

Castillo Petruzzi et al. v. Peru

ABSTRACT¹

This is one of the many cases stemming from the Peruvian State's fight, during the 1980s and 1990s, against the Tupac Amaru terrorist organization. The victims are four Chilean nationals, members of Tupac Amaru, who were tried before faceless military courts and found guilty of treason. It is noteworthy that when, in 1996, a Tupac Amaru commando stormed the Japanese embassy in Lima and held seventy-two hostages for months, they specifically demanded the release of the four victims of this case.

I. FACTS

A. Chronology of Events

1. Events Pertaining to all Victims

1982: The Túpac Amaru Revolutionary Movement (*Movimiento Revolucionario Túpac Amaru*, “MRTA”), a rebel group, begins operating in Peru.² Investigations by Peruvian authorities reveal Mr. Jaime Francisco Sebastián Castillo Petruzzi, a Chilean national, is a MRTA leader.³ Mr. Castillo Petruzzi, with support from other MRTA leaders, kidnaps wealthy businessmen to fund terrorist activities.⁴ MRTA sets up “people’s prisons” to house kidnap victims while they await ransom money.⁵ Over the course of this kidnapping operation,

1. Sean Lask, Author; Heather Hassan, Editor; Elise Cossart-Daly, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. David Montoya, *Quiénes Son Los Chilenos del MRTA*, CARETAS, <http://www.caretas.com.pe/1999/1571/mrta/mrta.htm> (last visited July 30, 2013).

3. *Peru: Chilenos MRTA Condenados Recurrirán a Corte Interamericana*, EMOL (Sep. 8, 2003), <http://www.emol.com/noticias/internacional/2003/09/08/122481/peru-chilenos-mrta-condenados-recurriran-a-corte-interamericana.html>.

4. David Montoya, *Quiénes Son Los Chilenos del MRTA*, CARETAS, <http://www.caretas.com.pe/1999/1571/mrta/mrta.htm> (last visited July 30, 2013).

5. *Peru: Chilenos MRTA Condenados Recurrirán a Corte Interamericana*, EMOL (Sep. 8, 2003), <http://www.emol.com/noticias/internacional/2003/09/08/122481/peru-chilenos-mrta-condenados-recurriran-a-corte-interamericana.html>.

Mr. Castillo Petruzzi kills mining entrepreneur Mr. David Ballón Vera while he is held in a “people’s prison.”⁶

October 15, 1993: Peruvian authorities rescue Mr. Raul Hiraoka Torres, a wealthy businessman kidnapped by the MRTA’s “Special Extortion and Kidnapping Unit.”⁷ With his help, the Peruvian government dismantles multiple MRTA facilities, which ultimately leads to the arrests of the victims.⁸

2. Events Pertaining to Mr. Jaime Francisco Sebastián Castillo Petruzzi

October 15, 1993: The Counter-Terrorist Directorate (*Dirección Contra el Terrorismo*, “DINCOTE”), a government department focused on counterterrorism, detains Chilean national Mr. Castillo Petruzzi.⁹

November 18, 1993: A Special Military Prosecutor charges Mr. Castillo Petruzzi with treason.¹⁰ Though Mr. Castillo Petruzzi is Chilean, Peruvian criminal law allows Peruvian courts to convict individuals of treason regardless of nationality.¹¹

November 22, 1993: State agents allow Mr. Castillo Petruzzi to contact an attorney for the first time since he was detained.¹²

November 25, 1993: Mr. Castillo Petruzzi’s attorney attempts to visit him in prison, but prison staff do not allow him to meet with his client.¹³

November 28, 1993: State agents bring Mr. Castillo Petruzzi before a “faceless” court, meaning he was bound and blindfolded, for a preliminary hearing.¹⁴ They do not allow Mr. Castillo Petruzzi to confer

6. David Montoya, *Quiénes Son Los Chilenos del MRTA*, CARETAS, <http://www.caretas.com.pe/1999/1571/mrta/mrta.htm> (last visited July 30, 2013).

7. Carlos Méndez, *Kidnapping Inc., A Flourishing Business in Ibero-America*, 21 EXEC. INTELLIGENCE REV. 38 (1994).

8. *Id.*

9. *Castillo Petruzzi v. Peru*, Merits, Reparations, and Costs, Judgment, Inter-Am Ct. H.R. (ser. C) No. 52, ¶¶ 86.2-86.4 (May 30, 1999).

10. *Id.* ¶ 86.9.

11. *Id.* ¶ 86.3; *Castillo Petruzzi v. Peru*, Preliminary Objections, Judgment, Inter-Am Ct. H.R. (ser. C) No. 41, ¶ 5 (Sep. 4, 1998).

12. *Castillo Petruzzi v. Peru*, Merits, Reparations and Costs, ¶¶ 86.6, 86.28.

13. *Id.* ¶ 86.28.

14. *Id.* ¶ 86.30.

with an attorney prior to the hearing.¹⁵ The authorities blindfold Mr. Castillo Petruzzi for the duration of the hearing and prohibit him from conducting discovery or cross-examination of the prosecution's witnesses.¹⁶

November 29, 1993: In an attempt to move Mr. Castillo Petruzzi's case to civil court, Mr. Castillo Petruzzi's attorney files a motion to dismiss the case for lack of military jurisdiction.¹⁷

January 2, 1994: Mr. Castillo Petruzzi is indicted for treason because of his involvement with the MRTA.¹⁸

January 6, 1994: The court allows Mr. Castillo Petruzzi's attorney to access the case file for the first time.¹⁹ He subsequently presents a defense brief to the court.²⁰

January 7, 1994: The Peruvian Air Force (*Fuerza Aérea del Perú*, "FAP") Special Military Court of Inquiry rejects Mr. Castillo Petruzzi's November 29, 1993 motion to dismiss and sentences him to life in prison for treason.²¹ Mr. Castillo Petruzzi appeals.²²

February 10 & 16, 1994: Mr. Castillo Petruzzi's attorney files another motion to vacate the lower court's decision and to send the case before a civilian court.²³

March 14, 1994: FAP's Special Military Tribunal upholds the lower court's ruling.²⁴ Mr. Castillo Petruzzi again appeals.²⁵

May 3, 1994: The Special Tribunal of the Supreme Court of Military Justice dismisses Mr. Castillo Petruzzi's motion to dismiss and upholds

15. *Id.*

16. *Id.*

17. *Id.* ¶ 86.32.

