

REPORT No. 179/10
PETITION 979-98
ADMISSIBILITY
WILFREDO MAS TRIGOSO
PERU
December 9, 2010

I. SUMMARY

1. On November 11, 1998, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition presented in his own name by Wilfredo Mas Trigos (hereinafter also "the alleged victim"), and by the *Asociación Pro Derechos Humanos – APRODEH* (hereinafter also "the petitioners")¹ alleging the violation by the Republic of Peru (hereinafter also "Peru," "the State," or "the Peruvian State") of rights enshrined in the American Convention on Human Rights (hereinafter also "the American Convention" or "the Convention"). According to the petition, the alleged victim was detained and prosecuted pursuant to decree-laws related to the crimes of terrorism and high treason (*traición a la patria*) enacted as from May 1992. It is said that those decrees and the criminal proceedings arising from them are in breach of provisions of the Convention. It is alleged that after several months of being incarcerated, Mr. Mas Trigos was acquitted, without the judicial authorities ordering adequate reparation for the material and moral damages he suffered.

2. The State held that the facts narrated initially by the petitioners have changed given the adoption of a new legislative framework on terrorism in early 2003. It argued that the arguments on alleged violations of due process and personal liberty are not well-founded, insofar as the alleged victim was acquitted. The State asked the IACHR to archive the petition under Article 48(1)(b) of the Convention, and argued that the alleged victim did not make his claim for compensation before the domestic courts.

3. After examining the parties' positions in light of the admissibility requirements set out at 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 5, 7, 9, 10, 8 and 25 of the American Convention, in relation Articles 1(1) and 2 of the same instrument. In addition, the IACHR decided to notify the parties of this admissibility report, and to publish it and include it in its Annual Report.

II. PROCESSING BEFORE THE COMMISSION

4. The petition was received on November 11, 1998 and assigned number 979-98. The petitioners sent additional communications on March 30, 2005 and March 22, 2006. On September 15, 2008, the pertinent parts of these documents were transmitted to the State, which was given two months to submit a response, in keeping with the IACHR's Rules of Procedure.

5. The State submitted its response on January 13, 2009, and submitted additional information on August 26, September 28, and November 2, 2009, and May 17, 2010. At the same time, the petitioners sent additional briefs on August 3, 2009, and March 30, 2010.

¹ The *Asociación Pro Derechos Humanos* (APRODEH) became a co-petitioner on August 3, 2009.

III. THE PARTIES' POSITIONS

Preliminary considerations

6. During the proceedings of the present complaint, the petitioners and the State described criminal trials against Mr. Wilfredo Mas Trigoso, 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,² holding closed hearings, solitary confinement during the first year of prison terms,³ and summary deadlines for presenting charges and issuing judgments in the case of the crime of treason against the fatherland.⁴ In addition, these decrees denied suspects the assistance of a legal representative prior to their first statement to an agent of the Public Prosecution Service⁵ and restricted the attorney's participation in the criminal proceedings, disallowed the recusal of judges or other judicial officers,⁶ established concealed identities for judges and prosecutors ("faceless courts"),⁷ prevented the summoning, as witnesses, of state agents who had participated in preparing the police arrest report.⁸

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*,⁹ and they only indicated minimum prison terms, without setting maximum penalties.¹⁰

² Decree Law No. 25475, Art. 12(d).

³ Decree Law No. 25475, Art. 20.

⁴ Investigations, prosecutions, and sentencing for treason against the fatherland were governed by Decree Laws Nos. 25708 and 25744.

⁵ 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.

⁶ Decree Law No. 25475, Art. 13.h.

⁷ With the enactment of Law 26671 on October 12, 1996, faceless judges and prosecutors were abolished.

⁸ Decree Law No. 25744, Art. 2.

⁹ Decree Law No. 25475, Art. 2.

¹⁰ Decree Law No. 25475, Art. 3.

