

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 70/03; Petition 11.149
Session: Hundred and Eighteenth Regular Session (7 – 24 October 2003)
Title/Style of Cause: Augusto Alejandro Zuniga Paz v. Peru
Doc. Type: Decision
Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Commissioners: Robert K. Goldman, Julio Prado Vallejo.
In compliance with Article 17(2a) of the Commission's Rules of Procedure, Commissioner Susana Villaran, a Peruvian national, did not participate in the discussion of or the vote on this report.

Dated: 10 October 2003
Citation: Zuniga Paz v. Peru, Petition 11.149, Inter-Am. C.H.R., Report No. 70/03, OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)

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I. SUMMARY

1. On April 1, 1993, the Inter-American Commission on Human Rights (hereafter "the Commission", "the Inter-American Commission" or "the IACHR") received a petition for Mr. Augusto Alejandro Zúñiga Paz (hereafter "the petitioner") against the Republic of Peru (hereafter "Peru", "the State" or "the Peruvian State"), for having received a letter bomb that exploded in his hands and caused the loss of his arm. The Petitioner argues that this constitutes a violation by the Peruvian State of the right to life, the right to humane treatment, the right to due process of law, and the right to judicial protection enshrined in Articles 4, 5, 8 and 25 of the American Convention on Human Rights (hereafter "the Convention" or "the American Convention").

2. The petition complains of the failure to investigate and punish the incident, which occurred on March 15, 1991, at the headquarters of a nongovernmental organization, the Comisión de Derechos Humanos (COMISEDH) and involved a letter bomb that was received by the petitioner and that exploded, causing the loss of his left arm.

3. On February 22, 2001, the Peruvian State issued a joint press release with the Inter-American Commission on Human Rights, in which the State undertook to seek a friendly settlement in certain cases pending before the Commission, including the present case, pursuant to Articles 48(1)(f) and 49 of the American Convention. This process was concluded on February 2003, when the act of friendly settlement was signed between the parties in Lima.

4. This friendly settlement report is issued pursuant to Article 49 of the Convention and Article 41(5) of the Commission's Rules of Procedure. It contains a summary of the facts alleged by the petitioner and the settlement reached. It also contains an agreement to publish the report.

II. PROCEEDINGS BEFORE THE COMMISSION

5. 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.

6. 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.

7. 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.

8. 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 110th 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."

9. On February 13, 2003, a Friendly Settlement Agreement was signed in Lima between the victim Augusto Alejandro Zúñiga Paz and the Peruvian State, represented by Fausto Humberto Alvarado Doderó, Minister of Justice, and Fernando Carbone Campoverde, Minister of Health.

III. FACTS OF THE CASE

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

IV. FRIENDLY SETTLEMENT

15. The State and the petitioners have signed a friendly settlement agreement, the text of which reads as follows:

FIRST: BACKGROUND

Dr. Augusto Alejandro Zúñiga Paz was the victim of a letter bomb attack on March 15, 1991, at the headquarters of the Comisión de Derechos Humanos (COMISEDH), a nongovernmental organization. As a result of that attack he lost his left arm. Dr. Zúñiga considered that the Peruvian authorities had failed to undertake an adequate investigation and to punish those responsible, and for this reason he turned to the Inter-American Commission on Human Rights. Consequently, Case 11.149 was opened on March 5, 2001, and the Commission approved Report 45/01 admitting the petition.

SECOND: RECOGNITION

The Peruvian State is aware that the protection and unrestricted enjoyment of human rights is the very basis of a just, worthy and democratic society. In strict compliance with the obligations arising from its signature and ratification of the American Convention on Human Rights and other international human rights instruments, it has accepted international responsibility for violation of Articles 1(1), 2, 5.1 and 8(1) of the American Convention on Human Rights to the prejudice of Dr. Augusto Alejandro Zúñiga Paz.

This recognition was made explicit in a joint press release signed by the Peruvian State and the Inter-American Commission on Human Rights on February 22, 2001, in which the Peruvian State admitted international responsibility for the facts described in the first clause of this agreement, and undertook to adopt measures to restore the affected rights and/or to repair the damages caused.

THIRD: INVESTIGATION AND PUNISHMENT

The Peruvian State undertakes to guarantee access to the remedies of domestic jurisdiction for the victim or his representatives and/or attorneys in order to give effect to his right to the truth, to justice and reparations, and to move diligently to ensure that the competent authorities will proceed, independently, with the investigation and punishment of all those responsible for the deeds described in this agreement.

FOURTH: COMPENSATION

1. The beneficiary of this agreement

The Peruvian State recognizes Dr. Augusto Alejandro Zúñiga Paz as the sole beneficiary of any compensation.

2. Monetary compensation

The Peruvian State grants compensation in favor of Dr. Augusto Alejandro Zúñiga Paz, as the sole beneficiary, amounting to US\$60,000, in compensation for the damages and injuries caused by the deeds described in the first clause, which amount includes reparations for all direct and indirect damages, as well as losses, foregone earnings, material damages and moral damages.

