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REPORT No. 59/15
PETITION P 895-06
REPORT ON ADMISSIBILITY

ANTONIO DE LA TORRE ECHEANDÍA AND FAMILY
PERU

Approved by the Commission at its session No. 2046 held on October 17, 2015
156th Regular Period of Session.

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Echeandía and Family. Peru. October 17, 2015.]



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I. SUMMARY

1. On August 21, 2006, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received a petition from Dina Ramírez Ramírez and the *Instituto de Prensa y Sociedad* (hereinafter IPyS) of Peru, alleging the international responsibility of the State of Peru (hereinafter “the State” or “Peru” or “Peruvian State”) for the violation of rights enshrined in the American Convention on Human Rights (hereinafter the “American Convention” or the “Convention”), as a result of the murder of journalist Antonio de la Torre Echeandía and the harassment, threats, and attacks against his family.

2. The petition concerns the February 14, 2004 murder of journalist Antonio De la Torre Echeandía in the city of Yungay, which was allegedly preceded by assaults and harassment against him and members of his family. The petitioners additionally maintain that the acts of harassment against the alleged victim’s relatives continued after his murder, and throughout the criminal case against the mayor of the city of Yungay and relatives and employees of his. In view of these facts, the petitioners alleged the responsibility of the Peruvian State for violations of the rights enshrined in Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 13 (freedom of expression), 17 (rights of the family), and 25 (right to judicial protection) of the American Convention.

3. The State asked the Commission to declare this petition inadmissible. It asserted that the facts set forth therein do not describe a human rights violation. In particular, the State indicated that the petitioners are seeking to have the Commission act as a “fourth instance,” and recalls that the Commission cannot review the judgments handed down by national courts acting within the scope of their jurisdiction, providing the proper right to a fair trial. It further stated that unsatisfactory outcomes at the national level cannot be subject to analysis by a supranational authority whose role is subsidiary and complementary to the domestic system.

4. Without prejudging the merits of the case, after examining the positions of the parties in light of the admissibility requirements established in Articles 46 and 47 of the Convention, the IACHR decided to declare the petition admissible with respect to the alleged violation of Articles 4, 5, 7, 8.1, 13, 17, 22, and 25 of the Convention, in connection with the general obligations enshrined in Article 1.1 thereof, to the detriment of the alleged victims, Antonio de la Torre Echeandía, his wife Dina Ramírez Ramírez, and their children.

5. Finally, the Commission decided to give notice to the parties and order the publication of this decision in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE INTER-AMERICAN COMMISSION

6. On August 21, 2006, the Commission received the petition and assigned it number 895-06. On September 11, 2008, the Commission requested additional information from the petitioners, which was received by the Commission on November 14, 2008. On July 29, 2011, it forwarded the petition to the Peruvian State, which sent its reply on October 11, 2011. The IACHR forwarded the State’s reply to the petitioners on August 7, 2012, and requested their observations. The petitioners did not present any observations.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

7. The petitioners stated that the journalist De la Torre Echeandía, radio host of the *radio Orbita de Yungay*, was murdered on February 14, 2004, and that his relatives were subjected to assaults and threats both before and after the murder. The petitioners point to the then-mayor of the city of Yungay, as well as relatives and employees of his, as possible perpetrators of the murder and the assaults. According to the case file, as a radio host he “criticized in a persistent [and] strong way” the management of the then mayor of Yungay.

8. Among the assaults prior to the murder, the petitioners stated that on October 19, 2003, Dina Ramírez Ramírez, De la Torre Echeandía’s wife, filed a police report complaining of damages to their house committed by a truck driver who fled the scene. On October 21, 2003, De la Torre Echeandía filed a complaint alleging that he had been the victim of physical assaults after disseminating critical information about the then-mayor of Yungay. On November 14 of the same year, De la Torre Echeandía reported that his home had been attacked with a Molotov cocktail.

9. The petitioners reported that on February 14, 2004 Antonio De la Torre Echeandía was murdered outside a public premises called Recreo Pampac in the city of Yungay, where a party was being held. The petitioners allege that he was attacked by two individuals near the building’s exit. They stated that De la Torre Echeandía was found by his son, who reported that his father managed to tell him that he had been attacked by the driver of the mayor of Yungay.