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 the capture of chiefs, heads, leaders or principal members of terrorist organizations.¹¹ 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.¹² The Repentance Law expired on October 31, 1994.¹³

A. The petitioners' position

12. They argued that teacher Wilfredo Mas Trigoso was a council member (*regidor*) in the municipality of San Juan de Miraflores, from 1986 to 1989, for the United Left (*Izquierda Unida*) party. They indicated that he was also a leader of the teachers' union, *Sindicato Único de Trabajadores de la Educación Peruana* (SUTEP), which opposed the rupture with the democratic-constitutional order carried out by then-President Alberto Fujimori on April 5, 1992.

13. The petitioners stated that on November 22, 1992, Mr. Wilfredo Mas Trigoso was detained by agents of the National Directorate against Terrorism (DINCOTE as in its Spanish acronym) while participating in elections for the Constitutional Congress. They indicated he was accused, along with other persons, of having formed the insurgent group *Frente Patriótico de Liberación* and of having participated in attacks on public and private establishments in the province of Lima. According to what was alleged, Mr. Mas Trigoso was tried for the crime of terrorism, and was held in the Miguel Castro Castro Maximum Security Prison, in an overcrowded cell, with access to the outdoors only 30 minutes a day, and subject to prohibitions on having any physical contact with his family members who visited him.

14. The petitioners adduced that on October 12, 1993, the Special Criminal Chamber of the Superior Court of Justice of Lima found that there was no evidence to attribute criminal liability to Mr. Mas Trigoso, and accordingly acquitted him and ordered his immediate release. It is indicated that on leaving the Miguel Castro Castro prison the alleged victim was arrested by members of the DINCOTE, in the presence of his family members, friends and students. It is adduced that even though there was a judicial resolution of October 12, 1993 ordering his release, he continued to be incarcerated until December 15, 1993.

15. According to the information presented, on June 7, 1995, the Supreme Court of Justice voided the judgment of acquittal handed down on October 12, 1993, by the Superior Court of Lima, and ordered that a new oral trial be held. It is indicated that on April 18, 1996, the Special Criminal Chamber of the Superior Court of Justice of Lima once again acquitted Mr. Mas Trigoso; that judgment was affirmed on August 1, 1997 by the Supreme Court of Justice. It is alleged that despite the existence of a firm judgment absolving the alleged victim of the accusations of belonging to the *Frente Patriótico de Liberación*, a criminal investigation based on the same facts and accusations was declared under seal until Mr. Mas Trigoso was found. It is alleged that in the context of that investigation, the Permanent Criminal Chamber of the Supreme Court of Justice applied, *sua sponte*, on May 22, 1998, the defense of *res judicata* on behalf of Wilfredo Mas Trigoso, and ordered that the criminal and judicial antecedents related to those accusations be set aside.

16. The petitioners asserted that as he was defenseless vis-à-vis the constant persecution by the DINCOTE and the possibility of being arbitrarily detained, Mr. Wilfredo Mas Trigoso went to Bolivia in June 1995, where he remained, with refugee status, until May 1998.

17. The petitioners indicated that even though there were two final judgments of the Supreme Court of Justice releasing Mr. Mas Trigoso of criminal liability, members of the DINCOTE arrested him

¹¹ Decree Law No. 25499, Articles 1.II.a and 1.III.

¹² Supreme Decree No. 015-93-JUS, Articles 8.a and 36.

¹³ The Repentance Law was repealed by Law 26345 of August 30, 1994.

again on March 30, 1999, subjecting him to a search of his home and confinement in the facilities of the Judicial Police (Policía de Requisitorias) and subsequently in a holding facility located in the Palace of Justice of Lima. According to the petitioners, agents of the National Police attempted to extort Mr. Wilfredo Mas Trigos and his family members, charging from US\$ 1,000 to US\$ 1,500 to release him.

18. The petitioners emphasized that Law 24973 of December 28, 1988 establishes the right of a person deprived of liberty as the result of a judicial proceeding to receive compensation when obtaining a final judgment of acquittal. They added that Articles 3 and 18 of said law provide that the judicial authority who issues the judgment of acquittal “shall set forth, therein, the order to pay the corresponding compensation...” According to them, on issuing the judgment of acquittal on August 1, 1997, the Permanent Criminal Chamber of the Supreme Court of Justice did not comply with the obligation to set compensation for Mr. Mas Trigos in the terms of Law 24973.

