

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 41/97; Case 10.491
Session: Ninety-Eighth Regular Session (17 February – 6 March 1998)
Title/Style of Cause: Estiles Ruiz Davila v. Peru
Doc. Type: Report
Decided by: Chairman: Carlos Ayala Corao;
First Vice Chairman: Robert K. Goldman;
Second Vice Chairman: Jean Joseph Exume.
Dated: 19 February 1998
Citation: Ruiz Davila v. Peru, Case 10.491, Inter-Am. C.H.R., Report No. 41/97,
OEA/Ser.L/V/II.102, doc. 6 rev. (1998)

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I. THE FACTS

1. On November 20, 1989, the Inter-American Commission of Human Rights (hereinafter "the Commission") received a complaint against the Republic of Peru (hereinafter "the Peruvian State" or "Peru") denouncing the forced disappearance of Estiles Ruiz Davila, a farmer, which stated the following:

... he was detained-disappeared on September 23, 1989 by Peruvian Army personnel in Pongo de Caynarachi, in the Pampa Hermosa district of the province of Lamas, in the Department of San Martín. The detention occurred at approximately 4:00 pm, while Mr. Ruiz Davila was attending a funeral wake in the mentioned locality. Later, he was moved to BAS Morales No. 30, located in the district of Morales, province of Tarapoto, department of San Martin.

II. PROCESSING BY THE IACHR

2. Having received the denunciation, and without prejudging its admissibility, the Commission transmitted the pertinent parts of it to the State of Peru in a communication dated November 21, 1989, requesting such information as it deemed appropriate. No reply was received in the statutory period.

3. This request for information was reiterated in notes sent to the Peruvian State on March 7, 1990 and April 12, 1991, in which reference was made to the possible application of Article 42 of the Regulations of the Commission, and which also went unanswered. On March 12, 1997, the Commission sent another communication requesting that the Peruvian State supply information on the present case within 30 days, and reiterated the possible application of article 42 of the Regulations of the Commission. Peru did not answer the request, nor did it provide any information on this complaint within the period specified.

4. Given the inapplicability of the friendly settlement procedures established in article 48.1.f 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. ACTIONS TAKEN FOLLOWING THE APPROVAL BY THE COMMISSION OF THE ARTICLE 50 REPORT

5. Pursuant to article 50 of the Convention, the Commission, on April 22, 1997, during the course of its 96th extraordinary period of session, approved Report No. 26/97 in regards to the present case, based on article 42 of its Regulations which authorize the Commission to presume the facts presented by the petitioners "to be true" if the Government has not responded to the case and as long "as other evidence does not lead to a different conclusion."

6. By Note No. 705-M/36 of April 24, 1997, two days after the approval of the article 50 Report, the Permanent Representative of Peru before the OAS informed the Commission that the National Council on Human Rights had informed it that the Joint Command of the Armed Forces would be investigating this case, but that the documents had just arrived on April 2, 1997 and since the facts occurred in 1989 in a distant locality, they would need an extension of time in order to prepare their reply.

7. The Commission, since it was interested in receiving as complete a reply as possible in this case, on May 7, 1997 informed the State that it was granting an extension of time to reply until June 3, 1997.

8. By Note of May 21, 1997, the Peruvian Mission to the OAS transmitted the reply of the National Council on Human Rights in this case. In the response it was stated that the Joint Command of the Armed Forces had realized an "exhaustive investigation" of the facts which had occurred in 1989 and presented information of the Ministries of Defense and Interior as well as the Attorney General's office. The information from the Ministry of the Interior revealed that it had located a complaint indicating that Mr. Estiles Ruiz Davila had been detained by an army patrol and that this information had been transmitted to the Attorney General's office. The information submitted by the district attorney for the province of Lamas indicated that Ruiz Davila had been detained on September 23, 1989 by members of the army, but since there was no registry of detainees at that time there was no information as to what had happened to him, and he is considered disappeared. The army base in the region informed that it did not maintain a registry of detainees in 1989. The case is in the hands of the Attorney General, since there is no further information.

9. The response of Peru in this case was transmitted to the petitioners on July 4, 1997 and they were requested to present their observations before June 18, 1997. No information was presented.

10. By letter dated June 18, 1997, the Commission sent Peru a copy of Report No. 23/97, the article 50 decision in this case, and requested the State to provide information on the measures

taken to comply with the recommendations of the Commission, advising it that it was not permitted to publish the report since it was still in a confidential status.

11. By Note 7-5-M/298 of August 22, 1997, Peru presented its observations to the Commission's confidential report which are discussed below in the analysis of the merits.

