

REPORT No. 75/10
PETITION 1064-98
ADMISSIBILITY
ESTEBAN JUAN MARTÍNEZ PÉREZ
PERU
July 12, 2010

I. SUMMARY

1. On November 10, 1998, the Inter-American Commission on Human Rights (hereinafter either "the Inter-American Commission", "the Commission", or "the IACHR") received a petition presented by Esteban Juan Martínez Pérez in his own behalf (hereinafter either "the petitioner" or "the alleged victim") alleging the violation by the Republic of Peru (hereinafter either "Peru", "the State" or "the State of Peru") of the rights enshrined in Articles 7, 8, 13, 24 and 25 of the American Convention on Human Rights (hereinafter either "the American Convention" or "the Convention"). The petitioner stated that he was prosecuted for the crimes of terrorism, aggravated robbery and the violation of financial and monetary regulations based on evidence allegedly fabricated by agents of the National Division Against Terrorism (DINCOTE as in its Spanish acronym) at the end of 1994. He stated that the charges were processed by secret identity judges, who acquitted him of the crimes of terrorism, but convicted him in relation to the remaining charges. He stressed that the members of the judiciary that intervened in the criminal procedure had no jurisdiction to rule on ordinary crimes such as aggravated robbery and crimes against financial and monetary regulations.

2. The State detailed the judicial steps taken in the proceedings against Mr. Esteban Juan Martínez Pérez and in the appeals lodged by his attorneys. It stressed that the alleged victim was charged and convicted by competent members of the judiciary and that his allegations with regard to breaches of judicial guarantees were dismissed by different courts of the Peruvian legal system, including the Supreme Court of Justice and the Constitutional Court. Lastly, the State pointed out that on January 5, 2000, the alleged victim was granted conditional parole, which he has regularly complied with.

3. After examining the position of the parties in the light of the requirements of admissibility set forth in Articles 46 and 47 of the Convention, the Commission concluded that it is competent to hear the petition and that it is admissible for the alleged violation of the rights enshrined in Articles 7, 11, 8, and 25 of the American Convention, in relation to Articles 1.1 and 2 of the same instrument. The Commission decided to notify the parties of the present Admissibility Report, make it public and include it in its Annual Report.

II. PROCEEDINGS BEFORE THE COMMISSION

4. The petition was received on November 10, 1998, and registered under number P 1064-98. The petitioner presented additional briefs on April 19, 1999, and April 4, 2006. On August 6, 2008, the relevant parts of these documents were sent to the State, setting a time limit of two months to present a response in conformity with the IACHR Rules of Procedures.

5. On October 17, 2008, the State presented its response which was sent to the petitioner on October 27 of the same year. The petitioner submitted additional briefs on December 16, 2008, August 27, 2009, and on February 4 and April 8, 2010. The State in turn sent additional briefs on July 7, November 2, and December 22, 2009.

III. THE PARTIES' POSITIONS

Preliminary considerations

6. During the proceedings of the present complaint, the petitioner and the State described criminal trials against Mr. Esteban Juan Martínez Pérez, carried out in the light of a legislative framework on terrorism adopted in 1992 and in force until January 2003. Before summarizing the parties' positions, the IACHR deems it is necessary to refer to the above-mentioned regulatory framework in which the alleged facts would have occurred.

Legislative framework in which the criminal proceedings against the alleged victim were held

7. Decree Law No. 25475, dealing with different forms of the crime of terrorism, was enacted in May 1992. In August of that year, Decree Law No. 25659 was enacted, criminalizing the offense of treason against the fatherland and giving the military justice system competence over the prosecution of that crime. Those decrees, along with decrees Nos. 25708, 25744, 25880, and other complementary provisions, equipped the Peruvian legal system with new exceptional procedures for investigating, examining, and prosecuting individuals accused of terrorism or treason against the fatherland.

8. The decrees that made up what was known as the "antiterrorist legislation" had the stated purpose of reining in the escalation of targeted killings against officers of the judiciary, elected officials, and members of the security forces, as well as of disappearances, bombings, kidnappings and other indiscriminate acts of violence against the civilian population in different regions of Peru, attributed to outlawed insurgent groups.

