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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 20/05; Petition 716/00
Session: Hundred Twenty-Second Regular Session (23 February – 11 March 2005)
Title/Style of Cause: Rafael Correa Diaz v. Peru
Doc. Type: Decision
Decided by: President: Clare K. Roberts;
First Vice-President: Susana Villaran;
Second Vice-President: Paulo Sergio Pinheiro;
Commissioners: Evelio Fernandez, Jose Zalaquett, Freddy Gutierrez,
Florentín Melendez.
Pursuant to Article 17(2)(a) of the Commission's Rules of Procedure,
Commissioner Susana Villaran, of Peruvian nationality, did not take part in
the discussion or the decision on this case.

Dated: 25 February 2005
Citation: Correa Diaz v. Peru, Petition 716/00, Inter-Am. C.H.R., Report No. 20/05,
OEA/Ser.L/V/II.124, doc. 5 (2005)

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I. SUMMARY

1. By petition submitted to the Inter-American Commission for Human Rights (hereafter "the Commission", "the Inter-American Commission", or "the IACHR") dated October 6, 2000, Mrs. Maria Elena Rojas Pesantes (hereafter "the petitioner"), alleged that the State of Peru (hereafter "Peru", "the State", or "the Peruvian State") violated, to the prejudice of Rafael Correa Diaz (hereafter "the victim"), certain rights protected in the American Convention on Human Rights (hereafter "the Convention" or "the American Convention"), by detaining and torturing him and causing his death at the hands of the national police on the night of May 24, 2000, in the town of Chuquibamba, Cajabamba, Department of Cajamarca. Despite complaints that the victim had been tortured, the investigation of the facts was deficient.

2. The Peruvian State submitted, in its defense, several arguments against the petitioner's complaint, and maintained that the death of Rafael Correa Diaz was accidental, for which reason the Attorney General's office did not lay criminal charges, and closed the file definitively.

3. In this report, the Commission concludes that the petition is admissible with respect to the alleged violations of the right to life, the right to humane treatment, the right to due process, and the right to judicial protection, enshrined respectively in Articles 4, 5, 8 and 25, taken in relation with Article 1(1) of the American Convention, as well as the Inter-American Convention to Prevent and Punish Torture, to the prejudice of Rafael Correa Diaz, and decides to notify the parties, to publish this report, and to include it in its annual report.

II. PROCEEDINGS BEFORE THE COMMISSION

4. In an e-mail message of October 6, 2000, Mrs. Maria Elena Rojas Pesantes lodged a complaint against the Peruvian State for the arrest, torture and death of her husband Rafael Correa Diaz on May 24, 2000. On February 21, 2001, the IACHR sent a note acknowledging receipt of the complaint and requesting further information from the petitioner, which was submitted by e-mail on March 9, 2001.

5. On August 6, 2003, the Commission opened a file for petition no. 176-00. On August 28, 2003, it transmitted to the State the pertinent portions of the petition, requesting that it provide information. On the same date, it advised the petitioner of the steps it had taken and requested further information.

6. In a communication of October 30, 2002, the State requested an extension, maintaining that the report from the respective authority was pending. The IACHR granted an extension in a communication of November 12, 2002.

7. In a communication of December 10, 2002, the State submitted Report 099-2002-JUS/CND-SE, prepared by the Executive Secretariat of the National Council on Human Rights, responding to the points contained in the complaint and attached copies of internal judicial proceedings. The information submitted by the State was sent to the petitioner with a note of January 30, 2003. On February 5, 2003, the petitioner submitted observations on the State's response.

III. POSITIONS OF THE PARTIES

A. The petitioner

8. The petitioner declares that her husband, Rafael Correa Diaz, a teacher, was found dead on May 25, 2000, on the banks of the Huamachuquino River near the town of Chuquibamba, Cajabamba, in the Department of Cajamarca, and that his body showed signs of torture. Some weeks prior to his death, her husband was engaged in political activism against President Alberto Fujimori, in support of the political movement Peru Posible, in and around the village of Araqueda.

9. On May 24, the victim was traveling from Araqueda to Cajabamba, in a slightly inebriated condition, intending to deliver his vehicle to Cajamarca. On that trip he had to pass by the Chuquibamba police station. He was last seen at around 8 p.m. by three children who then disappeared, according to the petitioner, at which time he was arrested by two police officers, using force and insulting him, and was taken inside the police station.