10. The petitioners stated that on February 16, 2004 the Provincial Prosecutor’s Office of Yungay brought a criminal complaint against an individual alleged to be the perpetrator of De la Torre Echeandía’s murder, and on March 18 it amended its complaint to indict the mayor of Yungay and his daughter as the masterminds of the murder and responsible for the crime of havoc against the journalist’s house. The petitioners added that another three individuals were charged as accomplices to the crime.

11. The petitioners stated that on December 14, 2005 the defendants were found guilty by the First Criminal Division of the Superior Court of Ancash. The conviction was overturned by the First Temporary Criminal Division of the Supreme Court, which acquitted all of the defendants, including the mayor’s daughter, on July 20, 2006. The petitioners stated that they received notice of this decision on August 10, 2006. They asserted that the acquittal created a situation of impunity, since the Court’s decision should have ordered the authorities to conduct new proceedings or investigations. They allege that no new investigations have been carried out to date, which has prevented finding and punishing the perpetrators of De la Torre Echeandía’s murder.

12. The petitioners alleged that the case brought against the defendants was plagued by irregularities. In particular, the victim’s wife Dina Ramírez Ramírez was denied access to the case file, she was prevented from attending the court hearings, and she was the victim of attacks during the trial that were not properly investigated. The petitioners explained that De la Torre Echeandía’s wife and co-petitioner in this case, Dina Ramírez Ramírez, was subject to numerous threats and incidents of harassment during the trial. For example, they stated that the electrical wiring in her house was tampered with in order to cause a short circuit, which was reported to the authorities on April 23, 2005. They further indicated that Dina Ramírez Ramírez’s daughter, Vanesa de la Torre Ramírez, and her niece Harley Julisa Andagua Ramírez, were threatened by one of the defendants, and that they file a complaint to the police concerning these facts on September 15, 2005. The petitioners also reported that between July 22 and August 8, 2006, Dina Ramírez Ramírez’s home was attacked every night and that the windows of the house were destroyed. They stated that on August 9, 2006, more than thirty intimidating phone calls were made to the house. Because of these threats, the *Instituto Prensa y Sociedad*, with the assistance of the New York-based Committee to Protect Journalists, arranged for Dina Ramírez Ramírez and her family to leave Yungay in order to protect her life and safety.

13. In conclusion, they asked the IACHR to declare the international responsibility of the Peruvian State for the violation of Articles 4, 5, 8, 13, 17, and 25 of the American Convention.

B. Position of the State

14. The State argued that the petition should be declared inadmissible because the alleged facts do not constitute violations of the human rights guaranteed by the American Convention. It also asserted that the judgment acquitting the individuals accused of Antonio De la Torre Echeandía's murder and the harassment and assaults against his family was handed down within the framework of a rights-based criminal proceeding that respected the due process of law. The State maintained that the Supreme Court acted within the scope of its legal and constitutional authority in acquitting the defendants. It also asserted that the shelving of the case makes it possible for "the investigations to continue in order to identify the perpetrators of the crime in question."

15. The State indicated that the prosecution of the defendants named by the petitioners as the perpetrators of the alleged victim's murder respected the due process of law and the presumption of innocence. The State asserted that the Supreme Court examined whether the convictions had followed its criterion for the establishment of circumstantial evidence, which requires—according to *en banc* Decision No. 1-2006/ESV-22 of October 13, 2006—that, with respect to the defendant: (a) the underlying fact is fully proven; (b) there are multiple indicia, or on an exceptional basis a single indicium that is extraordinarily strong; that (c) the indicia are concomitant to the fact sought to be proven; and (d) when there are several indicia, they are interrelated so as to reinforce each other. The State maintained that this requirement "was not met in this case, as the evidence presented in the criminal proceedings did not rise to the level of 'certainty' required to overcome the presumption of innocence enjoyed by the defendants." In this respect, the State explained that "the indicia noted by the Superior Court of Ancash were not properly accredited, and therefore could not constitute circumstantial evidence." The State further maintained that the petition seeks to have the Inter-American Commission act as a "fourth instance."

16. With respect to the alleged violation of the right to freedom of expression, the State maintained that the petitioners have failed to provide any evidence to show that this right has been violated. The State expressed regret for the death of Antonio de la Torre Echeandía and said it will ensure that the investigations continue until the perpetrators of the crime are identified. However, it did not provide any information on whether these investigations have in fact continued.

