

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 65/00; Case 11.849
Session:	Hundred and Eighth Regular Session (2 – 20 October 2000)
Title/Style of Cause:	Leoncio Florian Lopez, Felix Augusto Acuachi Espino, Hans Percy Burgos Castaneda, Henry Alejandro Gonzales Gonzales, David Wilfredo Carpio Cueva , Roberto Carlos Flores Valdivia, Cesar Manuel Huaccha Ramos, Mario Antonio Cajavilca de la Cruz , Alex Romero Tirado, Jorge Romero Tirado, Wilfredo Arroyo Gines, Williams Palomino Lopez, Wilson Quispe Rodriguez, Elvis Rodriguez Guillen, Juan Carlos Vila Plascencia, Roger Suarez Soto, Moises Ruiz Laguna and Gabino Sanchez Narciso v. Peru
Doc. Type:	Decision
Decided by:	Chairman: Helio Bicudo; Second Vice-Chairman: Juan E. Mendez; Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo
Dated:	3 October 2000
Citation:	Florian Lopez v. Peru, Case 11.849, Inter-Am. C.H.R., Report No. 65/00, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)
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## I. SUMMARY

1. By petition submitted to the Inter-American Commission on Human Rights (hereinafter “the Commission,” “the Inter-American Commission,” or “IACHR”) on December 1, 1997, and amended on December 16, 1997, the non-governmental organizations Centro de Estudios y Acción para la Paz (“CEAPAZ”), the Instituto de Defensa Legal (“IDL”), the Fundación Ecuémica para el Desarrollo y la Paz (“FEDEPAZ”), the Asociación Pro Derechos Humanos (“APRODEH”), the Grupo de Iniciativa Nacional para los Derechos del Niño (“GIN”), and the Center for Justice and International Law (“CEJIL”) (hereinafter “the petitioners”), alleged that the Republic of Peru (hereinafter “Peru,” “the State,” or “the Peruvian State”) violated the human rights of youths Leoncio Florian López (18 years old), Félix Augusto Acuachi Espino (18), Hans Percy Burgos Castañeda (15), Henry Alejandro González González (18), David Wilfredo Carpio Cueva (18), Roberto Carlos Flores Valdivia (18), César Manuel Huaccha Ramos (17), Mario Antonio Cajavilca de la Cruz (20), Alex Romero Tirado (20), Jorge Romero Tirado (18), Wilfredo Arroyo Gines (17), Williams Palomino López (17), Wilson Quispe Rodríguez (18), Elvis Rodríguez Guillén (18), Juan Carlos Vila Plascencia (18), Roger Suárez Soto (16), Moisés Ruiz Laguna (17), and Gabino Sánchez Narciso (18), on taking them, on March 14, 1997, from the Center for Diagnostics and Rehabilitation of Lima to the Quencoro Maximum Security Prison for Adults at Cuzco, and subjecting them, once there, to precarious conditions of confinement, without any possibility of visits given the distance, with very poor diet, and without

any regular medical or psychological assistance. The petitioners alleged that these events constitute a violation of the rights of personal liberty, a fair trial, humane treatment, and measures of protection set forth at Articles 7, 8, 5, and 19 of the American Convention on Human Rights (hereinafter the "Convention" or the "American Convention"). The State adduced that the case is inadmissible since the facts stated do not tend to establish a violation of rights guaranteed by the American Convention on Human Rights; it later alleged that the case should be archived since the facts that gave rise to the request do not subsist. The Commission decides to admit the case and to proceed to analyze the merits issues.

## II. PROCEEDINGS BEFORE THE COMMISSION

2. On December 12, 1997, the Commission opened the case, forwarded the pertinent parts of the complaint to the Peruvian State, and requested that it provide information within 90 days. The petitioners submitted additional information on December 16, 1997. Peru answered on March 5, 1998. The petitioners submitted observations on the State's response on January 11, 1999. The State submitted final comments on March 25, 1999. Both parties submitted several additional briefs.

## III. POSITION OF THE PARTIES

### A. Position of the petitioners

3. The petitioners indicate that on March 14, 1997, and due to an escape attempt, the Executive Committee of the Judiciary ruled that the presumed victims be transferred from the Youth Center for Diagnostics and Rehabilitation, located in the city of Lima, to the Quencoro Maximum Security Prison, located in the city of Cuzco.

