that through appropriate criminal trial proceedings it punish them with sentences suited to the gravity of the above-mentioned violations. Consequently, the Commission recommends that the Peruvian State render without force any internal measure, legislative or of any other nature, which tends to impede the investigation, trial or punishment of those persons responsible for the extrajudicial execution of Héctor Pérez Salazar. To this end the Peruvian State should declare Laws N° 26479 and N° 26492 to be without force.

ii. That the State of Peru grant an appropriate indemnification to the family of Héctor Pérez Salazar, including fair compensation for the suffering arising from not having found his body and given it burial.

VII. PUBLICATION

41. The Commission considered this case again during its 97th regular session and on October 16, 1997, adopted Report No. 43/97, its article 51 report on the case and transmitted it to the State of Peru on October 24, 1997. The Commission requested Peru to adopt reparatory measures in this case within a period of two months from the date of transmittal, in order for it to decide on the publication of the report.

42. The Peruvian State replied to the Commission by Note 7-5-M-467 dated December 29, 1997 in which the Government stated that it reaffirmed its conclusions set forth in Note No. 7-5-M/215 of June 17, 1997, regarding this case. The Commission considered this case again during its 98th regular session and on February 19, 1998, it took the decision to publish this Report.

43. In virtue of the fact that the Peruvian State responded expressing its decision to not comply with the recommendations issued by the Commission for the reasons expressed therein, and in conformity with articles 51.3 of the American Convention and 48 of its Regulations, the Commission decides to reiterate the conclusion and recommendations in chapters V and VI supra, to make public the present report and to include it in its Annual Report.