10. On the following day, May 25, the inhabitants of Chuquibamba and Huañinbamba reported finding the body of Rafael Correa Diaz on the banks of the Huamachuquino River. Police officers from that station began a search upstream from that point, allowing enough time for signs of torture to disappear through decomposition of the corpse.

11. It was only on May 26, in the afternoon, that the body was recovered and removed by the police, and this was done without the presence of any judicial or civil authority of Cajabamba, although the place in which the body was found was accessible to the provincial prosecutor of Cajabamba.

12. On May 27, an autopsy determined the cause of death as asphyxia from unidentified causes and a low degree of alcohol. The body showed wounds of a depth of 2 mm to 15 mm, a blow to the right side of the head, and hematomas in the knees.

13. An inquiry was begun by the provincial prosecutor of Cajabamba, and the investigations were entrusted to the police of the same station where the victim had been detained. The investigation extended beyond the normal time, and the documents issued by the police and by the prosecutor were not consistent with each other, nor with the autopsy report.

14. The petitioner claimed that her own investigations had revealed the names of several witnesses who observed the torture of her husband and his subsequent death, the circumstances under which it occurred, and the name of his killers, who were officers of the national police stationed at Chuquibamba. Local residents later changed their versions, saying they had no knowledge of the events, because they were being coerced by some person who did not wish the truth to be known. The newspaper La Republica of December, 2000, published a list of members of the National Intelligence Service headed by Vladimir Montesinos, in which appeared the name of one of the police officers who was on duty at the Cajabamba station on the night of the events.

15. The petitioner also declared that she had a telephone discussion with the physician, Dr. Hugo Cubas Camacho, who performed the initial autopsy. During that conversation, a transcription of which is recorded on the file, the physician asserted that her husband's death was presumably at the hands of other persons, that the wounds found on his body were caused before his death, because the nature of those wounds was different from those that would be caused by contact with the riverbed. The physician also said that his report had been replaced by another, written by a different physician, and he reiterated that the cause of death was not from drowning.[FN2]

[FN2] written submission of Maria Elena Rojas Pesantes, received on February 5, 2003.

B. The State

16. The State indicated that in the investigations conducted by the Attorney General's office it was found that the death of Rafael Correa Diaz was accidental, and that therefore the causes of his death did not constitute a crime, for which reason the Attorney General's office did not lay criminal charges and decided to close the case.

17. In evidence of the foregoing, the State submitted copies of file no. 165/2000 from the provincial prosecutor's office of Cajabamba, including the principal documents produced. These include the report of the initial investigation conducted by members of the national police of Cajabamba; the report on the recovery of the body at 3 p.m. on May 26, 2000, by members of the national police and by the deputy mayor of the village of Chuquibamba; the technical report of the police inspection of the site of the events, dated May 29, 2000, by officers of the national police and of the provincial prosecutor's office of Chuquibamba; the autopsy report 14/2000 of May 27, 2000, by the physicians Hugo Cubas Camacho and Alfredo Guadalupe Antialón, describing certain diffuse scarred wounds, some punctures in the upper extremities, with ecchymosis (bruises)[FN3] to the arm, inner forearm, and the lower extremities, at both knees. The hydrostatic (docimasia) test[FN4] for drowning proved negative. Cause of death: asphyxiation from an unknown cause.

[FN3] Ecchymosis: A swollen livid or blue-black spot on the skin caused by effusion of blood into the areolar tissue as the result of a contusion.

[FN4] A forensic procedure whereby the lung is immersed in water to establish whether asphyxiation was caused by drowning.

18. The file also contains a document entitled "Clarification of the autopsy report 14/2000 of the deceased Rafael Correa Diaz, May 29, 2000", in which it is stated that:

With respect to the telephone report made by the forensic medical doctor of Cajamarca, Dr. Alindort Torres, to this office, on the results of the negative hydrostatic test on the lungs of the deceased Rafael Correa Diaz, the prosecutor involved in the autopsy proceedings, Dr. Juan E. Reyes Carranza, makes the following statement: Through a typing error, the results of the hydrostatic test of the two lungs of the deceased Rafael Correa Diaz were shown as negative, whereas they were in reality positive. When the lungs were extracted from the deceased by the physicians performing the autopsy and placed in a pail of water they floated, which means that the results of the test were positive, and this test was moreover conducted in the presence of relatives of the deceased. This is all that he has to declare, and the declarant signs this declaration alone for the reason that the physicians involved are on leave, because of the presidential elections held on May 28 of this year. Cajabamba, May 29, 2000.