19. The petitioners indicated that pursuant to the recommendations of the Commission on Truth and Reconciliation, the Peruvian State issued Law No. 28592, which establishes a Comprehensive Plan for Reparations. They indicated that said statute and Supreme Decrees 015-2006-JUS and 003-2008-JUS establish programs in education, health, facilitation of access to housing, and collective reparations for persons who have suffered human rights violations from May 1980 to November 2000. The petitioners note that while Mr. Mas Trigos has been trying to be included in those programs, he can gain access only to non-monetary reparations, and not to reparations for the material and moral injury he alleges he suffered for the seven years of successive criminal proceedings and incarcerations.

B. The State’s position

20. The State indicated that on September 18, 1992, the 14th Criminal Court of Lima ordered that an investigation begin, issuing an arrest warrant for Mr. Wilfredo Mas Trigos, for the crime of terrorism. It stated that on October 12, 1993, the Special Criminal Chamber of the Superior Court of Justice of Lima issued a judgment of acquittal in favor of the alleged victim and ordered his immediate release in the event that there was no arrest warrant outstanding from any other judicial authority. It added that on June 7, 1995, the Supreme Court of Justice voided the judgment of acquittal and ordered that a new oral trial be conducted.

21. The State affirmed that on April 18, 1996, the Special Criminal Chamber of the Superior Court of Justice of Lima issued a judgment of acquittal and ordered the police authorities to lift the arrest warrants outstanding against Mr. Wilfredo Mas Trigos. It indicated that in a final judgment of August 1, 1997, the Supreme Court of Justice ratified said judgment of acquittal. It stated that on May 22, 1998, the Permanent Criminal Chamber of the Supreme Court of Justice invoked, *sua sponte*, in a second processing against the alleged victim, the defense of *res judicata*. The State indicated that on November 10, 1998, the Specialized Criminal Chamber of the Superior Court of Justice of Lima asked the National Prison Institute and the Divisions of Criminal Summons and Identification of the Peruvian National Police to set aside the alleged victim’s police record.

22. The State indicated that in January and February 2003 legislative reforms were adopted on investigation, prosecution, and criminal enforcement for the crime of terrorism, which had the effect of annulling trials conducted in the 1990s heard by military or civilian judges whose identity was kept secret.¹⁴ It argued that this new legislative framework is in line with the standards of the inter-American system for the promotion and defense of human rights and the Constitution of Peru. According to the

¹⁴ According to the copies of documents from the judicial record provided by the State, the identities of the judges of the Superior Court of Justice of Lima and of the Supreme Court of Justice of the Republic who heard the trials of Mr. Mas Trigos from 1992 to 1997 were kept under seal. Article 2 of Legislative Decree 926 of February 20, 2003 provides as follows:

The National Chamber on Terrorism, progressively in a term of no more than 60 working days from the entry into force of this Legislative Decree, shall vacate *sua sponte*, unless there is an express waiver by the accused, the judgment and oral trial, and shall declare, as the case may be, the nullity of the indictment in criminal proceedings for terrorism offenses before the regular jurisdiction with judges or prosecutors whose identity was kept secret.

information provided by the State, the new legislative framework on terrorism adopted as of January 2003 would not have had any implication whatsoever for the legal situation of Mr. Wilfredo Mas Trigoso.

23. The State indicated that prior being notified of the processing of this petition by the IACHR, the domestic judicial authorities had already issued a final ruling on the legal situation of Mr. Wilfredo Mas Trigoso. In this regard, it argued that the petition had become moot and asked that the IACHR find the petition inadmissible under Article 48(1)(b) of the Convention.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

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

25. 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.

26. 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.

27. 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

28. 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.

