

REPORT N° 44/01
CASE 11.016
EMILIO MOISÉS AND RAFAEL SAMUEL
GÓMEZ PAQUIYAURI
PERU
March 5, 2001

I. SUMMARY

1. On July 2, 1991, the Inter-American Commission on Human Rights (hereinafter the "Commission," the "Inter-American Commission" or the "IACHR") received a petition filed by Mrs. Marcelina Paquiyaury de Gómez, which the *Centro de Estudios y Acción para la Paz* (CEAPAZ) [the Center for Studies and Action for Peace] (hereinafter "the petitioners") later elaborated upon. The petition was filed against the Republic of Peru (hereinafter "Peru," the "State" or the "Peruvian State") and alleged that on June 21, 1991, Peruvian National Police arbitrarily detained and murdered young Emilio Moisés and Rafael Samuel Gómez Paquiyaury. The petitioners contend that the facts in question constitute violations by the Peruvian State of the rights to life, to humane treatment and to personal liberty, recognized in Articles 4, 5 and 7 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"). Peru requested that the case be closed, inasmuch as those responsible for the deaths of Emilio Moisés and Rafael Samuel Gómez Paquiyaury had been convicted of aggravated homicide and sentenced to imprisonment. The State reported that they were also ordered to pay civil damages to each of the victims' legal heirs. The IACHR therefore decides to admit the case and to continue to examine its merits.

II PROCESSING WITH THE COMMISSION

2. The Commission opened the case on June 12, 1992, and forwarded the pertinent parts of the petition to the Peruvian State with the request that it provide information within 90 days. The State responded on September 30, 1992. On November 11, 1992, the Commission sent the State's reply to the petitioners and requested that they send their comments within 45 days.

3. On October 21, 1992, the State sent a communication to the Commission, enclosing a report done by the Ministry of the Interior on this case. On June 8, 1993, the State sent additional information, and on December 15, 1993 sent a copy of the conviction handed down by the Callao Superior Court. It also requested that the present case be closed. On October 20, 1994, the State sent additional information, which was forwarded to the petitioner on November 17, 1994.

4. On April 28, 1997, the State sent the Commission additional information. The petitioners presented comments on that additional information on June 12 and July 23, 1997. On August 20, 1997, the State sent the Commission its observations on the petitioners' most recent communication. The petitioners responded on November 18, 1997.

5. On May 1, 2000, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter. On June 21, 2000, the State requested an extension of the established time period. On June 29, 2000, the IACHR granted a 30-day extension effective that date. None of the parties made any statement concerning the Commission's offer of a friendly settlement.

III. POSITION OF THE PARTIES

A. The petitioners' position

6. The petitioners allege that a vehicle carrying securities was stolen in the Province of Callao on June 21, 1991. Police immediately launched a search for the assailants. A Callao Special Services police van was nearing *Avenida de la Marina* in the Province of Callao. Inside were Commander Pedro González (chief of that unit) and four other police officers. Spotting a

suspicious vehicle, the police immediately gave chase and engaged the assailants in the vicinity of the Lima-Callao Development. The brothers Emilio and Rafael Gómez Paquiyauri, ages 14 and 17, respectively, happened to be passing by, on their way to their mother's food stand nearby, and were detained in the confusion created by the skirmish.

7. The petitioners noted that Rafael and Emilio Gómez Paquiyauri were put in the trunk of patrol car 27-1058, of the 27th command of the National Police, and taken to an isolated place where they were brutally interrogated on the assumption that they were criminal subversives. The Gómez Paquiyauri brothers denied any involvement in the robbery and the charges against them. They also said that they were only passing by the place where the clash occurred. The police beat them with the butts of their machine guns and then killed them, as Sergeant Antezama later confessed. He was the only police officer to confess his crime to the Callao Prosecutor.

8. The petitioners report that television cameras captured the detentions on film. That television film became the main piece of evidence to the effect that the young brothers were alive when they were arrested, and strongly suggested that they murdered while in police custody. When a television program broadcast the film, the Ministry of the Interior issued official communiqué No. 06-91 wherein it stated that the facts would be "thoroughly investigated."