18. *Id.* ¶ 86.34; see also Carlos Noriega, *El Juicio Criticado en el que Peru Mandó a Prisión a Cuatro Chilenos*, PAGINA 12 (Sept. 3, 2003), <http://www.pagina12.com.ar/diario/elmundo/4-24973-2003-09-03.html#arriba>.

19. Castillo Petruzzi v. Peru, Merits, Reparations and Costs, ¶ 86.35.

20. *Id.*

21. *Id.* ¶¶ 5, 86.36.

22. *Id.* ¶ 86.37.

23. *Id.* ¶ 86.39.

24. *Id.* ¶ 86.40.

25. *Id.* ¶ 86.41.

his life sentence.²⁶

3. Events Pertaining to Ms. María Concepción Pincheira Sáez and Mr. Lautaro Enrique Mellado Saavedra

October 14, 1993: DINCOTE detains Chilean nationals Ms. María Concepción Pincheira Sáez and Mr. Lautaro Enrique Mellado Saavedra.²⁷

November 20, 1993: The judge of the Special Military Tribunal begins proceedings against Ms. Pincheira Sáez and Mr. Mellado Saavedra and orders State agents to take them into custody.²⁸

November 27 & 28, 1993: Mr. Mellado Saavedra and Ms. Pincheira Sáez appear before a “faceless” court for a preliminary hearing.²⁹ The court gives Mr. Mellado Saavedra a court appointed attorney, as they do not recognize his chosen attorney.³⁰ The court does not allow Mr. Mellado Saavedra or Ms. Pincheira Sáez’s attorneys to confer with their clients, conduct discovery, or cross-examine witnesses called by the prosecution.³¹

November 28 & 30, 1993: Ms. Pincheira Sáez and Mr. Mellado Saavedra obtain defense attorneys that are recognized by the court.³²

December 2, 1993: The court states that it will allow both defense attorneys to access the case file on December 9, 1993 for no more than thirty minutes.³³

January 2, 1994: Ms. Pincheira Sáez and Mr. Mellado Saavedra are indicted for treason.³⁴

January 5, 1994: The court allows Ms. Pincheira Sáez and Mr. Mellado Saavedra’s defense attorneys to view their clients’ case files for the first

26. *Id.* ¶ 86.43.

27. *Id.* ¶¶ 86.12, 86.3.

28. *Id.* ¶ 86.44.

29. *Id.* ¶ 86.46.

30. *Id.*

31. *Id.*

32. *Id.* ¶ 86.45.

33. *Id.* ¶ 86.48.

34. *Id.* ¶ 86.50.

time.³⁵

January 6, 1994: After only a day of preparation, the court orders Ms. Pincheira Sáez and Mr. Mellado Saavedra's attorneys to present their arguments before the court.³⁶

January 7, 1994: FAP Special Military Court of Inquiry rejects both Ms. Pincheira Sáez and Mr. Mellado Saavedra's motions to dismiss charges against them for lack of jurisdiction.³⁷ The court convicts Ms. Pincheira Sáez and Mr. Mellado Saavedra of treason and sentences them to life in prison.³⁸ Both appeal.³⁹

March 14, 1994: FAP Special Tribunal upholds the lower court conviction.⁴⁰

April 28, 1994: The Assistant Special Prosecutor General asks the Special Tribunal of the Supreme Court of Military Justice to nullify Ms. Pincheira Sáez and Mr. Mellado Saavedra's life sentences and instead sentence them to forty years imprisonment.⁴¹

May 3, 1994: The Special Tribunal of the Supreme Court of Military Justice refuses to nullify the May 14, 1994 ruling and thereby upholds the January 7, 1994 ruling.⁴²

4. Events Pertaining to Mr. Alejandro Luis Astorga Valdéz

October 14, 1993: DINCOTE detains Chilean national Mr. Astorga Valdéz.⁴³

November 17, 1993: Mr. Astorga Valdéz appoints an attorney.⁴⁴

November 20, 1993: The judge of the Special Military Tribunal begins

35. *Id.* ¶ 86.51.

36. *Id.*

37. *Id.* ¶ 86.52.

38. *Id.*

39. *Id.* ¶ 86.53.

40. *Id.* ¶ 86.56.

41. *Id.* ¶ 86.58.

42. *Id.* ¶ 86.59.

43. *Id.* ¶¶ 86.12, 86.3.

44. *Id.* ¶ 86.14.

proceedings against Mr. Astorga Valdéz and orders him into custody.⁴⁵

November 28, 1993: State agents bring Mr. Astorga Valdéz before a “faceless” court for a preliminary hearing.⁴⁶ Mr. Astorga Valdéz is not allowed to confer with his attorney during the hearing.⁴⁷ State agents restrain Mr. Astorga Valdéz, cover his head in a hood, and prohibit him from conducting discovery or cross-examining witnesses.⁴⁸ The court successfully intimidates defense counsel before and during the preliminary hearing.⁴⁹

December 1, 1993: Mr. Astorga Valdéz’s attorney files a motion to dismiss the charges of treason for lack of jurisdiction.⁵⁰

January 2, 1994: The State indicts Mr. Astorga Valdéz.⁵¹ The indictment states that the evidence against Mr. Astorga Valdéz does not rise to the level of treason and recommends that if he is found guilty of terrorism that the Special Military Tribunal should refer his case to civilian court.⁵²

January 6, 1994: Mr. Astorga Valdéz’s defense attorney is permitted to view his case file for one hour to prepare arguments that same day.⁵³

January 7, 1994: The FAP Special Military Court of Inquiry grants Mr. Astorga Valdéz’s motion to dismiss, stating that the court does not have jurisdiction to rule on Mr. Astorga Valdéz’s case.⁵⁴

March 14, 1994: The FAP Special Military Tribunal upholds the dismissal of Mr. Astorga Valdéz’s case.⁵⁵

April 28, 1994: The Assistant Special Prosecutor General requests that the Special Tribunal of the Supreme Court of Military Justice nullify the lower court’s dismissal for lack of jurisdiction and convict Mr. Astorga

45. *Id.* ¶ 86.15.