9. Among other changes, these decrees allowed the holding of suspects incommunicado for specified lengths of time,¹ holding closed hearings, solitary confinement during the first year of prison terms,² and summary deadlines for presenting charges and issuing judgments in the case of the crime of treason against the fatherland.³ In addition, these decrees denied suspects the assistance of a legal representative prior to their first statement to an agent of the Public Prosecution Service⁴ and restricted the attorney's participation in the criminal proceedings, disallowed the recusal of judges or other judicial officers,⁵ established concealed identities for judges and prosecutors ("faceless courts"),⁶ prevented the summoning, as witnesses, of state agents who had participated in preparing the police arrest report.⁷

10. As for their provisions of material law, these decrees allowed for the possibility of applying more than one criminal offense to actions of a similar or identical nature; they did not differentiate between different levels of *mens rea*,⁸ and they only indicated minimum prison terms, without setting maximum penalties.⁹

11. On May 12, 1992, the Executive Branch passed Decree-Law 25499, also called the Repentance Law, which regulated the reduction, exemption, remission or mitigation of imprisonment sentences for persons charged or convicted for the crime of terrorism who provided information leading to

¹ Decree Law No. 25475, Art. 12(d).

² Decree Law No. 25475, Art. 20.

³ Investigations, prosecutions, and sentencing for treason against the fatherland were governed by Decree Laws Nos. 25708 and 25744.

⁴ The right to the assistance of freely chosen defense counsel from the very onset of criminal proceedings was later established by Article 2 of Law No. 26447.

⁵ Decree Law No. 25475, Art. 13.h.

⁶ With the enactment of Law 26671 on October 12, 1996, faceless judges and prosecutors were abolished.

⁷ Decree Law No. 25744, Art. 2.

⁸ Decree Law No. 25475, Art. 2.

⁹ Decree Law No. 25475, Art. 3.

the capture of chiefs, heads, leaders or principal members of terrorist organizations.¹⁰ By means of Supreme Decree No. 015-93-JUS of May 8, 1993, the Executive Branch adopted the Regulations for the Repentance Law, which provided, among other measures, the secrecy or change of identity for the repentant persons making the statement.¹¹ The Repentance Law expired on October 31, 1994.¹²

A. Position of the petitioner

12. According to the allegations, in October 1994, a person relying on the Repentance Law accused Mr. Esteban Juan Martínez Pérez to be the leader of an insurgent group called "Peruvian Communist Party – Red Peru". On the basis of this statement, the alleged victim was arrested on October 24, 1994, while he was driving an owned-taxi in the city of Lima. It is alleged that he was taken to the cells of the DINCOTE, where he underwent several interrogations, and that police officers fabricated statements and forged his signature, all with the complicity of a member of the Public Prosecutor's Office and a lawyer appointed by the court. Applicant claims that in November 1994 he was presented to the Peruvian television and written media, wearing a striped suit and branded as a terrorist.

13. According to the information submitted, on November 9, 1994, the 14th Special Criminal Court for Terrorism Cases initiated an investigation for the commission of the crime of terrorism, laid down in Law No. 25475. The petitioner emphasized that the Public Prosecutor's indictment reproduced the detention report and search records allegedly fabricated by members of the DINCOTE. He argued that this evidence could not be challenged during the preliminary stage of the investigation.

14. The petitioner alleged that he raised before the courts the forged search records, the police statement, and other procedural steps taken by DINCOTE agents. He indicated that technical examinations showed that the signature on the police statement was not genuine and that this was not duly considered by the courts.

15. According to the information presented, on February 15, 1996, the Special Criminal Chamber of 'Faceless' Judges acquitted Mr. Martínez Pérez of the crime of terrorism, but sentenced him to 20 years imprisonment for aggravated robbery and offences against financial and monetary regulations. This information indicates that on June 3, 1997, faceless Justices of the Supreme Court rejected an appeal of nullification of the conviction issued by the Criminal Chamber. The petitioner indicated that on September 15, 1997, he presented an *habeas corpus* petition demanding his release and the inapplicability of the June 3, 1997 ruling. He alleged that after being considered by several courts, the petition was declared inadmissible on September 29, 1998 in a final judgment of the Constitutional Court.

16. The petitioner stressed that, despite being accused of ordinary offences, he was charged and sentenced by faceless members judges who applied the special procedures laid down in the so-called anti-terrorism legislation. He pointed out that the offences of aggravated robbery and those against financial and monetary regulations were not part of the Public Prosecutor's accusation and that initiation of the judicial procedure for the said offences was ordered by the Criminal Chamber with exclusive jurisdiction for proceedings related to terrorism. He concluded that this resulted in a violation of right enshrined in Article 8 of the American Convention.

17. The petitioner indicated that on January 7, 2000 he was granted conditional parole, but since then he has had to report periodically to the National Prison Institute and to fulfill other requirements considered to be an illegal restriction on his personal liberty. Finally, the petitioner alleged that the State of Peru is responsible for the violation of the rights enshrined in Articles 7, 8, 13, 24 and 25 of the Convention.