9. The petitioners report that some days later, on June 25, 1991, the date on which the complaint surrounding these events was filed with Callao's 5th Criminal Attorney's Office, the home of the victims' parents was searched and the mother was summoned to the offices of the Anti-Terrorism Bureau to be deposed. All this was part of a campaign to harass the victims' next of kin, who were seeking an inquiry into the events and punishment of those guilty of murdering the above-named youths.

10. The petitioners report that on November 9, 1993, the Third Criminal Law Chamber of the Callao Superior Court convicted the material authors of the crimes. The petitioners point out that although it was proven that the youths were murdered on an order dispatched by radio to the police who were holding the youths, the only persons prosecuted were the five police officers who received the orders to execute the Gómez Paquiyauri brothers. The intellectual authors of the crime, i.e., the persons who had sent radio dispatches ordering that the victims be killed—namely Captain César Augusto Santoyo (a deserter) and Police Major Juan Valdelomar Quiroz Chávez—went unpunished. The Superior Court Prosecutor and Callao's Third Correctional Court expressly dropped the case proceedings against them, even though there was sufficient evidence linking them to the victims' deaths.

11. The petitioners point out that the orders that Captain César Augusto Santoyo Castro and Peruvian Police Major Juan Valdelomar Quiroz Chávez radioed were reliably established by the statements made by noncommissioned officers José Infantes Quiroz and Angel del Rosario Vásquez Chumo, who were the drivers for the patrolmen who killed the Gómez Paquiyauri brothers. They allege that the fact that both boys were killed at the same time is evidence that their execution was ordered from above, which is precisely what the examining magistrate in the case had concluded.

12. The petitioners allege that the domestic remedies have been ineffective for purposes of punishment of the intellectual authors responsible for sending the radio dispatch ordering that the victims be killed. They also allege that the police and court inquiry were cover-ups for those who gave the order that the Gómez Paquiyauri brothers be killed and who have still eluded prosecution.

13. The petitioners contend that on October 24, 1994, a former noncommissioned officer sent a letter to the National Human Rights Coordinator to report the threats that he and his family were receiving because of statements he had made to the press to the effect that there were intellectual authors of these crimes who were going unpunished.

14. The petitioners argue that Peru has failed to compensate the victims' next of kin. They report that on November 29, 1993, the Third Chamber of the Callao Superior Court handed

down a ruling convicting the material authors of the crimes and ordering them to pay civil damages in the amount of 20,000 new soles, to be divided among the victims' legal heirs. Nevertheless, as of November 18, 1997, that compensation had not been paid.

15. They allege that because the authors of the killing were agents of a State institution, namely the National Police, the State is obligated to assume responsibility for paying the damages owed to the victims' next of kin.

B. The State's position

16. The State maintains that the Division for Investigating Homicide, Assaults and Health-related crimes (DDCV) prepared affidavit N° 281-IC-H-DDCV, dated June 26, 1991, and expanded affidavit N° 192-IC-H-DDCV, dated July 8, 1991, certifying the deaths of the young boys, ages 14 and 17, and indicating that the author was identified as a member of the Peruvian National Police and was incarcerated by order of Callao's 5th Examining Magistrate.

17. It argues that the authors of the homicide of the Gómez Paquiyauri brothers were identified as police officers. Criminal proceedings were instituted against them in the 5th Criminal Court of the Province of Callao. Callao's 1st Criminal Chamber handed down a ruling of conviction.

18. The State points out that on November 29, 1993, the Third Criminal Chamber of the Callao Superior Court issued a ruling of second instance that convicted the guilty parties of the crimes charged, and ordered the following sentences: 18 years' imprisonment for PG Sergeant Second Class Guillermo Paulino Cornejo Zapata and for PG Sergeant Second Class Francisco Antezana Santillán; 15 years for PG Corporal Dámaso Alonso Antezana Liñan; 5 years for SO3 José Angel Infante Quiroz; 6 years for SO3 Angel del Rosario Vásquez Chumo; and 2 years for Captain PG Hodar Hinchástegui, for the crimes of aggravated homicide. It also ordered civil damages of 20,000 new soles for the victims' next of kin.