46. *Id.* ¶ 86.16.

47. *Id.* ¶ 86.16(a).

48. *Id.* ¶¶ 86.16(b)-(c).

49. *Id.* ¶ 86.16(e).

50. *Id.* ¶ 86.18.

51. *Id.* ¶ 86.19.

52. *Id.*

53. *Id.* ¶ 86.20.

54. *Id.* ¶ 86.21.

55. *Id.* ¶ 86.23.

Valdéz of treason.⁵⁶

May 3, 1994: The Special Tribunal of the Supreme Court of Military Justice nullifies Mr. Astorga Valdéz's dismissal, convicts him of treason and sentences him to life in prison.⁵⁷

B. Other Relevant Facts

From 1980 to 1994, Peru suffers from social turmoil caused in part by terrorist violence.⁵⁸ During the time when Mr. Castillo Petruzzi, Ms. Pincheira Sáez, Mr. Mellado Saavedra, and Mr. Astorga Valdéz are arrested, the Peruvian government declares a state of emergency and suspends certain portions of the Peruvian Constitution.⁵⁹ A special government department, known as DINCOTE, is created for counterterrorism operations.⁶⁰ DINCOTE is allowed to hold any suspect for fifteen days with the possibility of extending detention another fifteen days.⁶¹ During such investigations, suspects do not have any right to counsel until they make a preliminary statement.⁶² If DINCOTE determines the charge is treason, the suspects are tried before a "faceless" military tribunal.⁶³

In December 1996, MRTA took seventy-two hostages and occupied the Japanese Embassy.⁶⁴ The commando demanded the release of MRTA prisoners, including Mr. Castillo Petruzzi, Ms. Pincheira Sáez, Mr. Mellado Saavedra, and Mr. Astorga Valdez.⁶⁵ Four months later, the insurgents are killed by military forces when they brutally take back the embassy.⁶⁶ These events have been the subject of other Inter-American Court's cases.⁶⁷

II. PROCEDURAL HISTORY

56. *Id.* ¶ 86.24; *see id.* ¶ 86.25.

57. *Id.* ¶ 86.25.

58. *Id.* ¶ 86.1.

59. *Id.* ¶ 86.5.

60. *Id.* ¶ 86.2.

61. *Id.*

62. *Id.* ¶ 86.6.

63. *Id.* ¶ 86.10.

64. Gustavo Gonzalez, *RIGHTS-CHILE: Effort to Get Back Political Prisoners Held in Peru*, INTER PRESS SERVICE (Apr. 30, 1999), <http://www.ipsnews.net/1999/04/rights-chile-effort-to-get-back-political-prisoners-held-in-peru/>.

65. *Id.*

66. *Id.*

67. *See also* Eduardo Nicolás Sánchez, et al. ("Operation Chavín de Huántar") v. Peru, Inter-Am. Comm'n H.R., Case No. 12.444 (Dec. 13, 2011).

A. Before the Commission

January 28, 1994: The chief of the legal department of Chilean organization the Social Aid Foundation of Christian Churches (*Fundación de Ayuda Social de las Iglesias Cristianas*, "FASIC"), Ms. Verónica Reyna, files a complaint on behalf of Mr. Castillo Petruzzi, Ms. Pincheira Sáez, and Mr. Mellado Saavedra with the Commission.⁶⁸

June 29, 1994: The Commission transmits the pertinent parts of the complaint to the State and requests that it provide a response within two months.⁶⁹

August 26, 1994: A second group of complainants provides new information on the case.⁷⁰

September 14, 1994: The State responds to the initial complaint, stating that the victims were tried and found guilty of treason.⁷¹ The State asserts that the proceedings before the military courts respected all rules of due process and right to counsel.⁷²

September 29, 1994: The second group of complainants resubmits their complaint.⁷³

November 8, 1994: FASIC submits observations regarding the State's response and requests that the January complaint be expanded to include Mr. Astorga Valdéz.⁷⁴

November 18, 1994: The second group of complainants adds the case of Mr. Astorga Valdéz to the petition.⁷⁵

January 31, 1995: The Commission receives a report of the Human Rights commission of the Chilean Parties of Democratic Reconciliation from the second group of complainants, which states the Commission attempted to visit the victims in the Peruvian prison but was denied

68. Castillo Petruzzi v. Peru, Preliminary Objections, ¶ 3.

69. *Id.*

70. *Id.* ¶ 4.

71. *Id.* ¶ 5.

72. *Id.*

73. *Id.* ¶ 4.

74. *Id.* ¶ 6.

75. *Id.* ¶ 4.

access to them.⁷⁶

March 8, 1995: The State informs the Commission that Mr. Castillo Petruzzi, Ms. Pincheira Saéz, and Mr. Mellado Saavedra are serving a life term in prison.⁷⁷ The report notes that the Special Supreme Military Tribunal rejected a motion filed by Mr. Castillo Petruzzi for annulment of his final judgment on September 14, 1994.⁷⁸

November 7, 1995: The State reports Ms. Pincheira Saéz has been harassed in prison and suffers from health problems.⁷⁹

June 14, 1996: Petitioners ask the Commission to adopt precautionary measures on behalf of the victims as a result of a possible transfer to an “uninhabitable” prison.⁸⁰

July 16, 1996: The State claims that there is no plan to transfer the victims out of the Yanamayo prison, which they currently occupy.⁸¹

November 19, 1996: The Commission informs the State that the case is admissible, and attempts to facilitate a friendly settlement.⁸²

February 6, 1996: The State refuses a friendly settlement, reiterating that the victims were convicted according to criminal law, and that all rules regarding due process were observed.⁸³

December 17, 1996: The Commission receives a report from the Peruvian Supreme Court of Military Justice asserting that Peruvian courts have jurisdiction over the victims because the crimes were committed in Peru; the report asserts that the victims’ nationality is irrelevant.⁸⁴

December 18, 1996: The Petitioners request precautionary protection of the victims in the light of the seizure of the Japanese Embassy in Peru by members of the MRTA, the group with which the victims were

76. *Id.* ¶ 8.