That document is initialed by the medical surgeon Alfredo Guadalupe Antilon and by Hugo Cubas Camacho, head of the Chuquibamba health unit, as well as by the prosecutor Juan Reyes Carranza

19. On May 28, 2000, Maria Elena Rojas Pesantes submitted her complaint, reporting the death of her husband and declaring "the death was the product of aggression, mistreatment and torture", and requesting an autopsy.

20. Subsequently, on May 29, 2000, the report of the autopsy on the body of Rafael Correa Diaz, conducted in the Forensic Medicine Institute of Cajamarca, was issued, calling for further forensic examinations.

21. On August 11, 2000, the provincial prosecutor of Cajabamba, through resolution 48/2000, closed the case on the grounds that the diagnosis of the death of Rafael Correa Diaz showed that it was an accidental death through drowning, because of the willful imprudence of the deceased, and that there were no grounds to suspect the possible involvement of other persons.

22. Maria Elena Rojas Pesantes filed an appeal against this decision, claiming that the death of her husband had not been properly clarified, in light of the irregularities in the forensic medical examinations, and the fact that no testimony had been taken from witnesses who might have been able to shed light on the events. The senior prosecutor of Cajabamba, through resolution of September 11, 2000, upheld the appeal, quashing the decision and ordering a broader investigation.

23. The human rights association Aprodeh filed a criminal complaint with the national prosecutor's office on September 21, 2000, for the crimes of torture and homicide in the killing of Rafael Correa Diaz, against Captain Cristobal Fernandez Rojas, first-class officer Cesar Quiroz Garma, second-class officer Segundo Lima Chapoñan, and technical officer Cesar Orellano Olazabal, members of the police force of Chuquibamba, Cajabamba, Cajamarca. It asked for appointment of a special prosecutor to conduct the investigation, because of the persons allegedly involved in the deeds and the lack of impartiality on the part of the presiding prosecutor.

24. In response to that complaint, a resolution was issued on October 30, 2000, by the prosecutor of Cajabamba, ordering that it be added to the investigation under way by the prosecutor's office into the death of Rafael Correa Diaz, which had been opened as decided by the senior prosecutor of Cajabamba. See paragraph 24 above.

25. After further proceedings, the prosecutor's office of Cajabamba, through resolution 80/2000 of December 21, 2000, declared the case definitively closed, because there were no grounds for criminal charges against the police officers indicated. The Peruvian state maintained that, in light of this, the action of its agents was consistent with rules and procedures, and did not violate the human rights of the victim and his relatives.

IV. ANALYSIS

A. Competence *ratione personae*, *ratione temporis*, *ratione loci* and *ratione materiae* of the Inter-American Commission

26. The Commission is competent to hear the petition, which refers to alleged violations of the rights protected by Articles 4, 5, 8 and 25 the American Convention, taken in relation with Article 1(1) of the American Convention, and also in light of the Inter-American Convention to Prevent and Punish Torture.

27. The petitioner is entitled under Article 44 of the American Convention to file complaints with the Commission. The petition identifies as the alleged victim an individual in respect of

whom Peru undertook to respect and guarantee the rights enshrined in the American Convention. The Commission is therefore competent *ratione personae* to hear the petition.

28. Peru has been a State Party to the American Convention since July 28, 1978. With respect to the Inter-American Convention to Prevent and Punish Torture, Peru ratified that instrument on March 28, 1991. The complaint in question refers to events subsequent to the date of ratification of those international instruments.

29. The Commission is competent *ratione loci* to hear the petition inasmuch as the latter alleges violations of rights protected in the American Convention that took place within the territory of a State party to the Convention.

B. Other requirements for admissibility of the petition

1. Exhaustion of domestic remedies

30. Article 46 of the American Convention provides that:

1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 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;

(...)

2. The provisions of paragraphs 1.a and 1.b of this Article shall not be applicable when:

a. the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;

(...)

c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

31. The article cited above requires exhaustion of the remedies available under domestic law, in accordance with generally recognized principles of international law. The case law of the Inter-American Court of Human Rights has established that the rule requiring exhaustion of domestic remedies is for the State's benefit and hence it may waive the rule either expressly or by implication. The objection asserting non-exhaustion of domestic remedies, to be timely, must be made early in the Commission's proceedings, lest waiver of the rule be presumed; merely submitting information on the progress of domestic court proceedings is not the same as expressly invoking the ruling requiring exhaustion of domestic remedies.[FN5]

[FN5] Inter-American Court of Human Rights, Castillo Páez Case, Preliminary Objections, Judgment of January 30, 1996, par. 40; Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996, par. 40; Castillo Petruzzi Case, Preliminary Objections, Judgment of September 4, 1998, par. 56; Comunidad Mayagna (Sumo) Awas Tingi Case, Judgment of February 1, 2000, paragraphs 54 to 56.