19. The State reports that in the hearing held to sentence all those convicted, an appeal was filed to vacate the sentences of incarceration. On October 17, 1994, the Supreme Court's Criminal Law Transitory Chamber declared that the petition seeking to have the sentences nullified was denied, and upheld the sentence of imprisonment for those convicted.

20. The State reports that through memorandum No. 268-97-IN-CNDDHH/SP, dated May 8, 1997, the Ministry of the Interior reported that the persons convicted of the murder of the young Gómez Paquiyauri brothers had been serving their sentences and that on November 10, 1995, Guillermo Paulino Cornejo Zapata and Francisco Antezano Santillán had been paroled; Dámaso Antezama Liñan was paroled on May 1, 1995 and Angel del Rosario Vásquez Chumo on November 22, 1994. All the paroles were done by order of the proper authorities and pursuant to the provisions of the Sentencing Code.

21. The State asserts that Peru investigated the facts denounced, using the mechanisms of domestic law, which successfully identify, prosecuted and punished the authors and ordered payment of damages to the victims' next of kin. Payment of those damages must be effected in accordance with the procedures established under the domestic legal system.

IV. ANALYSIS

22. The Commission will now examine the requirements for a petition's admissibility, as established in the American Convention.

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

23. The petitioners are authorized to file petitions with the Commission under Article 44 of the American Convention. The alleged victims named in the petition are individual natural persons whose Convention-recognized rights Peru undertook to respect and ensure. With regard to the

State, the Commission notes that Peru is a State party to the American Convention, which it ratified on July 28, 1978. Hence, the Commission has competence *ratione personae* to examine the petition.

24. The Commission also has competence *ratione materiae* by reason of the fact that the allegations made in the petition could constitute violations of rights protected by the American Convention.

25. The IACHR has competence *ratione temporis* by virtue of the fact that the facts in question allegedly occurred as of June 1991, when the obligation to respect and ensure the rights recognized in the American Convention was already binding upon Peru.

B Admissibility requirements for the petition

1. Exhaustion of the remedies under domestic law

26. The Commission notes that the petition in this case, dated July 2, 1991, was filed before the remedies under domestic law had been exhausted. That fact, however, does not preclude the admissibility of the petition at this stage in the process. The IACHR has pointed out that the requirements for a petition's admissibility must be examined at the time the Commission decides the question of admissibility. Article 46 of the Convention states that "Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements: a) that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." The decision as to the admissibility of a petition is not made at the time the petition is filed. Under Article 33 of the Commission's Regulations, for example, the Commission may ask the petitioner to complete the requirements omitted in a petition when the Commission considers that the petition is "inadmissible or incomplete."¹

27. To declare a case inadmissible because the remedies under domestic law have not been exhausted at the time of filing, even when by the time the Commission rules on admissibility those resources have already been exhausted, would imply a decision based solely on the formalities of the law, which is totally at odds with the protection of the human rights recognized in the Convention. The alleged victims could be left without any means of defense. Even if a new petition on the same facts were presented, the Commission would in all likelihood be unable to examine the case if by that time the six-month period provided for in Article 46(1)(b) of the Convention had expired. The Inter-American Court of Human Rights has ruled that "It is generally accepted that the procedural system is a means of attaining justice and that the latter cannot be sacrificed for the sake of mere formalities."²

28. The Commission is confirming that the situation that must be considered to establish whether the domestic remedies have been exhausted is the situation at the time the issue of admissibility is decided. Consequently, the Commission considers that with the ruling handed down by the Criminal Transitory Chamber of the Supreme Court on October 17, 1994, the rule contained in Article 46(1)(a) of the American Convention requiring exhaustion of domestic remedies is satisfied.

2 Filing deadline

29. In the instant case, the petition was lodged before the ruling of the Supreme Court's Criminal Transitory Chamber on October 17, 1994. Therefore, the requirement established in Article 46(1)(b) of the American Convention is met.

3. Duplication of proceedings and *res judicata*

30. It is the Commission's understanding that the subject of the petition is not pending in another international proceeding for settlement. Nor is it substantially the same as one

¹ IACHR, Report N° 52/00, Dismissed Congressional Employees, Cases 11.830 and 12.038, paragraphs 18-22.