29. The petition argues the violation of the American Convention stemming from the detention and criminal trials pursued against Mr. Wilfredo Mas Trigoso. The information presented indicates that the alleged victim was subjected to two criminal trials in which he was accused of having been part of an insurgent organization known as the *Frente Patriótico de Liberación* and of having participated in attacks directed against public and private establishments. That information indicates that on May 22, 1998, the Permanent Criminal Chamber of the Supreme Court of Justice invoked *sua sponte* the defense of *res judicata* on behalf of the alleged victim, and that on November 10, 1998, the Specialized Criminal Chamber of the Superior Court of Justice of Lima ordered that Mr. Mas Trigoso's police and judicial records be set aside. In view of this outcome of the criminal trials against the alleged victim, the IACHR concludes that the petition satisfies the requirement set out at Article 46(1)(a) of the Convention.

30. As regards the State's argument that the alleged victim did not invoke the compensation procedure provided for in Law 24973, the petitioners stated that Articles 3(b) and 18 of that law provide that it is up to the judicial authority that issues the judgment of acquittal to set compensation, which apparently did not happen in the judgment of acquittal in favor of the alleged victim. Moreover, without prejudging on the effectiveness of Law 24973, the Peruvian State did not explain how the procedure provided therein would be suitable for curing all the violations of rights protected in the American

Convention alleged to have occurred to the detriment of Wilfredo Mas Trigoso. In this vein, and for the purposes of the requirement provided for in Article 46(1)(a) of the Convention, the IACHR concludes that one could not require the alleged victim to pursue additional remedies for the Peruvian State to cure the alleged violations of rights that have been brought to the attention of this international body.

C. Filing period

31. 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.

32. According to what is established in paragraph 29 *supra*, the last proceedings in the trials against Mr. Wilfredo Mas Trigoso were held on May 22 and November 10, 1998, through resolutions of the Supreme Court of Justice and the Superior Court of Justice of Lima, respectively. Given that this petition was filed on November 11, 1998, the IACHR considers that the requirement set forth at Article 46(1)(b) of the American Convention has been satisfied.

D. Duplication of procedures and international *res judicata*

33. 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

34. 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.

35. In view of the arguments of fact and law presented by the parties, the IACHR considers that the circumstances in which the alleged victim’s detention is said to have occurred, the conditions of detention to which he was said to have been subjected at the Miguel Castro Castro prison, as well as the alleged incompatibility of the normative framework in which the events unfolded with the American Convention could tend to establish violations of the rights enshrined in Articles 5, 7, 9, 10, 8 and 25 in conjunction with Articles 1(1) and 2 of the same instrument, all to the detriment of Wilfredo Mas Trigos. In addition, the IACHR considers that the alleged restrictions on the right to receive visits during his detention could tend to establish a violation of the right enshrined in Article 5(1) of the Convention to the detriment of Mr. Wilfredo Mas Trigos’s family members. In the merits stage the Commission will analyze the arguments of the Peruvian State that the acquittal of the alleged victim has cured the alleged violations of the above-mentioned provisions of the Convention.

36. The petitioners have not alleged the violation of specific provisions of the American Convention. In this regard, the possible characterization of violations of the articles of said treaty described in the previous paragraph have been incorporated by the IACHR based on the information provided by the parties, and pursuant to the principle of *iura novit curia*.

37. Finally, as the petitioners’ arguments are not manifestly groundless or evidently out of order, the Commission concludes that the allegations considered in the instant report meet the requirements established in Articles 47(b) and (c) of the American Convention.

V. CONCLUSIONS

38. Based on the considerations of fact and law set forth, and without prejudging on the merits, the Inter-American Commission concludes that the petition meets the admissibility requirements set forth in Articles 46 and 47 of the American Convention and, accordingly,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To find the petition admissible in relation to Articles 5, 7, 9, 10, 8 and 25 of the American Convention in conjunction with the obligations set forth at Articles 1(1) and 2 of the same instrument.
2. To give notice of this decision to the State and the petitioners.
3. To publish this decision and include it in the Annual Report to be presented to the General Assembly of the OAS.

Aproved on December 9th, 2010. Felipe González, President; Paulo Sérgio Pinheiro, First Vice-President; Dinah Shelton, Second Vice-President; Luz Patricia Mejía Guerrero, María Silvia Guillén, José de Jesús Orozco Henríquez, Rodrigo Escobar Gil, members of the Commission.