3. Nonmonetary damages

The Peruvian State also undertakes to provide Dr. Augusto Alejandro Zúñiga Paz with the following, depending on availability:

- An electronic diskette containing Peruvian legislation, issued by the Ministry of Justice.
- Official publications available within the Ministry of Justice.

As well, notwithstanding that the government of former President Alberto Fujimori published a story to the effect that Dr. Augusto Alejandro Zúñiga Paz was linked to the Shining Path through the Association of Democratic Lawyers, the Peruvian State undertakes to publish this agreement as an act of reparations and relief.

FIFTH: LIABILITY OF THOSE CRIMINALLY RESPONSIBLE

This friendly settlement agreement does not extinguish the civil and criminal liabilities of those directly responsible for violating the rights of Dr. Augusto Alejandro Zúñiga Paz to his physical integrity, which right the Peruvian State recognizes pursuant to Article 92 of the Peruvian Criminal Code, as the competent judicial authorities may decide. It is understood that this agreement nullifies any claim of Dr. Augusto Alejandro Zúñiga Paz that would hold the Peruvian

State jointly and severally liable or as a third-party defendant in a civil or any other type of action.

SIXTH: RIGHT TO BRING ACTION

The Peruvian State reserves the right to bring action, in accordance with domestic legislation, against those persons found to be responsible in the present case, through a definitive judgment issued by the competent national authority.

SEVENTH: TAX EXEMPTION AND PERFORMANCE

The monetary damages awarded by the Peruvian State will not be subject to any existing or future taxation, contribution or assessment, and are to be paid within six months from the date on which the Inter-American Commission on Human Rights serves notice that it has ratified the present agreement.

EIGHTH: HEALTH SERVICES

The Peruvian State undertakes to provide the beneficiary with medical attention free of charge through the public health system of the Ministry of Health, including medicines and rehabilitation and maintenance of the prosthetic left arm.

NINTH: LEGAL BASIS

The present agreement is signed in conformity with the provisions of Articles 2 (paragraphs 1 and 24, subparagraph h), 44, 55, 205 of the Peruvian Constitution and its Fourth Final Transitory Provision; Articles 1205, 1306, 1969 and 1981 of the Peruvian Civil Code; and Articles 1 and 2 of the American Convention on Human Rights.

TENTH: INTERPRETATION

The meaning and scope of the present Agreement are interpreted in accordance with Articles 29 and 30 of the American Convention on Human Rights, where pertinent, and the principle of good faith. In the event of any doubt or disagreement between the parties concerning the content of the agreement, the Inter-American Commission on Human Rights will decide what the interpretation shall be. The Commission will also verify compliance with the agreement, for which purpose the parties are required to report to the Commission every three months on its status and performance.

ELEVENTH: RATIFICATION

The parties to this Agreement undertake to bring this friendly settlement agreement to the attention of the Inter-American Commission on Human Rights, so that the latter may confirm and ratify it in all its parts.

TWELTH: ACCEPTANCE OF TERMS

The parties signing this Agreement declare that of their own free will they agree with and accept the terms of each and every clause of this Agreement, and expressly stipulate that this Agreement settles the dispute between them and any claim concerning the Peruvian State's international responsibility for the human rights violations of which Dr Augusto Alejandro Zúñiga Paz was victim.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

16. The IACHR observes that under Articles 48(1)(f) and 49 of the Convention, this procedure is done "with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention." The State's consent to pursue this avenue is evidence of its good faith to honor the Convention's purposes and objectives, based on the principle of *pacta sunt servanda*. According to that principle, States must perform the obligations undertaken in treaties in good faith. The IACHR also wishes to point out, once again, that with the friendly settlement procedure provided for in the Convention, individual cases can be settled in a non-contentious manner. In cases involving a number of countries, the friendly settlement arrangement has proven to be a useful vehicle that both parties can use to advantage.

17. The Inter-American Commission has closely monitored the development of the friendly settlement arrived at in the present case. The Commission greatly appreciates the efforts that both parties made to reach this settlement, which is compatible with the object and purpose of the Convention.

VI. CONCLUSIONS

18. For all the foregoing reasons and in keeping with the procedure provided for in Articles 48(1)(f) and 49 of the American Convention, the Commission would like to state that it is very grateful for the efforts made by the parties and is pleased that the friendly settlement arrived at in the present case is consistent with the object and purpose of the American Convention.

19. By virtue of the considerations and conclusions set forth in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To approve the terms of the friendly settlement agreement that the parties signed on February xx, 2002.
2. To continue to monitor and supervise each and every point of the friendly settlement agreement, and accordingly to remind the parties of their obligation to report to the IACHR every three months on the performance of this friendly settlement.
3. To make the present report public 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 the city of Washington, D.C., on the 10th day of the month of October, 2003. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Robert K. Goldman and Julio Prado Vallejo, Commissioners.