

REPORT NO. 110/11
PETITION 801-98
CARLOS BRAULIO ARANA FRANCO
ADMISSIBILITY
PERU
July 22, 2011

I. SUMMARY

1. On November 11, 1998, the Inter-American Commission on Human Rights (hereinafter also "the Inter-American Commission", "the Commission", or "the IACHR") received a petition presented in his own name by Carlos Braulio Arana Franco (hereinafter also "the petitioner" or "the alleged victim"), alleging violations by the Republic of Peru (hereinafter also "Peru", "the State", or "the State of Peru") of rights enshrined in the American Convention on Human Rights (hereinafter also "the American Convention" or "the Convention"). The petitioner complained about being arbitrarily detained and forced into signing seizure records in which he admitted possessing subversive material. He stated that he was convicted of the crime of terrorism, in a trial conducted by faceless judges and without the guarantees of due process. He indicated that although he was pardoned and released in December 2000, the State did not compensate him for the moral and material damages caused by his detention.

2. The State maintained that the allegations in the petition have substantially changed, by reason of the fact that Mr. Carlos Braulio Arana Franco regained his freedom in December 2000 after obtaining a presidential pardon. It emphasized that the alleged victim has not presented a request before the domestic legal authorities demanding compensation for damages sustained due to his detention. In this regard, it argued that the petition does not comply with the requirement set out in Article 46(1)(a) of the Convention. Finally, it argued that the events set out in the petition do not characterize a violation of rights protected in the Convention and requested that the IACHR declare the complaint inadmissible by virtue of Article 47(b) of the same instrument.

3. After examining the position of the parties, in the light of the requirements for admissibility set out in Articles 46 and 47 of the Convention, the Commission concluded that it was competent to examine the petition and that it was admissible with regard to the alleged violation of the rights enshrined in Articles 5, 7, 9, 10, 13, 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 present Admissibility Report to the parties, to publish it and to include it in its Annual Report.

II. PROCEEDINGS BEFORE THE COMMISSION

4. On November 11, 1998, the petition was received and registered under number 801-98. On May 1, 2006, the petitioner presented additional information. On December 11, 2008, this documentation was sent to the State, with a time limit of two months to present its response, in conformity with the IACHR's Rules. On March 13, 2009, the State presented its response, and on September 7, 2010, it sent an additional brief. The petitioner sent additional information on June 28, 2010 and on May 17, 2011.

III. POSITION OF THE PARTIES

Preliminary Question

5. In the proceedings of the present complaint the petitioner and State described the criminal trial undertaken against the alleged victim and held in accordance with the terrorism legislation adopted from the beginning of May 2002 and remaining in force until January 2003. Before outlining the position of the parties, the IACHR considers it necessary to refer to the above legislative framework applicable to the events referred to in the claims.

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

6. 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.

7. 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.

8. 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

9. 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

10. 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.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

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.

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.

A. Petitioner's Position

11. He alleged that on June 22, 1992 his brother, Ricardo Arana Franco, decided to get rid of some documents belonging to his other younger brother, Luis Alberto Arana Franco, who had been accused of being a leader of the Communist Party of Peru - Shining Path. He indicated that after placing the material in the trash on a public road, Ricardo Arana Franco was arrested by officers of the National Police who were on patrol in the area. He stated that when he realized his brother had been arrested, he tried to intervene on his behalf, but was also arrested by the police officers.

12. The petitioner submitted that when he arrived at the police station he was forced to sign a seizure record admitting that he was the owner of letters relating to Shining Path and other documents classified by the police officers as having "a subversive content". It is shown that among these documents was freely available Marxist literature.

13. According to the information made available, the alleged victim underwent a criminal trial, which implicated dozens of individuals and was conducted by faceless judges. It is stated that a series of violations against judicial guarantees were committed, among others, the impossibility of interrogating the police officers who participated in his capture. It indicates that on November 30, 1994, the alleged victim was sentenced to 20 years imprisonment by the Special Chamber of the Lima Superior Court of Justice for the offense of terrorism, a sentence confirmed by the Supreme Court of Justice on September 5, 1996.

14. The petitioner reported that on August 17, 1996, Law 26655 was enacted, which created a "Commission charged with advising the President of the Republic as to the granting of pardons to persons convicted of terrorist offences or high treason". According to the information presented, Article 1 of Law 26655 established that a pardon could be granted to individuals convicted of the said offenses "on the basis of insufficient evidence which would allow the Commission to reasonably presume that there had not been any type of connection with terrorist elements, activities or organizations." Carlos Braulio Arana Franco confirmed that he was granted a presidential pardon by Supreme Resolution No. 322-2000-JUS, published in the Official Gazette *El Peruano* on December 22, 2000.

15. The petitioner stated that although he has been released, the State has not compensated him for the moral and material damage due to eight years imprisonment based on an allegedly irregular trial. He added that this compensation should also include his brother, Ricardo Arana Franco, who indicated that he was convicted of terrorism in the criminal trial held against him, and was equally released after obtaining a presidential pardon in terms of Law 26655, on December 22, 2000.