IV. ANALYSIS OF THE MERITS

12. What happened to Estiles Ruiz Davila, as set forth in this case, corresponds in all its extremes to the concept of "forced disappearance", as developed in the jurisprudence of the Commission and the Inter-American Court of Human Rights 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 Inter-American Convention on Forced Disappearance of Persons defines "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 Convention on Forced Disappearance, but the mere elaboration of a definition of "forced disappearance" by the drafters of the Convention is useful in order to identify the elements of the same. The essential thing is that the individuals are deprived of their liberty by the agents of the State or under the color of law, followed by the negation or incapacity of the State to explain what occurred to the victim or to provide information regarding his whereabouts. In this case, Peru, in its response dated August 22, 1997, recognized that a complaint was filed with the District Attorney for Lamas, denouncing the detention of Mr. Estiles Ruiz Davila by an army patrol in Pampa Hermosa, district of Pongo de Caynarachi-Lamas, information which was communicated to the Attorney General.

15. Despite the existence of this complaint, an investigation was not initiated at that time or later, and eight years later, the State cannot locate the victim nor identify the individuals in the patrol who might be responsible.

16. The General Assembly of the Organization of American States in Resolution 666 (XIII-O/83), 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 practice has demonstrated that the main cause of forced disappearances derives from abuse of powers conferred on the armed forces of the State during a state of emergency. Under a state of emergency, the number of arbitrary detentions increases, individuals are detained without charges and kept without trial, deprived of access to judicial remedies, and there is no record of their having been arrested, all of which is flagrantly at variance with the rule of law.

Peru, in its response dated August 22, 1997, informed the commission that the "Leoncio Prado" military base in Morales-Tarapoto did not have a registry of detainees in 1989.

Right to life (Article 4 of the Convention)

18. The Inter-American Court of Human Rights has pointed out that the forced disappearance of persons "frequently (involves) execution of those detained, in secret and without any kind of trial, followed by hiding of the body with a view to removing all material traces of the crime and achieving impunity for those who committed it, which amounts to brutal violation of the right to life recognized under Article 4 of the Convention." (Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraph 157).

19. In the present case, Mr. Estiles Ruiz Davila was detained by members of the security forces. In addition, his whereabouts remains unknown more than eight years after his detention-disappearance. The context in which the disappearance occurred and the fact that his fate is still unknown, are in themselves, reasonable grounds for concluding that he was killed (Godínez Cruz Case, Judgment of January 20, 1989, paragraph 198).

20. The jurisprudence of the Court states: "The right to life and the guarantee and respect thereof by States cannot be conceived in a restrictive manner. That right does not merely imply that no person may be arbitrarily deprived of his or her life (...) It also demands of the States that they take all appropriate measures to protect and preserve it."(...) "The international protection of human rights, as it relates to Article 4.1 of the American Convention on Human Rights, has a preventive dimension, in which the obligation to act with due diligence assumes graver implications when dealing with illegal detentions." (Gangaram Panday Case, Judgment of

January 21, 1994, dissenting opinion of judges Picado Sotela, Aguiar-Aranguren and Cançado Trindade, paragraphs 3,4).

21. Therefore, the Commission considers that the Peruvian State has violated the right to life, a fundamental right protected under Article 4 of the Convention which states that "Every person has the right to have his life respected..." and "No one shall be arbitrarily deprived of his life."

Right to Personal Liberty (Article 7 of the Convention)

22. A detention is arbitrary and illegal when it is practiced for reasons not validly envisaged by law, when it is carried out without observing legal standards, and when powers to detain have been abused, i.e. when a detention is carried out for reasons other than those contemplated and required by law. The Commission has also pointed out that detention for improper purposes is in itself a punishment or sentence, a kind of sentence without trial or extralegal sentence violating the democratic principles of independence and separation of powers as well as the guarantees of legality and the presumption of innocence.

23. As a result of his disappearance, Estiles Ruiz Davila was the victim of arbitrary arrest, which deprived him of his physical freedom without legal cause and without a determination of the lawfulness of his detention by a judge or competent tribunal. Those acts directly violate the right to personal liberty recognized under article 7 of the Convention and constitutes a violation, attributable to Peru, of the duties to respect and ensure that right enshrined in Article 1.1 of the Convention (Godínez Cruz Case, Judgment of January 20, 1989, paragraph 196).

24. Concerning violation of this right, the Inter-American Court has ruled that:"The kidnapping of a person is an arbitrary deprivation of liberty, an infringement of a detainee's right to be taken without delay before a judge and to invoke the appropriate procedures to review the legality of the arrest, all in violation of Article 7 of the Convention which recognizes the right to personal liberty". (Godínez Cruz Case, Judgment op.cit., paragraph 163).