17. With respect to the alleged violations of the right to humane treatment, rights of the family, and the right to judicial protection, the State indicated that the petitioners have failed to properly establish how those violations were allegedly committed, and stressed that there is documentation in the annexes to the petition to indicate that the State in fact met its duty to protect and guarantee the personal safety of the members of the De la Torre Ramírez family.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

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

18. The petitioners are authorized by Article 44 of the Convention to file petitions. The alleged victims are individuals who were under the jurisdiction of the Peruvian State at the time of the alleged events. For its part, Peru deposited its instrument of ratification of the American Convention on July 28, 1978. Accordingly, the Commission has jurisdiction *ratione personae* to examine the petition.

19. The IACHR has jurisdiction *ratione materiae* because the petition concerns alleged violations of human rights protected by the American Convention that reportedly took place within the jurisdiction of a State Party thereto. The Commission also has jurisdiction *ratione materiae*, given that the petition alleges facts that may amount to the violation of rights protected in the American Convention.

20. Finally, the Commission has jurisdiction *ratione temporis* insofar as the State's obligation to respect and guarantee the rights protected in the American Convention was in force at the time the acts alleged in petition reportedly took place.

B. Requirements for the Admissibility of the Petition

1. Exhaustion of domestic remedies

21. Article 46.1.a of the American Convention provides that for a petition submitted to the Inter-American Commission to be admissible under Article 44 of the Convention, the petitioner must first have pursued and exhausted domestic remedies, in keeping with generally recognized principles of international law. This requirement is intended to allow national authorities to consider an alleged violation of a protected right and, when applicable, to give them the opportunity to correct it before it is heard and decided by an international body.

22. Article 46.2 of the Convention provides that the rule on the exhaustion of domestic remedies does not apply 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; b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

23. The Commission finds that the facts alleged by the petitioner constitute criminal offenses under the domestic law that the government must investigate and prosecute on its own initiative, which in such cases is the suitable way to establish the facts, prosecute the perpetrators, and impose the appropriate criminal penalties, as well as to facilitate other means of adequate reparation. That is to say, the events relating to the murder of Antonio de la Torre Echeandía and the attack on his family are criminal acts under the domestic law that must be investigated and prosecuted by the State on its own initiative.

24. Accordingly, in these types of cases, the adequate remedy to be exhausted is an investigation that properly establishes the facts.¹ The petitioners complained of irregularities that, if proven to be true, could be violations of due process and access to justice. The Commission observes that Mr. De la Torre Echeandía was murdered on February 14, 2004 and that—as the State acknowledges—more than twelve years have now elapsed without any conclusion to the investigation to establish the facts surrounding the murder. The IACHR notes that the complaints about alleged attacks to the house of the journalist's family and other acts of harassment against his family have not investigated. In the Commission's opinion, the fact that the investigation remains open without results nor information on the measures adopted by the authorities amounts to an unwarranted delay under the terms of Article 46(2)(c) of the Convention.

2. Timeliness of the petition

25. Article 32 of the Rules of Procedure of the IACHR provides that in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case. Taking account of the date of the facts alleged and the situation of the domestic remedies in Peru, the Commission finds that the petition under study was filed within a reasonable period of time.

¹ See, Report No. 54/04, Nelson Carvajal Carvajal. See also, Report No. 05/03, Petition 519/2001, Jesús María Valle Jaramillo, 2003 Annual Report of the IACHR, para. 28. See also, Report No. 52/97, Case 11.218, Arges Sequeira Mangas, 1997 Annual Report of the IACHR, paras. 96 & 97; Report 55/97, Case 11.137, Juan Carlos Abella, 1997 Annual Report of the IACHR, para. 392; Report 57/00, Case 12.050, La Granja, Ituango, 2000 Annual Report of the IACHR, para. 40.

3. Duplication of proceedings and international res judicata

26. The case file does not contain any information to indicate that the subject of the petition is pending in another international proceeding, or that it duplicates a petition previously decided by the IACHR or another international body. Hence, the requirements set forth in Articles 46.1.c and 47.d of the Convention have been met.

4. Colorable claim

27. The Inter-American Commission must decide whether the alleged facts amount to a violation of the rights enshrined in the American Convention pursuant to the requirements of Article 47.b, or whether the petition is “manifestly groundless” or “obviously out of order,” as described in Article 47.c. At this stage of the proceedings, the Commission must perform a *prima facie* evaluation, not to establish the alleged violations of the American Convention, but to examine whether the petition alleges acts that could potentially constitute violations of the rights guaranteed in the American Convention. This determination does not entail the prejudgment of the merits of the case.²

28. Neither the American Convention nor the IACHR’s Rules of Procedure require petitioners to identify the specific rights alleged to have been violated by the State in the matter submitted to the Commission, although they may do so if they wish. It falls to the Commission, on the basis of the system’s jurisprudence, to determine in its reports on admissibility which provisions of the pertinent inter-American instruments are applicable, and the violation thereof may be established if the facts alleged are demonstrated with sufficient evidence.

