

REPORT N° 55/98
CASE 11.768
PEDRO HUILCA TECSE
PERU
September 25, 1998

I. SUMMARY

1. On May 13, 1997, the Inter-American Commission on Human Rights (hereinafter "the Commission") received a complaint against the Republic of Peru (hereinafter "Peru," "the State," or "the Peruvian State")¹ for violating the right to life of Pedro Huilca Tecse (hereinafter "the victim").

II. EVENTS

2. The petitioner informed the Commission that on December 18, 1992 at 8:00 a.m., Pedro Huilca Tecse, Secretary General of the General Confederation of Workers of Peru (CGTP), was killed at Avenida Las Palmeras No. 4391, Urbanización Carlos Cueto Fernandini, in the Los Olivos district of Lima. This act was attributed to a commando group of the Shining Path (Sendero Luminoso). Some members of that group were captured and convicted.

3. On April 14, 1997, Retired General Rodolfo Robles Espinoza showed the press a letter dated April 22, 1994 in which a former agent of the army intelligence service (SIE), Mesmer Carles Talledo, who was convicted to life imprisonment for treason, attributes the murder of Pedro Huilca to members of the Colina Paramilitary Group and names the following persons as responsible: Major Santiago Martín Rivas, and specialists Juan José Sosa Saavedra, Yarleque, Pedro Pretell (deceased), and Nelson Caravajal García, as well as several female noncommissioned army officers. Another letter by the same man confirms the foregoing information and states that the political motive was Huilca's demonstrations in favor of nationwide strikes in 1993.

4. On May 23, 1997, Martha Flórez Gutiérrez, Pedro Huilca Tecse's widow, filed criminal charges with the Office of the Attorney General against members of the Colina Group, citing former agents Mesmer Carles Talledo and Clemente Alayo as witnesses.

III. PROCESSING BY THE COMMISSION

5. The Commission opened case No. 11,768 on July 3, 1997 and transmitted the pertinent parts of the complaint to the Peruvian State, through a note on that date, giving the State 90 days to respond. On August 8, 1997, the petitioner requested to be heard by the Commission at one of its regular sessions to present an oral report on the arguments in the petition. The Commission set the hearing for October 9th of that year at 10:00 a.m., however the party in question requested that the presentation be postponed until the next regular session. The State did not respond to the observations until October 24, 1997 and requested that the Commission declare the case inadmissible. The State used two arguments; the first was regarding the failure to exhaust domestic remedies, since the petitioner had not gone before

the members of the Supreme Court or the Office of the Attorney General. The second was regarding the lapse of the time limit for lodging a complaint, on the grounds that the date of submittal exceeded six months, from the date of the offense or of the final sentencing. This information was transmitted to the petitioner on October 24, 1997, giving that party 30 days to make observations. The Commission Secretariat received those observations on December 9, 1997, along with a video containing Carles Talledo's version of the events, accusing members of the Colina Group, including General Juan Rivero Lozano, former Director of Army Intelligence, of killing Huilca Tecse. In the response, the petitioner reiterated that domestic remedies had been exhausted through a variety of bodies that declared the final sentencing enforceable and that the complaint had been presented to the Commission on time, i.e. within six months of the date on which they learned the names of the true murderers. These observations were transmitted to the State through a note dated January 14, 1998, for it to respond within 30 days. That deadline was extended by 45 days at the request of the State, as can be seen in the request dated February 17 and the note dated February 20, 1997. Finally, on March 16, 1998, the Peruvian State responded to the observations and again requested that the petition be found inadmissible on the grounds that it was presented after the deadline set forth in article 46(1)(b) of the American Convention on Human Rights. This information was forwarded to the petitioner through a note dated April 23, 1998, with a 30-day deadline for that party to comment. To date, those observations have not yet been received.

IV. POSITION OF THE PARTIES

A. The Petitioner

6. The petitioner maintains that the Peruvian State is the true party responsible for the attack on Pedro Huilca Tecse that took his life, thus violating article 4.1 of the American Convention. Based on the letters signed by the former agent of the army intelligence service (SIE), Mesmer Carles Talledo, and made public on April 14, 1997 by Retired General Rodolfo Robles Espinoza, the petitioner initially listed Major Santiago Martín Rivas and specialists Juan José Sosa Saavedra, Yarleque, Nelson Carbajal García, and Pedro Pretell (deceased) as the members of the government paramilitary agency responsible for Huilca's assassination because of his demonstrations in favor of starting nationwide strikes in 1993. However, the petitioner clarifies that the complaint against Pedro Pretell Damasco was withdrawn since criminal action cannot be pursued against the deceased. The petitioner then sent a video in which former agent Mesmer Carles Talledo states that the order was given in his presence by General Juan Rivero Lozano, former Director of Army Intelligence, to Major Santiago Martín Rivas.

