



ORGANIZACIÓN DE LOS ESTADOS AMERICANOS
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February 21, 2012

Ref.: Case No. 12.474
Familia Pacheco Tineo
Bolivia

Mr. Secretary:

I am pleased to address you on behalf of the Inter-American Commission on Human Rights in order to file Case No. 12.474 against the Plurinational State of Bolivia (hereinafter “the State,” “the Bolivian State” or “Bolivia”), before the jurisdiction of the Honorable Inter-American Court of Human Rights., relating to the return of the Pacheco Tineo family to the State of Peru on February 24, 2001, as a result of a rejection of their application for recognition of refugee status in Bolivia. The Pacheco Tineo family—made up of Rumaldo Juan Pacheco Osco; his wife, Fredesvinda Tineo Godos; and their children, Juana Guadalupe, Frida Edith, and Juan Ricardo Pacheco Tineo—entered Bolivia on February 19, 2001. The immigration authorities became aware of their irregular status and ordered measures with a view to their expulsion to Peru. This led Rumaldo Juan Pacheco Osco to apply to the State of Bolivia for recognition of refugee status for himself and his family. This application was rejected in a matter of hours, in a summary fashion and in violation of several due process guarantees. As a result, the Pacheco Tineo family was expelled to Peru on February 24, 2001. In its Report on the Merits, the Commission concluded that the Bolivian State had violated the right to mental and moral integrity, for the violation of the right to judicial protection, the right to a fair trial, the right to seek asylum and the principle of *non-refoulement*. Finally, the State of Bolivia is responsible for the violation of the obligation to provide special protection to children.

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

Attachments

The State of Bolivia ratified the American Convention on Human Rights (hereinafter "the American Convention" or "the ACHR") on July 19, 1979 and accepted the contentious jurisdiction of the Court on January 21, 1981.

The Commission has designated Commissioner Rodrigo Escobar Gil and Executive Secretary of the IACHR, Santiago A. Canton, as its delegates. Likewise, Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán, attorneys at the Executive Secretariat of the IACHR will serve as legal advisors.

In accordance with Article 35 of the Rules of Procedure of the Inter-American Court, the Commission is enclosing with this communication a copy of Report No. 136/11 prepared in accordance 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 drafting Report 136/11 (attachments). Said merits report was notified to the Bolivian State by means of communication of November 21, 2011, granting it a two-month term to report on the implementation of the recommendations. The State requested an extension from the Inter-American Commission in order to report on compliance with the recommendations. The Commission granted a two-month extension to the State and requested that it present a report by no later than February 9, 2012. The Commission received the State's report on time. On December 28, 2011, the State submitted a supplementary report.

The Commission submits this case to the jurisdiction of the Inter-American Court due to the need to obtain justice for the victims, in light of the lack of progress in compliance with the recommendations on the part of the State of Bolivia, which did not request an extension for such purpose.

Regarding the recommendation to ***order comprehensive reparation in favor of the members of the Pacheco Tineo family for the human rights violations found in the report***, the State indicated that it is taking "diplomatic and consular steps" to make contact with the Pacheco Tineo family. The Commission does not have information on the results of these efforts or on concrete reparation proposals.

Regarding the recommendation to ***order administrative, disciplinary, and other measures to address the acts or omissions of the government officials who took part in the human rights violations found in the report***, the State indicated that under applicable domestic law, any possible administrative offenses committed in the instant case are subject to statute of limitations, and therefore it is impossible to comply with this recommendation.

Regarding the recommendation to ***adopt measures to ensure non-repetition, including training for officials in charge of immigration proceedings that could result in the deportation or expulsion of immigrants, and of proceedings for the determination of refugee status***, the State indicated that "instructions" had been issued ordering immigration personnel to comply with the provisions established in the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. It also indicated that workshops are being held to provide updated training on various subjects. In this regard, the Commission believes that the information provided is not sufficient to find that the State has effectively complied with the recommended

measures to ensure non-repetition. For example, the subject matters of the training being conducted do not seem to be directly related to the violations that occurred in the instant case, which centers on the standards that apply to proceedings involving recognition of refugee status, as well as the guarantee of non-refoulement.

Based on the foregoing considerations, while the State of Bolivia has taken some initial steps toward complying with two of the three recommendations, thus far the recommendations have not been met.