4. They allege that the Quencoro Center for Diagnostics and Rehabilitation was established at a new locale, in Cuzco, which did not have the infrastructure needed to carry out the work activities, educational programs, or recreational activities for adolescents. They add that the Center did not have a permanent medical service, though nine of the alleged victims suffered diseases such as bronchial affections, parasitosis, and acute depression, among others.

5. They note that the situation of the alleged victims at Quencoro was characterized by the lack of the rehabilitation function provided for in the Code on the Minor; deficient food; difficulties in the regime of visits, since the youths' family members generally did not have the economic resources needed to travel to Cuzco; and conditions of confinement even worse than those applied to the adult convicts, for these youths, on average, had only six hours a week in the yard.

6. They state that the transfer of the youths is a violation of their right to personal liberty, for it was based on an administrative decision, not a judicial decision, as required by domestic law, thereby constituting arbitrary imprisonment. They argue that this transfer also entails a violation of the youths' right to a fair trial, as a punitive measure was applied to them outside of any judicial process, in which the judge with jurisdiction was the family judge, at that time, for the Judicial District of Lima. They add that as a result of the transfer, the youths who had

judicial proceedings pending suffered a violation of the right to be assisted by counsel; and with the transfer of the persons allegedly implicated in the escape attempt, they were unable to exercise their right of defense.

7. They allege that the way in which the transfer occurred; the confinement in the maximum security prison; and the regime imposed on them there constituted inhuman treatment, in violation of the youths' right to humane treatment. They add that the youths' transfer implied that they were not receiving rehabilitative treatment and were not adequately separated from the adults, in violation of the right to measures of protection set forth in the American Convention.

8. They note that on March 24, 1997, they filed a habeas corpus action in relation to the transfer of the youths to the Quencoro Rehabilitation Center, but that this action was declared inadmissible in the first instance and on appeal. They add that once the judgment on appeal was handed down, it was challenged by a motion for nullity before the Constitutional Court, which on August 22, 1997, confirmed the inadmissibility of the habeas corpus action.

#### B. Position of the State

9. In its initial answer, the State alleges that the youths were transferred temporarily, as part of security measures to protect the rest of the prison population. It notes that it was a measure ordered by the competent authority, properly exercising its functions. It adds that through judicial inspection it was found that the transfer of the youths included the presence of medical personnel, until they were located in a pavilion specially designed and adapted for them.

10. It further argues that according to the foregoing, and pursuant to Article 47(b) and (c), the case is inadmissible since the facts alleged do not tend to establish a violation of rights guaranteed by the American Convention.

11. It further adduces, in subsequent communications, that the Quencoro Youth Rehabilitation Center in Cuzco was deactivated on January 11, 1999, and that as of March 25, 1999, only two of the youths included in the original complaint were confined, as a socio-educational measure, and at a different Rehabilitation Center.

12. It notes that in consideration thereof, the case should be archived, pursuant to Article 48(1)(b) of the American Convention and Article 35(c) of the Commission's Regulations, as the motives that gave rise to it no longer subsist.

#### IV. ANALYSIS

13. The Commission will now analyze the admissibility requirements of a petition, established in the American Convention, and the request by the State to archive the case.

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

14. The petitioners are authorized by Article 44 of the American Convention to present complaints to the IACHR. The petition indicates that the alleged victims are individuals, with

respect to whom Peru undertook to respect and guarantee the rights set forth in the American Convention. As regards the State, the Commission observes that Peru is a state party to the American Convention, having ratified it on July 28, 1978. Therefore, the Commission is competent *ratione personae* to examine the complaint.

15. In addition, the Commission is competent *ratione materiae* since the facts alleged in the petition could be violative of rights protected by the American Convention. The IACHR is also competent *ratione temporis* since the facts in question are alleged to have taken place as of 1997, when the obligation to respect and ensure the rights established in the American Convention had already entered into force for the Peruvian State.

B. Admissibility requirements of the petition

a. Exhaustion of domestic remedies

16. Petitioners allege that on March 24, 1997, they filed a habeas corpus action in relation to the transfer of the youths to the Quencoro Rehabilitation Center. That action was declared inadmissible in the first instance and on appeal. Once the decision on appeal was rendered, it was challenged via a motion for nullity before the Constitutional Court, which, on August 22, 1997, confirmed the inadmissibility of the habeas corpus action.