29. In this case, the petitioners alleged that Mr. Antonio de la Torre Echeandía was murdered for reasons connected to his practice of journalism and that the investigation and criminal case were plagued by irregularities, resulting in the acquittal of the defendants, without establishing the facts of the case. They also alleged that members of the journalist’s family were the victims of harassment, threats, and persecution, which was not properly investigated. For its part, the State asserted that the “fourth instance” exception is applicable to this case.

30. The IACHR recalls that “it is not competent to review judgments handed down by national courts acting within their jurisdiction and observing due judicial guarantees,”³ nor “serve as an appellate court to examine alleged errors of internal law or fact that may have been committed by the domestic courts acting within their jurisdiction.”⁴ However, within its mandate to guarantee the observance of the rights set forth in the Convention, the Commission is necessarily competent to declare a petition admissible and analyze its merits when it concerns a national decision that has allegedly been issued without respect for due process, or that apparently violates any other right guaranteed by the Convention. The petitioners alleged irregularities in the criminal case initiated to investigate murder the journalist and the alleged assaults against his family, if proven true at a later stage of the proceedings, could potentially involve State obligations arising from the American Convention. Additionally, the petitioners have stated that the crime remains unpunished. Accordingly, the Commission finds that the examination of this case does not require it to act as a “fourth instance.”

31. In view of the legal and factual elements presented by the parties and the nature of the matter brought before it, the Commission finds that, if proven, the petitioners’ allegations of State responsibility for the facts set forth in the petition could potentially constitute a violation of the rights

² IACHR, Report No. 21/04, Petition 12.190, Admissibility, José Luís Tapia González et al., Chile, February 24, 2004, Paras. 33 & 52.

³ See IACHR, Report No. 101/00, Case 11.630 Arauz et al. (Nicaragua), October 16, 2000, in 2000 Annual Report of the IACHR, para. 56, citing IACHR, Report No. 39/96, Case 11.673, Marzioni (Argentina), October 15, 1996, in 1996 Annual Report of the IACHR, paras. 50 & 51.

⁴ IACHR, Report No. 7/01, Case 11.716 Güelfi (Panama), February 23, 2001, Report No. 39/96, Case 11.673, Marzioni (Argentina), October 15, 1996, in 1996 Annual Report of the IACHR, paras. 50 & 51.

enshrined in Articles 4 and 13 of the Convention, to the detriment of Antonio De la Torre Echeandía. In addition, the facts potentially describe a violation of Articles 5, 8, 17, and 25 to the detriment of Dina Ramírez Ramírez and her children. The Commission will examine at the merits stage the possible violation of these provisions in light of the general obligation enshrined in Article 1.1 of the Convention, as well as the obligation to take domestic law measures pursuant to Article 2 of the Convention. Finally, the IACHR observes that, to the extent it is relevant, it may examine potential violations of the rights protected under the Article 22 of the Convention to the detriment of Dina Ramírez and her family.

32. In conclusion, the IACHR finds that this petition is neither “manifestly groundless” nor “obviously out of order,” and therefore declares that the petitioner has met *prima facie* the requirements established in Article 47.b. of the American Convention with respect to potential violations of Articles 4, 5, 8, 13, 17, 22, and 25 of the American Convention, in relation to the general obligations enshrined in Article 1.1 thereof, as stated above.

V. CONCLUSION

33. The Inter-American Commission concludes that it is competent to examine the merits of this case and that the petition is admissible pursuant to Articles 46 and 47 of the American Convention. Based on the foregoing legal and factual considerations, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To find this petition admissible with respect to the rights protected in Articles 4, 5, 8, 13, 17, 22, and 25 of the American Convention, in relation to the general obligations provided in Article 1.1 thereof.
2. To provide notice of this decision to the parties, continue with the analysis of the merits of the case; and
3. To publish this decision and to include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 17th day of the month of October, 2015. (Signed): Rose-Marie Belle Antoine, President; James L. Cavallaro, First Vice President; José de Jesús Orozco Henríquez, Second Vice President; Felipe González, Rosa María Ortiz and Tracy Robinson, Commissioners.