32. The petition under study was received by the IACHR on October 6, 2000, i.e. it was presented before domestic remedies had been exhausted. The resolution of the prosecutor's office closing the investigation is dated December 21, 2000, and while it is true that that resolution does not have the status of a case decided by a court, it was issued by the same authority that is being challenged in connection with the events denounced. Notwithstanding the foregoing, the Commission holds that the admissibility requirements to be met by a petition must be examined, generally speaking, at the moment at which the Commission pronounces on its admissibility.[FN6]

[FN6] IACHR, Cases 11.016 and 12.038, Dismissed Employees of the National Congress, Peru, paragraph 19.

33. Moreover, the State did not invoke the exhaustion of domestic remedies in its response to the initial communication on the opening of proceedings. The IACHR therefore observes that at the time admissibility is being examined, available domestic remedies have been exhausted, and that criminal proceedings are by their nature the appropriate means of clarifying the events, prosecuting those responsible, and imposing the corresponding penalties, as well as making financial reparations possible.[FN7]

[FN7] IACHR, case 11,581, Zulema Tarazona Arriate et al. Peru, para. 25.

2. Filing period

34. With respect to the requirement of Article 46(1) of the Convention, that the petition be lodged within a period of six months from the date on which the petitioner was notified of the final judgment exhausting domestic remedies, the Commission considers that that period is intrinsically related to the exhaustion of the available remedies, which as noted above were exhausted subsequent to the submission of the petition to the IACHR.[FN8]

[FN8] IACHR, Cases 11.016 and 12.038, Dismissed Employees of the National Congress, Peru, paragraph 23.

3. Duplication of proceedings and res judicata

35. The Commission finds that the subject of the petition is not pending in another international proceeding for settlement, nor is the petition substantially the same as one previously studied by the Commission or by another international organization. Accordingly, the requirements set forth in Articles 46(1)(c) and 47(d) have also been met.

4. Characterization of the facts alleged

36. The petitioner alleges violations of the rights to life, to humane treatment, to due process, and to judicial protection, enshrined respectively in Articles 4, 5, 8 and 25 of the American Convention, and of the Inter-American Convention to Prevent and Punish Torture, and alleges that the Peruvian state has therefore failed to fulfill its obligations under Article 1(1) of the American Convention.

37. With the evidence produced by the petitioner and the State, the IACHR finds that the account of the events is reasonable and that it raises questions about the State's responsibility that must be clarified in another stage of the proceedings. From the copies of the documentation provided to date, the circumstances of the death of Mr. Rafael Correa Diaz were not thoroughly established, in particular as to whether he was subjected to torture that may have caused his death. Moreover, notwithstanding the evidence provided by the victim's wife and of the organization APRODEH that supported her claims, the responsibility for ascertaining the facts was left to the same police officers who were indicated as responsible for the death. The decision as to whether or not the facts warranted criminal proceedings was made by the provincial prosecutor, who was involved in the initial investigation that was denounced as irregular.

38. For the time being, and for purposes of admissibility, the Commission concludes that there is sufficient evidence to hold that the allegations, if proven, could characterize violations of human rights, and that the petition is neither manifestly groundless nor obviously out of order.

V. CONCLUSIONS

39. The IACHR has established in this report that it is competent to hear the petition as it relates to the alleged violation of the rights of Rafael Correa Diaz and his family to life, to humane treatment, to due process, and to judicial protection.

40. The Commission concludes that the petition is admissible, pursuant to Article 47 of the American Convention. Based on the arguments of fact and of law set out above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this petition admissible in relation to Articles 4, 5, 8 and 25 and 1(1) of the American Convention and the Inter-American Convention to Prevent and Punish Torture.
2. To notify this decision to the petitioners and to the State.

3. To publish this decision and to include it in its 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 February 25, 2005. Signed: Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Commission Members: Evelio Fernández, José Zalaquett, Freddy Gutiérrez and Florentín Meléndez,