17. For its part, the State has not made any objection related to the requirement of exhaustion of domestic remedies. In this respect, the Inter-American Court has noted 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.”<sup>[1]</sup>

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[FN1] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987, Series C No. 1, para. 88; Case of Fairén Garbi and Solís Corrales, Preliminary Objections, Judgment of June 26, 1987, Series C No. 2, para. 87; Case of Godínez Cruz, Preliminary Objections, Judgment of June 26, 1987, Series C No. 3, para. 90; Inter-American Court of Human Rights, Case of Gangaram Panday, Preliminary Objections, Judgment of December 4, 1991, Series C No. 12, para. 38; Inter-American Court of Human Rights, Case of Neira Alegría et al., Preliminary Objections, Judgment of December 11, 1991, Series C No. 13, para. 30; Inter-American Court of Human Rights, Case of Castillo Páez, Preliminary Objections, Judgment of January 30, 1996, Series C No. 24, para. 40; and Inter-American Court of Human Rights, Case of Loayza Tamayo, Preliminary Objections, Judgment of January 31, 1996, Series C No. 25, para. 40.

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18. For the foregoing reasons, the Commission concludes that the requirement concerning exhaustion of domestic remedies has been met.

b. Time period for submission

19. As regards the requirement set forth at Article 46(1)(b) of the Convention, according to which the petition must be submitted within six months from notification to the victim of the final decision that exhausted domestic remedies, it has been met in this case since the judgment of the Constitutional Court that concluded the judicial process was reported on October 9, 1997, and the petition was submitted to the IACHR on December 1, 1997.

c. Duplicity of procedures and res judicata

20. The Commission understands that the subject matter of the petition is not pending before any other international body for settlement, nor does it reproduce a petition already examined by this or any other international organization. Therefore, the requirements of Articles 46(1)(c) and 47(d) are found to have been met.

d. Characterization of the facts

21. In the first stages of the proceedings before the IACHR, the State, as mentioned supra, indicated that the transfer of the youths was done as a temporary measure, and that it was done in the context of security measures to protect the rest of the prison population. It added that it was a measure ordered by the competent authority and in the full exercise of its functions, and that through judicial inspection it was found that the transfer of the youths was done with the presence of medical personnel, until their placement in a pavilion specially designed and adapted for them. In view of the foregoing, Peru asked that the case be declared inadmissible, for failing to tend to establish a violation of the rights protected in the Convention. The Commission decides to address this issue when analyzing the merits, as it considers that the petitioners' presentation refers prima facie to facts which, if true, tend to establish a violation of rights guaranteed in the Convention.

D. Request to archive the case

22. With respect to the request to archive the case, made by the State in the subsequent stages of proceedings before the IACHR, based on the grounds that the motives that gave rise to it no longer subsist, since the youths are free or outside of the Quencoro Rehabilitation Center at Cuzco, the Commission observes that, as the Inter-American Court of Human Rights has established, the obligation to guarantee to all persons under their jurisdiction the free and full exercise of the rights recognized in the Convention, provided for at Article 1(1) of the American Convention, means that 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.[2]

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[FN2] Inter-American Court of Human Rights, Case of Velásquez Rodríguez, Judgment of July 29, 1988, para. 166.

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23. In this respect, from the parties' arguments it does not appear that there has been an investigation into and punishment of the human rights violations alleged in this case, nor does it appear that any reparation has been made for the possible damages that said violations, if they occurred, may have caused. Therefore, the Inter-American Commission does not have a basis at this stage in the proceeding to archive the case based on the argument that the reasons that gave rise to it no longer subsist.

## V. CONCLUSIONS

24. The Commission considers that it is competent to hear this case and that the petition is admissible, under Articles 46 and 47 of the American Convention, in the terms set forth above.

25. Based on the arguments of fact and of law set forth above, and without prejudging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible with respect to the alleged violations of Articles 7, 8, 5, and 19 of the American Convention.
2. To give notice of this decision to the petitioners and to the State.
3. To continue to analyze the merits of the case.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed by the Inter-American Commission on Human Rights in Washington, D.C., on October 3, 2000. (Signed): Hélio Bicudo, Chairman; Juan E. Méndez, Second Vice- Chairman; Members: Marta Altolaguirre, Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.