77. *Id.* ¶ 9.

78. *Id.*

79. *Id.* ¶ 10.

80. *Id.* ¶ 11.

81. *Id.*

82. *Id.* ¶ 12.

83. *Id.*

84. *Id.* ¶ 13.

associated.⁸⁵

March 11, 1997: The Commission approves on the Merits No. 17/97.⁸⁶ The Commission finds that the State Report violated Articles 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal), 20 (Right to a Nationality), and 25 (Right to Judicial Protection) in conjunction with Article 1(1) (Obligation to Respect Rights) of the American Convention.⁸⁷ The Commission recommends that the State annul the victims' convictions and conduct a new trial in civil court that comports with due process.⁸⁸

April 24, 1997: The Commission transmits the Report on the Merits to the State.⁸⁹

B. Before the Court

June 27, 1997: The Commission submits the case to the Inter-American Court of Human Rights after the State failed to adopt its recommendations.⁹⁰

1. Violations Alleged by Commission⁹¹

Article 5 (Right to Humane Treatment)

Article 8 (Right to a Fair Trial)

Article 20 (Right to Nationality)

Article 29 (Restrictions Regarding Interpretation)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁹²

85. *Id.* ¶ 14.

86. *Id.* ¶ 16.

87. *Id.*

88. *Id.*

89. *Id.* ¶ 17.

90. *Id.* ¶ 18.

91. *Id.* ¶ 1. The Commission alleged that the State violated Article 29 (Restrictions Regarding Interpretation) in conjunction with the Vienna Convention on Consular Relations.

92. *See generally id.*

Same Violations Alleged by the Commission.

September 3, 1997: The State appoints Fernando Vidal Ramírez as *ad hoc* judge.⁹³

October 1, 1997: The State submits preliminary objections claiming that the victims did not exhaust domestic remedies, petitioners lacked standing to bring the case, the decision to send the case to the court was premature, and that the Court lacks jurisdiction to hear the case.⁹⁴

September 4, 1998: The Court issues its Judgment on the Preliminary Objections.⁹⁵ The first four objections all involve a failure to exhaust domestic remedies.⁹⁶ The State insists the Commission failed to comply with Article 46(1)(a) (Exhaustion of Domestic Remedies) and 47(a) (Inadmissibility Criteria) of the Convention by processing the initial complaint, which was submitted prior to the completion of the victim's appeal before the Supreme Council of Military Justice.⁹⁷ The Court dismisses these allegations.⁹⁸ The Court explains that accepting a complaint is not the same as initiating procedures against the State.⁹⁹ By not raising the issue of failure to exhaust domestic remedies to the Commission, the State impliedly waived the right to raise the issue before the Court.¹⁰⁰ The Court goes on to say that the State failed to demonstrate the effectiveness of the suggested domestic remedies that the State claims were still available to the victims, such as a writ of habeas corpus.¹⁰¹

The Court upholds the State's objection that the Commission did not inform the State of alleged violations of the Vienna Convention on Consular Relations.¹⁰² By leaving the violation out of the initial report, the Commission denied the State the ability to rectify the issue prior to appearing before the Court.¹⁰³

The State also objects to discrepancies in the Commission report to the Court.¹⁰⁴ In one document the Commission calls for the immediate

93. *Id.* ¶ 23.

94. *Id.* ¶ 27.

95. *Id.* ¶¶ 27, 48.

96. *Id.* ¶¶ 51-74.

97. *Id.* ¶ 52(a).

98. *Id.* ¶ 54.

99. *Id.*

100. *Id.* ¶ 56.

101. *Id.* ¶¶ 62-63.

102. *Id.* ¶ 68.

103. *Id.*

104. *Id.* ¶¶ 71-73.

release of the victims; the other requires the State to annul the military court proceedings.¹⁰⁵ The Court says the two remedies are one and the same, as the annulment of the military proceedings would lead to the release of the victims.¹⁰⁶

The next two objections challenge the petitioners' ability to bring the issue before the Commission.¹⁰⁷ First, the State claims that FASIC lacks the legal ability to submit the initial complaint to the Commission.¹⁰⁸ The Court rejects this notion, as Article 44 of the Convention allows anyone to submit a complaint.¹⁰⁹ It goes on to state that the Court is not subject to the rigid formalities of domestic laws, such as legal standing, since the Court's goal is protection of basic human rights.¹¹⁰

Next, the State contends that the Court lacks jurisdiction because the victims are international terrorists.¹¹¹ The Court observes that the Convention does not take into account the occupation of the victims and dismisses this objection.¹¹²

The State again objects on the grounds that the Commission sent the case to the Court prior to the State's response.¹¹³ However, the Court points out that the report sent by the Commission was subject to the State conforming to its recommendations.¹¹⁴ Had they conformed, the Commission would have withdrawn its report from the Court.¹¹⁵

The State's eighth objection mirrors previous objections regarding the discrepancies between the recommendations and the report.¹¹⁶ The Court dismisses the objection as repetitive.¹¹⁷

Next, the State objects to a corrected version of the application to the Court, which the Commission submitted after the three month period provided by Article 51(1) of the American Convention on Human Rights.¹¹⁸ The corrected version, the Court explains, is only altered in style and spelling without any change to its content.¹¹⁹ Thus,

105. *Id.*

106. *Id.* ¶ 73.