¹⁰ Decree Law No. 25499, Articles 1.II.a and 1.III.

¹¹ Supreme Decree No. 015-93-JUS, Articles 8.a and 36.

¹² The Repentance Law was repealed by Law 26345 of August 30, 1994.

B. Position of the State

18. The State made a similar statement to the petitioner's with regard to the criminal proceedings undertaken against Mr. Martínez Pérez between October 1994 and June 1997 and regarding the *habeas corpus* petition lodged on September 15, 1997. It indicated that in the judgment given on February 15, 1996, the Special Criminal Chamber acquitted the alleged victim of the crime of terrorism, since elements of the relevant criminal offense had not been proved, in particular the intention to instill fear in the population. It argued that on May 26, 1995, the Special Criminal Chamber decided to complement the Public Prosecutor's charges and remit Mr. Martínez Pérez for oral trial for the crimes of terrorism, aggravated robbery and offences against financial and monetary regulations.

19. The State indicated that the Criminal Chamber found that the involvement of Mr. Martínez Pérez and other co-accused in robberies at commercial premises aimed at gathering funds for the organization called "Red Peru" had been proved. It emphasized that the Criminal Chamber pointed out that from the elements submitted in the Public Prosecutor's charges it was impossible to determine whether the intention of those accused of participating in the robberies had a subversive element, thus proving impossible to prove the *means rea* of the offense set out in Decree Law 25475. Nevertheless, it indicated that the alleged victim's conduct presented the legal elements of aggravated robbery and offences against financial and monetary regulations.

20. The State submitted that the allegations of non-competence of the Special Criminal Chamber to judge the crimes of aggravated robbery and offences against monetary and financial regulations were rejected both by the Supreme Court of Justice, by virtue of the appeal of nullification, as well as by the Constitutional Court in the context of the *habeas corpus* petition lodged by Esteban Juan Martínez Pérez.

21. The State alleged that on January 5, 2000, the 4th Criminal Judge of Lima granted Mr. Martínez Pérez conditional parole, and he was released from the San Pedro Lurigancho Penitentiary on January 7 of the same year. It added that since this date the alleged victim has duly complied with the restrictions on his liberty, reporting periodically to the National Penitentiary Institute.

22. The State mentioned that between January and February 2003, legislative reforms were undertaken in matters of proceedings for terrorist offenses, leading to the void of convictions handed down by 'faceless' military or civil tribunals. It maintained that this new legislative framework complies with the standards of the Inter-American system for the promotion and defense of human rights and with the Political Constitution of Peru. According to the information provided by the State, on July 3, 2003, the National Chamber for Terrorism decided that the criminal proceedings against Mr. Esteban Juan Martínez Pérez did not fall within the requirements for void of sentences laid down in Legislative Decree No. 926, since he had been convicted for ordinary offences rather than terrorism.¹³

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Jurisdiction *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae* of the Commission

23. Article 44 of the American Convention entitles the petitioner to lodge complaints. The alleged victim is an individual who was under the jurisdiction of the Peruvian State at the time of the

¹³ Article 2 of Legislative Decree 926 of February 20, 2003 establishes the following:

The National Terrorism Chamber, following a time limit of not more than sixty working days from the coming into force of this Legislative Decree, will annul *sua sponte*, without the express revocation of the defendant, the judgment and oral trial and shall declare, if need be, the groundlessness of the prosecutor's indictment within the criminal proceedings for crimes of terrorism undertaken before the ordinary criminal jurisdiction with secret identity judges or prosecutors.

This annulment shall be limited to convicted persons and to facts in the sentence, as well as to *in absentia* and default proceedings and to facts relevant to the Public Prosecutor's indictment.

reported incidents. As for Peru, it ratified the American Convention on July 28, 1978. As a result, the Commission has jurisdiction *ratione personae* to examine the petition.

24. The Commission has jurisdiction *ratione loci* to hear the petition, because it alleges violations of rights protected by the American Convention occurring in the territory of a State party to this treaty.

25. Likewise, the Commission has jurisdiction *ratione temporis* because the obligation to respect and guarantee the rights protected by the American Convention was already in force for the State at time that the incidents alleged in the petition had occurred.

26. Finally, the Commission has jurisdiction *ratione materiae*, because the petition alleges potential violations of rights protected by the American Convention.

B. Exhaustion of remedies under domestic law

27. Article 46(1)(a) of the American Convention provides that, for admission of a petition lodged with the Inter-American Commission in accordance with Article 44 of the Convention, remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. This requirement is aimed at enabling national authorities to be apprised of the alleged violation of a protected right and, if appropriate, to have the opportunity to settle the matter before it is heard by an international body.

