

August 22, 2014

Re: Case No. 12,700
Agustín Bladimiro Zegarra Marín
Peru

Mr. Secretary:

On behalf of the Inter-American Commission on Human Rights, I have the honor to submit to the jurisdiction of the Inter-American Court of Human Rights case 12,700 - Agustín Bladimiro Zegarra Marín v. the Republic of Peru (hereinafter “the State”, “the Peruvian State” or “Peru”).

The case concerns violation of the principle of presumption of innocence and of the court’s obligation to provide a reasoned judgment, to the detriment of Agustín Bladimiro Zegarra Marín, who on November 8, 1996 was convicted by the Superior Court’s Fifth Criminal Chamber of crimes against the administration of justice (personal complicity), crimes against the public faith (falsification of documents in general) and corruption of government officials. That court authority specifically wrote that the only evidence against the victim were the statements made by his co-defendants. Furthermore, although there was exculpatory evidence that directly refuted those statements, the court did not explain the reasons why that evidence did not create doubt as to the victim’s criminal culpability and instead simply stated that the charges made by the co-defendant were “feasible”. The Commission concluded that the criminal conviction of an individual based solely on the “feasibility” of the assertions made in a co-defendant’s statement must be examined in light of the principle of presumption of innocence. Furthermore, in the instant case, the Commission found that the burden of proof had been turned upside down, which was patently evident in the conviction, where the Fifth Criminal Court wrote that “no convincing rebuttal evidence has been presented that would show the defendant to be completely innocent of the crimes of which he stands accused.” Furthermore, the Commission found that the December 17, 1997 decision on the victim’s appeal to vacate the court ruling did not respect the right to appeal a judgment and that neither the appeal to vacate the decision nor the appeal for review, decided on August 24, 1999, constituted effective remedies against the violations of due process committed with the conviction handed down by the court of first instance.

Mr.
Pablo Saavedra Alessandri, Secretary
Inter-American Court of Human Rights
Apartado 6906-1000
San José, Costa Rica

Enclosures

The State ratified the American Convention on Human Rights on July 12, 1978, and accepted the Court's contentious jurisdiction on January 21, 1981.

The Commission has designated Commissioner James Cavallaro and Executive Secretary Emilio Álvarez Icaza L. as its delegates. Likewise, Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán, an attorney with the Executive Secretariat of the IACHR, have been designated to serve as legal advisors.

In accordance with Article 35 of the Rules of Procedure of the Inter-American Court, the Commission is enclosing a copy of Merits Report No. 9/14, prepared in compliance with Article 50 of the American Convention, as well as a copy of the entire file before the Inter-American Commission (Appendix I) and the annexes used in preparing report 9/14 (Annexes). The State was notified of the Merits Report by a communication dated May 22, 2014, in which it was given two months to report on its compliance with the recommendations made therein. The Peruvian State submitted a report in which it stated that it had not committed the violations established in the Merits Report and hence was not required to review the conviction or to order reparations of any kind.

Therefore, in order to get justice for the victim, the Commission decided to submit the present case to the jurisdiction of the Inter-American Court of Human Rights. The Inter-American Commission is presenting to the Court all the facts and human rights violations described in Merits Report 9/14.

Accordingly, the Commission is asking the Court to adjudge and declare that the Peruvian State is internationally responsible for violation of the right to presumption of innocence and the right to appeal a judgment and to judicial protection, recognized in articles 8(1), 8(2) and 25 of the American Convention, in relation to the obligations established in Article 1(1) thereof, to the detriment of Mr. Zegarra Marín.

The Commission is also asking the Court to order the following measures of reparation:

1. Order the measures of reparation necessary so that, should Mr. Zegarra Marín so request, his conviction be vacated and his case be re-examined in accordance with the principle of presumption of innocence, based on the standards established in the report. If appropriate, and based on the findings of the re-examination of the case, the State shall expunge Mr. Zegarra Marín's criminal record and wipe out any other effect of his conviction, and

2. Order full reparations for Mr. Zegarra Marín for the violations established in the report.

Apart from the need to obtain justice for the failure to comply with the recommendations made in the merits report, the Commission believes that this case raises issues of inter-American *ordre public*. Specifically, the case could be used to build upon the case law on a fundamental aspect of due process, which is the principle of presumption of innocence. It is an opportunity for the Court to establish the considerations that must be taken into account to determine whether, based on international human rights law, that principle was violated in a given case, without delving into an analysis of criminal law. Specifically, the Court could issue a finding concerning the close relationship that exists between the duty to provide a statement of reasons and the principle of presumption of innocence in cases like the present one, where the act through which that principle was violated is the reasoning of the judgment.

Because the issues that this case raises have a significant impact on inter-American *ordre public*, in keeping with Article 35(1)(f) of the Rules of Procedure of the Inter-American Court the Inter-American Commission will offer the following expert's statement:

An expert, whose name will be reported shortly, who will make a statement about the principle of presumption of innocence and the specific criteria that international human rights law offers to determine whether that principle has been violated. The expert will make reference to the case law in other systems for the protection of human rights and, if appropriate, to the case law of constitutional courts. The expert will also analyze the relationship between the principle of presumption of innocence and the duty to give reasoned judgments. To illustrate, the expert may cite the facts in this case.

The expert's curriculum vitae will be included among the annexes to merits report 9/14. The Commission informs the Court that during the processing of this case, Mr. Agustín Bladimiro Zegarra Marín represented himself. The contact information the Commission has on file is the following:

[REDACTED]

Please accept renewed assurances of my highest regards,

Signed in the original

Mario López-Garelli
By authorization of the Executive Secretary