107. *Id.* ¶¶ 75-85.

108. *Id.* ¶ 76(a).

109. *Id.* ¶ 77.

110. *Id.*

111. *Id.* ¶ 81.

112. *Id.* ¶¶ 82-83.

113. *Id.* ¶ 87(a).

114. *Id.* ¶ 88.

115. *Id.*

116. *Id.* ¶ 91.

117. *Id.* ¶ 92.

118. *Id.* ¶ 95(a).

119. *Id.* ¶ 95(b).

the Court dismisses the State's objection.¹²⁰

Finally, the State asserts that the Commission and the Court have no authority over the State, as it is a sovereign nation and the victims were tried and convicted under laws necessary to combat crime.¹²¹ The Court dismisses the objection on the grounds that as a signatory of the American Convention on Human Rights, the State agreed to submit to the Court's authority in regards to any human rights violations.¹²²

The Court dismisses nine of the State's objections and upholds one, making it clear that the victims exhausted all domestic remedies, the Commission did its due diligence prior to submitting the case, and that the State must comply with the Court's decision on human rights regardless of what crimes the victims have committed.¹²³

III. MERITS

A. Composition of the Court

Hernán Salgado Pesantes, President
Antônio A. Cançado Trindade, Vice-President
Máximo Pacheco Gómez, Judge
Oliver Jackman, Judge
Alirio Abreu Burelli, Judge
Sergio García Ramírez, Judge
Carlos Vincente de Roux Rengifo, Judge
Fernando Vidal Ramírez, Judge *ad hoc*

Manuel E. Ventura Robles, Secretary
Renzo Pomi, Deputy Secretary

B. Decision on the Merits

May 30, 1999: The Court issues its Judgment on Case of Castillo Petruzzi et al. v. Peru.¹²⁴

The Court found unanimously that Peru had violated:

120. *Id.* ¶ 97.

121. *Id.* ¶ 100(a).

122. *Id.* ¶¶ 101-03.

123. *Id.*

124. *See generally* Castillo Petruzzi v. Peru, Merits, Reparations and Costs.

Article 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time) of the Convention, to the detriment of Mr. Castillo Petruzzi, Ms. Pincheira Sáez, Mr. Mellado Saavedra, and Mr. Astorga Valdéz,¹²⁵ because:

The State detained the victims for thirty-six days before they were brought before a judge.¹²⁶ Furthermore, under the State's emergency provisions, State authorities were empowered to hold individuals charged with terrorism for thirty days without bringing them before a judge.¹²⁷

The State argued that under Article 27(2) (Non-Derogable Rights) of the Convention, states may suspend certain rights, including Article 7 (Right to Personal Liberty), during a state of emergency.¹²⁸ The Court recognized that terrorism was rampant in Peru during the time of the alleged violations, but explained that the suspension of rights must be done delicately and must properly balance the immediate needs of the State and the restrictions of the Convention.¹²⁹

The Court found that the Peruvian law that allowed thirty-day detentions without trial and the detention of the victims in this case constituted an excessive detention and violated Article 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time) of the Convention.¹³⁰

Article 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal) of the Convention, to the detriment of Mr. Castillo Petruzzi, Ms. Pincheira Sáez, Mr. Mellado Saavedra, and Mr. Astorga Valdéz,¹³¹ because:

Though trial by a military tribunal is not a violation of due process per se, certain aspects of this tribunal inhibited the right to be judged by an independent and impartial court.¹³² Article 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal) provides that individuals have the right to a hearing before an impartial

125. *Id.* ¶¶ 104-12.

126. *Id.* ¶ 111.

127. *Id.* ¶¶ 109-10.

128. *Id.* ¶¶ 106.

129. *Id.* ¶¶ 109-10.

130. *Id.* ¶¶ 110-11.

131. *Id.* ¶¶ 123-34.

132. *Id.* ¶¶ 125 (a), (e), (g).

and independent tribunal, in accordance with due process guarantees previously established by law.¹³³

The Court explained that under Peruvian law, military tribunals only have jurisdiction over military personnel who commit crimes or fail to perform their duties.¹³⁴ Peruvian law does not allow military tribunals to hear cases involving civilians.¹³⁵ When the State tried civilians before military tribunals, it did not observe judicial procedures previously established by law, and thus violated the victims' due process rights.¹³⁶

Furthermore, these tribunals lacked impartiality.¹³⁷ The military engaged in anti-terrorism enforcement and prosecuted terrorist groups, so they could not impartially adjudicate charges of terrorism.¹³⁸ The Court also stated that a "faceless" tribunal contravenes Article 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal) because it prevents defendants from identifying the judges or assessing their competence.¹³⁹

Therefore, the Court found that the State violated Article 8 (Right to a Fair Trial) of the Convention.¹⁴⁰

Articles 8(2)(b) (Right to Have Prior Notification of Charges) and 8(2)(c) (Adequate Time and Means to Preparation a the Defense) of the Convention, to the detriment of Mr. Castillo Petruzzi, Ms. Pincheira Sáez, Mr. Mellado Saavedra, and Mr. Astorga Valdéz,¹⁴¹ because:

The attorneys for all four victims could not confer with their clients until after their clients made statements to the government and the courts issued the decision a day after the attorneys first had access to the case files.¹⁴² Furthermore, the law only allowed defense counsel to review the case files over a period of twelve hours and the State did not allow the defense attorneys to cross-examine government agents that

133. *Id.* ¶ 124.

134. *Id.* ¶ 128.

135. *See id.*

136. *Id.* ¶¶ 128, 129.

137. *See id.* ¶ 130.

138. *Id.* ¶ 130.

139. *Id.* ¶¶ 131-33.

140. *Id.* ¶ 134.

141. *Id.* ¶¶ 135-42.