7. The petitioner explained that Pedro Huilca Tecse was the Secretary General of the General Confederation of Workers (CGTP), a union movement in Peru, which took up the cause of workers' rights disavowed by the regime in Peru led by Alberto Fujimori Fujimori that had recently staged a coup d'état, and stressed that at the end of 1992, at the annual conference of executives held in Arequipa, as it happened Huilca Tecse called for on-going mobilization of workers unions in 1993. The assault was carried out precisely at 8:00 a.m. on December 18, 1992 in front of the victim's residence by a group composed of both men and women. The official investigation found members of a commando group of the Shining Path to be responsible. Some of those persons were subsequently captured and convicted, thus exhausting all legal

remedies. Finally, upon learning of the accusation made by General Robles and the statements of former army agents Mesmer Carles Talledo and Clemente Alayo, who were convicted to life imprisonment for an alleged link to the Shining Path, the petitioner filed the respective criminal charges with the Office of the Attorney General.

8. The petitioner maintains that the complaint is admissible, because there is a clear violation of article 4.1 of the American Convention and the petition was presented within six months of the date on which new evidence emerged that had not been known during the proceedings for the murder of Huilca Tecse. This makes it clear that the time that transpired between the violation of the right to life, the results of domestic legal proceedings, and the emergence of new clues and proof was reasonable. Finally, all judicial remedies to investigate the assassination had been exhausted, and the sentence was made final. The petitioner also explained that, in keeping with the Peruvian legal system, only the persons convicted could lodge an appeal, and then that the petitioner does not include them as possible perpetrators [REV. CHECK SPANISH ORIGINAL]. In addition, the petitioner is not specifically interested in reviewing the judgment convicting innocent persons, but rather in investigating and convicting the persons truly responsible. Once the guilty verdict is obtained, those persons wrongly convicted would be in a position to appeal. Finally, the petitioner argues that there are no guarantees of due process, since the final investigation is proceeding slowly, and the government appears to be interested in dragging it out, since it dismissed the prosecutor who was pursuing the case impartially two days after that person requested formal amplification of the statement made by former agent Mesmer Carles Talledo implicating General Juan Rivero Lozano.

B. The State

9. The State maintains that the persons responsible for the assassination of Pedro Huilca Tecse were detained and convicted and that the Special Tribunal of the Supreme Court of Military Justice confirmed the guilty verdict in June 1993. The State also clarifies that the Peruvian legal system includes motions to reopen a case, which cannot be filed by the plaintiff; it does however allow for the possibility of that party going before the Supreme Court or the Office of the Attorney General (Ministerio Público) so that either body may bring charges. The petitioner did not use these remedies and procedures within the domestic legal system and therefore had not exhausted the domestic remedies available. Finally, the State says that the deadline of six months for presenting claims had lapsed, as provided for in article 46(1)(b) of the American Convention, "considering the nature of the offense and the date on which it occurred, as well as the date of the corresponding criminal proceedings." In the note dated April 23, 1998, it adds arguments to the effect that the petitioner is trying, through subjective statements with political content, to have the Commission decide on the accusation. In addition, the State feels the petitioner's interpretation of the date on which the aforementioned six-month period would start is erroneous and maintains that it starts from the time of notification of the final judgment. The State closes by requesting that the petition be found inadmissible.

V. ADMISSIBILITY

A. Timing

10. The Commission is competent to examine this complaint, since it deals with an alleged violation of article 4.1 of the American Convention. Peru deposited the instrument of ratification of the aforementioned Convention on January 21, 1981.