28. The present petition alleges the violation of provisions of the American Convention as a result of the criminal proceedings undertaken against Mr. Esteban Juan Martínez Pérez. The information submitted by the parties shows that after the Supreme Court's final judgment of June 3, 1997, the alleged victim lodged a *habeas corpus* petition raising the nullity of the criminal proceedings, inasmuch as it was decided by incompetent courts and other supposed breaches to the right to a fair trial. The parties have shown that the said *habeas corpus* petition was declared groundless by final decision of the Constitutional Court of September 29, 1998.

29. Based on the foregoing considerations, the IACHR concludes that recourse to domestic remedies was exhausted on September 29, 1998, and finds that the requirement set out in Article 46(1)(a) of the American Convention is satisfied.

C. Filing period

30. Article 46(1)(b) of the Convention establishes that for a petition to be declared admissible, it is necessary that it be presented within six months from the date on which the relevant person was notified of the final decision pronounced by the internal jurisdiction.

31. In accordance with what has been shown above, domestic remedies were exhausted with the judgment of the Constitutional Tribunal on September 29, 1998. Given that the present petition was received by the IACHR on November 10, 1998, this satisfies the requirement set out in Article 46(1)(b) of the Convention.

D. Duplication of procedures and international *res judicata*

32. Article 46(1)(c) of the Convention provides that the admissibility of petitions is subject to the requirement that the subject matter "is not pending in another international proceeding for settlement" and Article 47(d) of the Convention provides that the Commission shall consider the petition inadmissible if the petition or communication is substantially the same as one previously studied by the Commission or by another international organization. In the petition under consideration in the present report, the parties have not raised the existence of either of those two circumstances, nor are they evident from the case file.

E. Characterization of the alleged incidents

33. For the purposes of admissibility, the Commission must decide whether or not the petition states facts that tend to establish a violation of rights as stipulated in Article 47(b) of the American Convention and whether or not the petition is “manifestly groundless” or “obviously out of order,” according to subparagraph c) of the same article. The rule governing evaluation of these particulars is different from the one required to decide on the merits of a complaint. The Commission must conduct a *prima facie* evaluation to examine whether the complaint substantiates the apparent or potential violation of a right guaranteed by the Convention and not to establish the existence of a violation. This review is a summary analysis that does not involve any prejudgment or advanced opinion on the merits of the case.

34. In view of the facts presented by the parties, the IACHR considers that the circumstances surrounding the arrest and trial of the alleged victim, as well as the legislative framework employed in the respective criminal proceedings and the allegations of his having been convicted by incompetent and “faceless” courts, could tend to establish a violation of rights enshrined in Articles 7, 8 and 25 of the American Convention in relation to Articles 1.1 and 2 of the same instrument, all to the prejudice of Esteban Juan Martínez Pérez.

35. With regard to the alleged parading of Mr. Esteban Juan Martínez Pérez before the media in a striped suit and his allegedly being singled out as a terrorist by the agents of DINCOTE, by virtue of the principle of *iura novit curia*, the IACHR considers that should such acts be proved, this may constitute a potential violation of the right enshrined in Article 11 of the American Convention, in relation to Article 1.1 of the same instrument.

36. In relation to the alleged violation of the rights enshrined in Articles 13 and 24 of the American Convention, the IACHR considers that the petitioner has not submitted sufficient elements to indicate a potential breach of such provisions.

37. Finally, since it is not evident that those aspects of the claim are groundless or out of order, the Commission concludes that the petition satisfies the requirements laid down in Articles 47(b) and (c) of the American Convention.

V. CONCLUSIONS

38. Based on the considerations of fact and law set forth above, and without prejudice to the merits of the case, the Inter-American Commission concludes that the petition satisfies the requirements for admissibility set out in Articles 46 and 47 of the American Convention, and therefore

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition admissible with respect to Articles 7, 11, 8 and 25 of the American Convention in conjunction with the obligations set out in Articles 1.1 and 2 of the same instrument.
2. To declare inadmissible the alleged violations of the rights enshrined in Articles 13 and 24 of the American Convention.
3. To notify this decision to the State and to the petitioner.
4. To make this report public, and publish it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 12th day of the month of July, 2010.
(Signed: Felipe González, President; Paulo Sergio Pinheiro, First Vice-President; Dinah Shelton, Second

Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, Rodrigo Escobar Gil, and Luz Patricia Mejía Guerrero, members of the Commission).