142. *Id.* ¶¶ 136(b), (g).

conducted the investigation.¹⁴³ Even further, Mr. Astorga Valdéz was convicted based on evidence presented at the highest court for the first time, which his attorney was not allowed to rebut or even see prior to the trial.¹⁴⁴

Therefore, the Court found that the State violated Articles 8(2)(b) (Right to Have Prior Notification of Charges) and 8(2)(c) (Adequate Time and Means to Preparation a Defense).¹⁴⁵

Article 8(2)(d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel) of the Convention, to the detriment of Mr. Castillo Petruzzi, Ms. Pincheira Sáez, Mr. Mellado Saavedra, and Mr. Astorga Valdéz,¹⁴⁶ because:

*The State's laws only allowed defense attorneys to have one case involving treason or terrorism at a time.*¹⁴⁷ Further, the victims were not given legal counsel between the time they were arrested and the time they gave their initial statements to the government.¹⁴⁸ The Court stated that similar cases where attorneys were given restricted access to their clients violated the Convention.¹⁴⁹ Therefore, the Court held that the State violated Article 8(2)(d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel) of the American Convention.¹⁵⁰

Article 8(2)(f) (Right to Examine Witnesses) of the Convention, to the detriment of Mr. Castillo Petruzzi, Ms. Pincheira Sáez, Mr. Mellado Saavedra, and Mr. Astorga Valdéz,¹⁵¹ because:

*The government agents responsible for the victims' arrest and investigation gave their statements without defense counsel present, thereby making it impossible to cross-examine them.*¹⁵² The Court holds that these restrictions violated Article 8(2)(f) (Right to Examine

143. *Id.* ¶ 138.

144. *Id.* ¶ 140.

145. *Id.* ¶ 142.

146. *Id.* ¶¶ 143-49.

147. *Id.* ¶ 144.

148. *Id.* ¶ 146.

149. *Id.* ¶ 148.

150. *Id.* ¶ 149.

151. *Id.* ¶¶ 150-56.

152. *Id.* ¶¶ 151,155.

Witnesses).¹⁵³

Articles 7(6) (Right to Recourse to a Competent Court) and 25 (Right to Judicial Protection) of the Convention, to the detriment of Mr. Castillo Petruzzi, Ms. Pincheira Sáez, Mr. Mellado Saavedra, and Mr. Astorga Valdéz,¹⁵⁴ because:

Under laws of the State a writ of habeas corpus is not allowed, “based on the same facts or grounds [that are] the subject of a proceeding that is underway.”¹⁵⁵ This meant that none of the victims were allowed to file a writ of habeas corpus.¹⁵⁶ The Court held that a writ of habeas corpus is the proper legal remedy for the victims’ case.¹⁵⁷ Therefore, the State violated Articles 7(6) (Right to Recourse to a Competent Court) and 25 (Right to Judicial Protection) when it prohibited the victims from pursuing this remedy.¹⁵⁸

The Court found by seven votes to one that Peru had violated:

Article 9 (Freedom from *Ex Post Facto* Laws) of the Convention, to the detriment of Mr. Castillo Petruzzi, Ms. Pincheira Sáez, Mr. Mellado Saavedra, and Mr. Astorga Valdéz,¹⁵⁹ because:

Peruvian law defined treason as “aggravated terrorism.”¹⁶⁰ The law, however, did not clearly define how aggravated terrorism differed from terrorism.¹⁶¹ Individuals charged with treason were tried before a faceless tribunal, with less due process guarantees than those charged with terrorism.¹⁶² Treason also carried a harsher sentence than terrorism: under the law individuals convicted of treason must be sentenced to life in prison.¹⁶³ This ambiguity gave DINCOTE and military tribunals inappropriate discretion to determine the rights, treatment, and sentencing of individuals suspected of terrorism.¹⁶⁴

153. *Id.* ¶ 156.

154. *Id.* ¶¶ 174-88.

155. *Id.* ¶ 181.

156. *Id.* ¶ 182.

157. *Id.* ¶ 187.

158. *Id.* ¶ 188.

159. *Id.* ¶¶ 113-22.

160. *Id.* ¶ 119.

161. *Id.*

162. *Id.*

163. *Id.*

164. *See id.*

Under Article 9 (Freedom From Ex Post Facto Laws) the State must narrowly define crimes with clear definitions to avoid abuse of power.¹⁶⁵ Here, the State did not clearly define the differences between crimes of treason and terrorism.¹⁶⁶ Therefore, the Court held that the State violated Article 9 (Freedom from Ex Post Facto Laws).¹⁶⁷

Article 8(2)(h) (Right to Appeal) of the Convention, to the detriment of Mr. Castillo Petruzzi, Ms. Pincheira Sáez, Mr. Mellado Saavedra, and Mr. Astorga Valdéz,¹⁶⁸ because:

Though the victims appealed twice, the appellate courts were not independent or impartial.¹⁶⁹ Simply having a higher court to which an appeal can be made is not all that is required under Article 8(2)(h) (Right to Appeal).¹⁷⁰ The higher court must satisfy the requirements of impartiality and independence or else the proceedings are not valid.¹⁷¹ As the appellate courts that reviewed the victims' appeals were not independent or impartial, the Court found that the State violated Article 8(2)(h) (Right to Appeal).¹⁷²

Article 8(5) (Criminal Proceeding Must be Public) of the Convention, to the detriment of Mr. Castillo Petruzzi, Ms. Pincheira Sáez, Mr. Mellado Saavedra, and Mr. Astorga Valdéz,¹⁷³ because:

All the proceedings and hearings took place on a military base away from the public eye.¹⁷⁴ Therefore, the Court found that the State violated Article 8(5) (Criminal Proceeding Must be Public) of the Convention.¹⁷⁵

Article 5 (Right to Humane Treatment) of the Convention, to the detriment of Mr. Castillo Petruzzi, Ms. Pincheira Sáez, Mr. Mellado Saavedra, and Mr. Astorga Valdéz,¹⁷⁶ because:

All the victims were held in solitary confinement for over thirty-six days

165. *Id.* ¶ 121.