B. Exhaustion of domestic remedies

11. The petition was presented on time, as established in article 46(2)(a), since the new information that in the end may lead to a review of the guilty verdict against members of the Shining Path was first made known on April 14, 1997 by General Rodolfo Robles Espinoza, and the petition was presented on June 4, 1997, i.e. within two months of the dissemination of these new means of proof. It therefore did not exceed that term of six months set in the Convention from when the injured party was notified of the final decision. This is taken as a parameter for judging whether or not the time that transpired was reasonable given the circumstances. This evidence that was not known or judged in the aforementioned judgment is factual grounds that in "this specific case" reasonably entitle the petitioner to lodge a complaint with the Commission in a timely manner, since Peruvian law does not set forth any domestic provisions establishing due process for victims' relatives for the purpose of filing a motion for reconsideration. That reconsideration deals specifically with a factual aspect linked to the murder of Huilca Tecse that was not heard during the proceedings and that will provide new proof regarding an event that was unknown up until then, aimed at showing that other persons were responsible for the violation of the right to life.

12. Article 46 of the American Convention specifies that, for a case to be admissible, it is required "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." The purpose of this requirement is to guarantee that the State in question can resolve disputes within its own legal context. The State's position is that this case is inadmissible because the petitioners did not pursue or use the remedies and procedures in the domestic legal system. In other words, when the decision was made final by the highest body, the plaintiff, who is not able to file a motion for reconsideration, could have gone before the Supreme Court to suggest that that action be taken or the Public Ministry for it to file a criminal accusation. In opposition to the State's position, the petitioner maintains that the legal system does not authorize the petitioner to file a motion to reopen the case and that it seeks to see the true persons responsible investigated and convicted. Thus, once that guilty verdict is obtained, the persons wrongly convicted would be entitled to request a reconsideration of the judgment. The petitioner closes with the argument that the State and the judicial system did not guarantee due process and analyzes the political events that affected that guarantee. The file before the Commission includes a copy of the criminal accusation filed by Martha Flórez Gutiérrez, Huilca's widow, with the Office of the Attorney General against the members of the Colina Paramilitary Group, as well as a request for proof to clarify the events. Nonetheless, in the responses to the observations dated October 24, 1997 and April 23, 1998, the Peruvian State did not present any information contradicting the existence of and proceedings for this criminal accusation and, on the contrary, in the first observation, accurately affirms that the petitioner did not file a motion to reopen the case or turn to the Public Ministry, in order to conclude that the petitioner did not exhaust judicial recourse.

B. Concurrence of legal actions

13. The petition includes the informational requirements set forth in article 32 of the Regulations of the Commission and meets the conditions stipulated in article 46(1)(c) of the American Convention and article 39 of the Regulations, since it is not pending in another international proceeding for settlement and is not substantially the same as one pending before or previously studied by the Commission.

14. The two parties agree that there were criminal proceedings for the murder of Pedro Huilca that led to the apprehension and final conviction of members of the Shining Path and that a motion to reopen the case cannot be filed by the plaintiff. This means that the judicial remedies authorized under the legal system for relatives of the victim, correctly designated by the Peruvian State as the "plaintiff" (parte civil), were exhausted. Furthermore, in the various responses to observations, the State omits all information on actions or steps taken as a result of journalistic publications questioning the presumption of credibility underlying the *res judicata* nature of the guilty verdict handed down or with regard to the accusation filed by the victim's wife with the Office of the Attorney General. The Commission therefore concludes that Peruvian officials have not reacted as stipulated under domestic law and should take action to investigate the new facts.

VI. CONCLUSIONS AND RECOMMENDATIONS

15. The Commission concluded that it is competent to hear this case and that the case is admissible, in keeping with the requirements established in articles 46 and 47 of the American Convention.

16. Based on these arguments of fact and of law, and without prejudging the substance of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible.
2. To notify the parties involved of that decision.
3. To continue to examine the merits of the case.
4. To make itself available to the parties to reach a friendly settlement based on the observance of the rights enshrined in the Convention and to invite the parties to present their opinions on that possibility within two months.
5. To publish this report and include it in the annual report of the Commission to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C. on September 25, 1998. (Signed): Carlos Ayala Corao, Chair; Robert K. Goldman, First Vice Chair; Jean Joseph Exumé, Second Vice Chair; Alvaro Tirado Mejía, Claudio Grossman, Hélio Bicudo, and Henry Forde.

1 The petitioner also directed the complaint at members of the Colina Paramilitary Group in Peru (hereinafter "the Paramilitary Group," "government paramilitary agents," or "the Colina Group"). However, the Commission is only competent to hear human rights violations for which the State is responsible, because state employees or officials were perpetrators of or participants in the violation. Therefore, the case names the Peruvian State.