The Inter-American Commission submits to the jurisdiction of the Court the entire set of facts and human rights violations set forth in the report on the merits No. 136/11 and requests that the Court find and declare that:

1. The State of Bolivia is responsible for the violation of the right to a fair trial, the right to seek asylum and the principle of *non-refoulement*, enshrined in articles 8, 22(7), and 22(8) of the American Convention, taken in conjunction with Article 1(1) of that instrument, to the detriment of Rumaldo Juan Pacheco Osco; Fredesvinda Tineo Godos; and the minors Frida Edith, Juana Guadalupe, and Juan Ricardo Pacheco Tineo.
2. Based on the principle of *iura novit curia*, the State of Bolivia is responsible for the violation of the right to judicial protection enshrined in article 25 of the American Convention, taken in conjunction with Article 1(1) of that instrument, to the detriment of Rumaldo Juan Pacheco Osco; Fredesvinda Tineo Godos; and the minors Frida Edith, Juana Guadalupe, and Juan Ricardo Pacheco Tineo.
3. The State of Bolivia violated the right to mental and moral integrity enshrined in article 5(1) of the American Convention, taken in conjunction with article 1(1) of that instrument, to the detriment of Rumaldo Juan Pacheco Osco; Fredesvinda Tineo Godos; and Frida Edith, Juana Guadalupe, and Juan Ricardo Pacheco Tineo.
4. The State of Bolivia is responsible for the violation of the obligation to provide special protection to children recognized in article 19 of the American Convention, taken in conjunction with Article 1(1) of that instrument.

Based on the foregoing conclusions, the Commission recommended that the State:

1. Order comprehensive reparation in favor of the members of the Pacheco Tineo family for the human rights violations found in this report. This reparation should include compensation for the material and non-pecuniary damages suffered. The presence of the Pacheco Tineo family in another country should not be considered an obstacle in carrying out this recommendation. It is incumbent on the Bolivian

State to order the necessary efforts through diplomatic and consular channels to ensure this reparation.

2. Order administrative, disciplinary, and other measures to address the acts or omissions of the government officials who took part in the human rights violations found in this report.

3. Adopt measures to ensure non-repetition, including training for officials in charge of immigration proceedings that could result in the deportation or expulsion of immigrants and of proceedings for the determination of refugee status. This training should include the standards described in the instant merits report. The State should also adopt other measures to ensure non-repetition in order to make certain that the practices of domestic authorities in these two spheres are compatible with the American Convention in the terms described in this report.

Besides the need to obtain justice for the victims, this case involves issues of inter-American public order. This is the first case submitted to the Court's jurisdiction involving violations that occurred in the context of a proceeding to apply for recognition of refugee status. Furthermore, given that the family was returned without a serious determination of the potential risk they faced in their country of origin, the instant case will allow the Court for the first time to address the principle of non-refoulement in a contentious case. These aspects must also be analyzed in light of the special obligations of protection and the best interests of the child.

Given that these matters have a relevant effect on inter-American public order, in accordance with Article 35(1)(f) of the Inter-American Court's Rules of Procedure, the Commission takes the liberty of offering the following statements regarding expert witnesses:

Juan Carlos Murillo, who shall testify on the scope and content of the right to seek and receive asylum, and on the principle of non-refoulement. The expert witness shall analyze the relationship that exists between these rights and the right to a fair trial and judicial protection. In his or her analysis, the expert witness shall refer to the guarantees that must be respected in any proceeding to determine the refugee status of a person in order for that proceeding to be compatible with applicable international standards. Further, the expert witness shall offer the Court a comparative perspective vis-à-vis other human rights protection systems, including the universal system and other regional systems.

Pablo Ceriani, who shall testify on the rights of children applying for recognition of refugee status, in light of international human rights law. The expert witness shall refer to the special obligations of protection and to the principle of the best interests of the child, in the context of proceedings of this nature.

The curricula vitae of the proposed experts will be included in the attachments to the report on the merits No. 136/11.

The Commission wishes to inform the Court that Ms. J. is representing herself in the instant case. The contact data that the Commission possesses are:

Rosaura Acuña



Signed in the original

Elizabeth Abi-Mershed
Deputy Executive Secretary