166. *Id.*

167. *Id.* ¶ 122.

168. *Id.* ¶¶ 157-62.

169. *Id.* ¶ 161.

170. *Id.*

171. *Id.*

172. *Id.* ¶ 162.

173. *Id.* ¶¶ 169-73.

174. *Id.* ¶ 172.

175. *Id.* ¶ 173.

176. *Id.* ¶¶ 189-99.

prior to the initiation of judicial proceedings.¹⁷⁷ After the victims exhausted all legal remedies, the highest court sentenced them to life in prison in continuous solitary confinement.¹⁷⁸ The Court held that prolonged isolation and deprivation of communication is itself cruel and unusual punishment.¹⁷⁹ Such isolation is a severe punishment only to be used in exceptional cases due to its crippling effect on prisoners' moral and psychological integrity.¹⁸⁰ Therefore, the Court found that the victims' sentences constituted cruel, inhuman and degrading punishment that violated Article 5 (Right to Humane Treatment).¹⁸¹

The Court found unanimously that Peru had not violated:

Article 20 (Right to Nationality) of the Convention, to the detriment of Mr. Castillo Petruzzi, Ms. Pincheira Sáez, Mr. Mellado Saavedra, and Mr. Astorga Valdéz,¹⁸² because:

*The State's use of the term treason was simply the term to describe the acts of terrorism that the victims were charged with.*¹⁸³ *The term does not imply that the victims acquired the duties of Peruvian citizens, or that the State denied their nationality as Chileans.*¹⁸⁴ *According to the State, the law applies both to nationals and aliens.*¹⁸⁵ *Therefore, the Court found that the State did not violate Article 20 (Right to Nationality).*¹⁸⁶

Article 8(3) (Confession is Valid Only if Not Coerced) of the Convention, to the detriment of Mr. Castillo Petruzzi, Ms. Pincheira Sáez, Mr. Lautaro Enrique Mellado Saavedra, and Mr. Astorga Valdéz,¹⁸⁷ because:

*The victims were ordered to tell the truth at the preliminary proceedings but nothing suggests that they were threatened with punishment or adverse legal penalties if they did not confess.*¹⁸⁸

177. *Id.* ¶ 192.

178. *Id.* ¶ 193.

179. *Id.* ¶ 194.

180. *Id.* ¶ 195.

181. *Id.* ¶¶ 198-99.

182. *Id.* ¶¶ 96-103.

183. *Id.* ¶ 102.

184. *Id.*

185. *Id.* ¶¶ 98(d), (g).

186. *Id.* ¶ 103.

187. *Id.* ¶¶ 163-68.

188. *Id.* ¶¶ 164, 167.

C. Dissenting and Concurring Opinions

1. Partially Concurring and Dissenting Opinion of Judge Fernando Vidal Ramírez

In a separate opinion, Judge Vidal Ramírez summarized the turbulent history of the State, which led it to adopt laws that established the procedure for prosecuting terrorism.¹⁸⁹ According to Judge Vidal Ramírez, due to the rampant and anarchistic actions of terrorists, the State did away with certain rights in favor of military courts and stricter sentences.¹⁹⁰ Despite Judge Vidal Ramírez's understanding of these draconian measures, he concurred that the proceedings against the victims were invalid.¹⁹¹

Judge Vidal Ramírez dissented, however, on the violation of Article 9 (Freedom from Ex Post Facto Laws).¹⁹² Judge Vidal Ramírez listed the elements for both terrorism and treason, to illustrate the military courts can distinguish between the two crimes and have done so since the codification of both crimes.¹⁹³ Further, he found no violation of Article 8(2)(h) (Right to Appeal) as there were several higher courts to which the victims appealed.¹⁹⁴ He also found exceptions to Article 8(5) (Criminal Proceedings Must be Public) allowing for the trial to take place away from the public eye.¹⁹⁵ Finally, Judge Vidal Ramírez disagreed with the Court's finding of a violation of Article 5 (Right to Humane Treatment).¹⁹⁶ As the State issued emergency provisions to protect its citizenry from terrorism, all the sentencing guidelines contained in them were published, which gave these laws legal effect.¹⁹⁷ Judge Vidal Ramírez insisted the Court should have taken these provisions into account, instead of second-hand accounts of the victims' attorneys.¹⁹⁸

2. Concurring Opinion of Judge Carlos Vincente de Roux Rengifo

189. Castillo Petruzzi v. Peru, Merits, Reparations, and Costs, Concurring and Dissenting Opinion of Judge Fernando Vidal Ramírez, Inter-Am Ct. H.R. (ser. C) No. 52, ¶¶ 1-7 (May 30, 1999).

190. *Id.* ¶¶ 4-6.

191. *Id.* ¶ 8.

192. *Id.* at 3, ¶ 1.

193. *Id.* at 3-4, ¶ 2.

194. *Id.* at 4, ¶ 3.

195. *Id.*

196. *Id.* at 4, ¶¶ 1-2.

197. *Id.* at 4, ¶ 1.

198. *Id.* at 4, ¶ 2.

Judge de Roux Rengifo concurred with the Courts finding of violations of Articles 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal) and 8(2)(h) (Right to Appeal) but took issue with its reasoning.¹⁹⁹

According to the majority of the court the violation of Article 8(1) was directly linked to the violation of Article 8(2)(h).²⁰⁰ In essence, since the higher courts lacked impartiality, their rulings were essentially void.²⁰¹ Thus the State violated the victim's right to appeal to a higher court.²⁰²

Judge de Roux Rengifo agreed that Article 8(2)(h) was violated but only because the courts did not reexamine the facts and the probative value of the evidence.²⁰³

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Judgment as a Form of Reparation

The Court indicated the judgment itself should be understood as a form of compensation and should serve as a form of satisfaction for the victims.²⁰⁴

2. Invalidate Judicial Proceedings

The Court ordered the State to provide a new trial for each victim and to ensure due process of law.²⁰⁵

3. Amend Current Law to Comply with the Convention

199. Castillo Petruzzi v. Peru, Merits, Reparations, and Costs, Concurring Opinion of Judge Carlos Vincente de Roux Rengifo, Inter-Am Ct. H.R. (ser. C) No. 52 (May 30, 1999).