16. As regards the State of Peru's allegations that a civil reparations suit had to be filed before resorting to the Inter-American Human Rights system, he stated that "in the first few years after the pardon his family faced a situation of a lack of personal guarantees." He also stressed that due to his old age and delicate state of health he found it impossible to bear the costs and to wait several years for a response from the courts.

B. The State's Position

17. Just the same as the petitioner, the State related that on November 30, 1994, Mr. Carlos Braulio Arana Franca was sentenced to 20 years imprisonment for the offense of terrorism. It indicated that on September 5, 1996, the Supreme Court of Justice decided that there were no grounds for nullity of the said decision. Finally, it indicated that on December 21, 2000, the Ministry of Justice granted a pardon to Mr. Carlos Arana in Supreme Resolution No. 322-2000-JUS.

18. With respect to the request for compensation for the grievances allegedly suffered, the State pointed out that Peruvian law sets out the possibility of claiming compensation from the domestic courts for judicial errors in criminal trials. In this sense, it argued that the alleged victim had not exhausted remedies available under domestic law.

19. The State pointed out that the events set out in the petition failed to constitute a colorable claim on the violation of the rights protected in the Convention and requested that the IACHR declare it inadmissible in conformity with Article 47(b) of the same instrument.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

20. 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 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.

21. 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.

22. 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.

23. Finally, the Commission has jurisdiction *ratione materiae*, because, as explained in the section of characterization below, the petition alleges potential violations of rights protected by the American Convention.

B. Exhaustion of remedies under domestic law

24. 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.

25. The present petition alleges the violation of provisions of the American Convention, derived from the imprisonment and criminal trial held against the alleged victim. According to the parties' account, the trial resulting in the imprisonment of Mr. Carlos Braulio Arana was decided at last instance by the Supreme Court of Justice on September 5, 1996. The information emerging from the case file indicates that subsequent to this sentence, the alleged victim's immediate family lodged various requests for the grant of a presidential pardon in terms of Law 26655. This information also indicates that on December 22, 2000, the alleged victim obtained a presidential pardon and regained his freedom.

26. Based on the foregoing considerations and taking into account that the pardon modified the judicial situation of the alleged victim, the IACHR considers that the requirement set out in Article 46(1)(a) of the Convention was satisfied by the presidential order issued on December 22, 2000.

27. As regards the exception of a failure to exhaust remedies available under domestic law raised by the State surrounding the allegations that the petitioner had the right to be compensated, the IACHR observes that the facts set out in the complaint relate to the alleged material and moral damages sustained due to Mr. Carlos Braulio Arana Franco's alleged arbitrary deprivation of liberty and trial. In the case at hand, the claims as to an alleged obligation of the State of Peru to compensate him are framed within the possible granting of reparations measures that the IACHR must evaluate at the merits stage.

C. Filing period

28. 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.

29. In the present case, the presidential pardon produced a fundamental change in the legal situation of the alleged victim. According to the parties' account, Mr. Arana Franco was notified of the said pardon on December 22, 2000, i.e., more than three years after he presented the petition before the Commission, and after various requests lodged by the petitioner and his immediate family. Based on the above, the IACHR considers that the requirement laid down in Article 46(1)(b) of the American Convention is satisfied.

D. Duplication of procedures and international *res judicata*

30. 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

31. 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.

32. In view of the factual elements presented by the parties, the IACHR considers that the circumstances surrounding the detention of the alleged victim, the allegations involving the criminal trial held against the alleged victim and its underlying legislative framework could constitute a colorable claim on the violation of the rights enshrined in Articles 5, 7, 9, 10, 8 and 25 of the American Convention, in conjunction with Articles 1(1) and 2 of the same instrument; all to the prejudice of Carlos Braulio Arana Franco.

33. Should it be proved that the opening of a formal criminal investigation against the alleged victim was based on the possession of freely available literature, this may amount to a violation of the right protected in Article 13 of the American Convention.

34. As regards the State of Peru's arguments that the granting of a pardon in favor of Mr. Carlos Braulio Arana Franco had rectified the alleged violation of Convention rights resulting from his imprisonment, the IACHR considers that this is related to any possible findings to be made at the merits stage.

35. The IACHR clarifies that the petitioner has not alleged the violation of any specific provisions of the American Convention, and that therefore the inclusion of the Articles quoted in the preceding paragraphs is based on the principle *iura novit curia*.

36. Finally, since it is not apparent that these aspects of the claim are manifestly groundless or out of order, the Commission concludes that the petition satisfies the requirements established in Articles 47.b and c of the American Convention.

V. CONCLUSIONS

37. Based on the considerations of fact and law expressed, and without prejudging the merits of this matter, the Inter-American Commission concludes that the petition satisfies the requirements of admissibility set out in Articles 46 and 47 of the American Convention, and consequently

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,**DECIDES:**

1. To declare the petition admissible in relation to Articles 5, 7, 9, 10, 13, 8, and 25 of the American Convention in conjunction with the obligations established in Articles 1.1 and 2 of the same instrument

2. To notify this decision to the State and to the petitioners.

3. To publish this decision and include it in its Annual Report, to be presented to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 22nd day of July 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Paulo Sérgio Pinheiro, Felipe González, and María Silvia Guillén, Commission Members.