² IACtHR, *Cayara Case*, Preliminary Objections, Judgment of February 3, 1993, par. 42.

previously studied by the Commission or by another international organization. Thus, the requirements stipulated in Articles 46(1(c) and 47(d) are satisfied.

4. Characterization of the facts

31. The Commission considers that the petitioners' brief concerns facts that if true could constitute a violation of rights guaranteed under the Convention.

32. In effect, the Commission observes that the petitioners argue that the intellectual authors of the crimes denounced were never prosecuted. The petitioners contend that even though it was shown that the orders came from superiors, the only persons prosecuted were the five police officers who received the orders to execute the Gómez Paquiyauri brothers. The intellectual authors of the crime, who radioed the orders to execute the victims, have never been brought to justice, even though there is sufficient evidence linking them to the homicides.

33. The Commission notes in this regard that Article 1 of the American Convention on Human Rights establishes the obligation of States parties to respect the rights and freedoms recognized therein to all persons subject to their jurisdiction and to ensure to them the free and full exercise of those rights and freedoms. Because of the obligation to ensure the free and full exercise of the rights and freedoms recognized in the Convention, States are obligated to "prevent, investigate and punish any violation of the rights recognized by the Convention and, moreover, if possible attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation."³

34. The obligation to investigate and punish any action that involves a violation of the rights recognized by the Convention requires that the intellectual authors of human rights violations be punished as well.⁴

35. Furthermore, on the matter of civil damages in the deaths of the young Emilio Moisés and Rafael Samuel Gómez Paquiyauri, the IACHR notes that on November 29, 1993, the Third Chamber of the Callao Superior Court handed down a ruling convicting the material authors of the crimes and ordering them to pay the victims' legal heirs a total of 20,000 new soles in the form of civil damages. The Commission will give its finding on this matter in the report on the merits, where it will examine the petitioners' allegation to the effect that the convicted police officers have not paid those civil damages and arguing that the State is responsible for payment.

36. The Commission further observes that the petition concerns the alleged extrajudicial execution of a 17-year old youth and a 14-year old boy. Exercising its authorities by virtue of the principle *iura novit curia*, at its own initiative the Commission is deciding to study whether the facts denounced might constitute a violation by Peru of the provisions of Article 19 of the American Convention. Exercising that same authority and at its own initiative, the Commission also decides to study whether the facts denounced could constitute a violation by Peru of Articles 8 and 25 of the American Convention since, as previously noted, there have been problems or omissions in the investigation into the intellectual authors of the extrajudicial executions denounced in the instant case.

V. CONCLUSIONS

37. The Commission concludes that it is competent to take cognizance of this case and that the petition is admissible under Articles 46 and 47 of the American Convention.

³ IACtHR, Velásquez Rodríguez Case, Judgement of July 29, 1988, Series C No. 4, par.166.

⁴ See IACHR, Report N° 42/99, Hugo Muñoz Sánchez, Bertila Lozano Torres, Dora Oyaque Fierro, Luis Enrique Ortiz Perea, Armando Richard Amaro Condor, Robert Edgar Teodoro Espinoza, Heráclides Pablo Meza, Felipe Flores Chipana, Marcelino Rosales Cárdenas and Juan Gabriel Mariños Figueroa (*La Cantuta*), Case 11.045 (Peru) paragraphs 34-38. See also IACtHR, Constitutional Court Case, judgment of September 29, 1999. Series C No. 71, para.123, and IACtHR, Blake Case, Reparations, Judgment of January 22, 1999, Series C No. 48, par. 65

38. Based on the foregoing arguments of fact and of law, and without prejudging the merits of the case,

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

1. To declare that the present case is admissible with respect to the possible violations of Articles 1(1), 4, 5, 7, 8, 19 and 25 of the American Convention on Human Rights.
2. To notify the parties of this decision.
3. To continue the analysis of the merits of the case.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the fifth day of March in the year 2001. (Signed) Claudio Grossman, Chairman; Juan Méndez, First-Vice Chairman; Marta Altolaguirre, Second Vice-Chair, and Commission members Hélio Bicudo, Robert K. Goldman, Julio Prado Vallejo and Peter Laurie.