200. *Id.* at 2.

201. *Id.*

202. *Id.*

203. *Id.*

204. Castillo Petruzzi v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am Ct. H.R. (ser. C) No. 52, ¶ 225 (May 30, 1999).

205. *Id.*

Under the current laws, the Court found that certain crimes, such as treason, do not allow for many of the guarantees of due process required by the Convention.²⁰⁶ The Court ordered that the State adopt measures to amend these laws to ensure the enjoyment of the rights of the Convention by all persons within the State.²⁰⁷

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

[None]

2. Non-Pecuniary Damages

The Court ordered the State to pay \$2,500 to each of the victims' families to compensate them for the cost of these proceedings.²⁰⁸

3. Total Compensation (including Costs and Expenses ordered):

\$10,000

C. Deadlines

[None]

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

November 17, 1999: The State submitted a brief informing the Court of its refusal to follow the ruling of May 30, 1999.²⁰⁹ According to the State's highest court, the Court's decision lacked impartiality, infringed

206. *Id.* ¶ 222.

207. *Id.*

208. *Id.* ¶ 223.

209. *Castillo Petruzzi v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., ¶ 2 (Nov. 17, 1999).*

upon the State's constitution, and was impossible to enforce.²¹⁰ The State accused the Court of violating due process since the Commission did not include in the application violations found by the Court.²¹¹ Further, the State argued that the decision infringes on their sovereignty because the Court required the State to change its laws.²¹² The Commission countered by pointing out that as a signatory of the Convention, the State must comply with all rulings of the Court.²¹³ The Court determined that, as a signatory to the Convention, the State must comply with the judgment of May 30, 1999.²¹⁴

June 1, 2001: The State took steps to repeal an earlier resolution attempting to withdraw from the Court's jurisdiction.²¹⁵ The State issued several documents informing the Court of the current progress with compliance.²¹⁶

July 1, 2011: The State highlighted the steps taken to adjust the laws to comply with the judgment of May 30, 1999.²¹⁷ Among the many changes it instituted to comply with the judgment, the Court noted the removal of mandatory incommunicado detention and allowance for attorneys to take on more than one client accused of terrorism.²¹⁸ The Court stated that these changes are important, but the State must monitor those affected by these changes to insure they are respected.²¹⁹

Next, the State explained the steps taken to nullify the previous judgment against the victims and give them a new trial.²²⁰ All the victims received a new trial and were sentenced to prison for varying amounts of time.²²¹ As of July 1, 2011, all victims, except Mr. Castillo Petruzzi, who remains in prison, were paroled.²²² Though the victims raised issue with certain due process issues in the new trial, the Court found that the State complied with its obligations to nullify the victims'

210. *Id.*

211. *Id.* ¶ 3(g).

212. *Id.* ¶ 3(d).

213. *Id.* ¶ 4.

214. *Id.* ¶ 1.

215. Castillo Petruzzi v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., ¶ 7 (June 1, 2001).

216. *Id.* ¶ 13.

217. Castillo Petruzzi v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., ¶ 6 (July 1, 2011).

218. *Id.* ¶¶ 16-17.

219. *Id.* ¶¶ 20-22.

220. *Id.* ¶¶ 33-34.

221. *Id.* ¶ 35.

222. *Id.* ¶ 37.

previous trials and hold a new trial.²²³

Finally, the State admitted it has not paid the \$10,000 to the victims' families.²²⁴ The Court found that the State should have paid the victims the moment the judgment was handed down.²²⁵ The Court asked FASIC to contact the State to expedite the payment to the victims.²²⁶

With this order, the Court declared the State satisfied two of its three requirements under the May 30, 1999 judgment and will only continue to monitor the State regarding its payment to the victims.²²⁷

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[Castillo Petruzzi v. Peru, Preliminary Objections, Judgment, Inter-Am Ct. H.R. \(ser. C\) No. 41 \(Sept. 4, 1998\).](#)

2. Decisions on Merits, Reparations and Costs

[Castillo Petruzzi v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am Ct. H.R. \(ser. C\) No. 52 \(May 30, 1999\).](#)

[Castillo Petruzzi v. Peru, Merits, Reparations, and Costs, Concurring Opinion of Judge Carlos Vicente de Roux Rengifo, Inter-Am Ct. H.R. \(ser. C\) No. 52 \(May 30, 1999\).](#)

[Castillo Petruzzi v. Peru, Merits, Reparations, and Costs, Concurring and Dissenting Opinion of Judge Fernando Vidal Ramírez, Inter-Am Ct. H.R. \(ser. C\) No. 52 \(May 30, 1999\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

223. *Id.* ¶¶ 38-39, 47-48.

224. *Id.* ¶¶ 49, 51.

225. *Id.* ¶ 53.

226. *Id.* ¶ 54.

227. *Id.* ¶ 2.

[Castillo Petruzzi v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(July 1, 2011\).](#)

[Castillo Petruzzi v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(June 1, 2001\).](#)

[Castillo Petruzzi v. Peru, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Nov. 17, 1999\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Not Available]

3. Provisional Measures

[None]

4. Report on Merits

Castillo Petruzzi v. Peru, Report on Merits, Report No. 17/97, Inter-Am. Comm'n H.R., Case No. 11.319 (Mar. 11, 1997).

5. Application to the Court

Castillo Petruzzi v. Peru, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 11.319 (June 27, 1997).

VIII. BIBLIOGRAPHY

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Peru: Chilenos MRTA Condenados Recurrirán a Corte Interamericana, EMOL (Sep. 8, 2003), <http://www.emol.com/noticias/internacional/2003/09/08/122481/peru-chilenos-mrta-condenados-recurriran-a-corte-interamericana.html>.