On the obligation of States to guarantee and respect rights

25. In this case it has been demonstrated that the Peruvian State has not complied with the provision of Article 1.1 that States Parties 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." For that reason the Peruvian State is deemed to have violated the rights contemplated in Articles 4 and 7 of the Convention.

26. The first obligation of States, assumed by the States Parties under Article 1.1, is to respect the rights and freedoms of all persons subject to their jurisdiction. Referring to this obligation, the Court stated that: "... under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even if they act outside the sphere of their authority or violate internal law." Furthermore, it held that: "... in principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State." (Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraphs 170 and 172).

27. The Commission concludes that the detention and subsequent disappearance of Estiles Ruiz Davila are public acts perpetrated by State agents, which means that the Peruvian State violated the rights of the victim contemplated in Article 1.1 in relation to violations of Articles 4 and 7 of the Convention.

28. The second obligation envisaged in Article 1.1 is to ensure free and full exercise of the rights and freedoms recognized in the Convention. Here Court jurisprudence establishes that: "This obligation implies the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which State 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 in 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).

29. In the event of a "forced disappearance", the State is duty-bound to establish the fate and current circumstances of the victim, punish those responsible, and compensate the victim's relatives. In the case at hand, those obligations have not been met.

30. The response of the State to the confidential article 50 report is designed to give the State an opportunity to demonstrate that it is complying with the recommendations of the Commission. As the Inter American Court recently stated in the Loayza Tamayo case: "...if a State signs and ratifies an international treaty, especially one dealing with human rights, as is the case with the American Convention, it is obligated to use its best efforts to carry out the recommendations of the organ of protection such as the Inter American Commission, which is, furthermore, one of the principal organs of the Organization of American States...". [FN3]

[FN3] Loayza Tamayo Case, Judgment of September 17, 1997, paragraph 80. Free translation from the Spanish original.

31. Peru, in its response dated August 22, 1997 informed the Commission that the Joint Command of the Armed forces had carried out an "exhaustive investigation" in order to establish the individual responsibility of the members of the army involved in the events. Then it informed the Commission that the case had been provisionally filed in the District Attorney's office because of a lack of information which did not allow for an identification of the members of the patrol who had arrested the victim. The State concluded its report indicating its will to clarify these questions and affirmed that the Attorney General would open a new investigation of the case.

32. 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.[FN4] 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.[FN5]

[FN4] See IACHR, ANNUAL REPORT 1996, pp. 774-6.

[FN5] 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).

33. 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.

34. 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.[FN6] 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.

[FN6] See Report No. 36/96, Case 10.843 (Chile), 15 October 1996 in the Commission's ANNUAL REPORT 1996, p. 156.

35. Consequently, the Commission concludes that the Peruvian State has violated article 1.1, because it failed to safeguard the exercise of the rights and guarantees of Estiles Ruiz Davila.

36. The Commission, based on the considerations formulated in the present report, confirms the following conclusions and recommendations:

V. CONCLUSIONS

i. That members of the Peruvian State security forces detained Estiles Ruiz Davila, and that during the following eight years his whereabouts have not been identified, and that, as a result, the Peruvian State is responsible for violating the right to life (article 4), the personal liberty (article 7) and the State's overall obligation to respect and ensure the exercise of these rights (article 1.1) enshrined in the American Convention.

VI. RECOMMENDATIONS

i. That the Peruvian State carry out a serious, impartial and effective investigation of the facts by means of the competent organs, to establish the whereabouts of Estiles Ruiz Davila and to identify those responsible for his detention-disappearance, and, by means of appropriate criminal proceedings, to punish those responsible for such grave acts in accordance with the law.

ii. That the Peruvian State, render without force any domestic measure, be it legislative or of some other nature, tending to prevent the investigation, trial, and punishment of those responsible for the detention and disappearance of Estiles Ruiz Davila. To that end, the Peruvian State should declare Laws N° 26479 and N° 26492 to be without force.

iii. That the Peruvian State provide reparations for the relatives of Estiles Ruiz Davila, including moral damages in that compensation payment for the suffering derived from not knowing the fate of the victim.

VII. PUBLICATION

37. The Commission considered this case again during its 97th regular session, and on October 16, 1997 adopted Report No. 41/97, its article 51 report on the case and transmitted it to the State of Peru on October 29, 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.

38. The Peruvian State replied to the Commission by Note N° 7-5-M-469, dated December 29, 1997, in which the Government stated that it reaffirmed its conclusions set forth in Note No. 7-5-M/298 of August 22, 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.

39. 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 conclusions and recommendations in chapters V and VI supra, to make public the present report and to include it in its Annual Report.