

REPORT N° 56/98

CASE 11.876
LORI BERENSON
PERU
December 8, 1998

I. SUMMARY

1. On January 22, 1998, attorneys Ramsey Clark, Thomas H. Nooter, and Grimaldo Achahui Loaiza filed a petition with the Inter-American Commission on Human Rights (hereinafter the "Commission") on behalf of Lori Berenson, a United States citizen, against the Republic of Peru (hereinafter "the State" or "Peru"). The petition states that Miss Berenson was sentenced to life imprisonment by "faceless" military courts in Peru, which tried her in proceedings that violated the guarantees established in the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention").

II. FACTS

2. According to the petitioners, Lori Berenson, age 28, had gone to Peru a year before her arrest. Her attorneys further contend that the alleged victim did not commit, plan, or ever intend to carry out any acts of violence in Peru.

3. The petitioners assert that on November 30, 1995, Lori Berenson was arrested and interrogated illegally for several days and nights by the police, without benefit of a defense counsel. She was subsequently questioned in the presence of her attorney by the prosecutor and examining magistrate, both of whom were members of the military. Throughout the trial, the Court did not inform the defendant of the charges of which she was accused and she was not permitted to challenge testimony or cross-examine witnesses. Nor was she permitted to produce evidence attesting to her innocence. Around January 11, 1996, Lori Berenson was sentenced to life imprisonment by a "faceless" military court.

4. The decision was appealed and another "faceless" military court dismissed the appeal. Lori Berenson then appealed to the Supreme Military Court composed of five anonymous officers and that Court upheld the sentence. Finally, her attorneys filed an appeal for review which was denied on April 3, 1997.

5. The petitioners further state that during her detention Miss Berenson was subjected to cruel, inhumane, and degrading treatment.

6. According to the petition, the trial against Lori Berenson by "faceless" military courts was a violation of the following international guarantees established in the American Convention:

Right to be notified and informed of the charges against the accused (Articles 7(4) and 8(2));

Right to consult with legal counsel (Article 8(2)(d));

Right not to testify against oneself (Article 8(2)(g));

Right to examine witnesses testifying against the accused (Article 8(2)(f));

Right to be present when evidence is presented against the accused (Article 8(2)(c));

Right to adequate time and resources to prepare a defense (Article 8(2)(c));

Right to be accused only of crimes recognized as such by international standards (Article 8(1));

Right to have an appeal heard by judges free from outside influence and government manipulation (Article 7(2));

Right to be detained in a manner consistent with standards that prohibit cruel or unusual punishment (Article 5 and the Decision of the Inter-American Court of Human Rights rendered on September 17, 1997, in the case of Loayza Tamayo);

Right to habeas corpus before an independent court (Articles 7.6 and 25).

III. PROCEEDINGS BEFORE THE COMMISSION

7. On February 11, 1998, the Commission forwarded the pertinent parts of the petition to the State, which responded that the complaint should be declared inadmissible because the remedies available under domestic jurisdiction had not been exhausted.

IV. GENERAL CONSIDERATIONS

A. Competence of the Commission

8. Peru is a State Party to the American Convention on Human Rights which it ratified on July 28, 1978. The petition alleges violations to human rights established in the aforesaid treaty, which the Commission is competent to examine.

B. Admissibility of the petition

1. Exhaustion of domestic remedies

9. In their submission, the petitioners maintain that the sentence handed down by the Supreme Military Court against Lori Berenson is final. They point out that the sentence of the lower court was appealed to a higher military court, which dismissed the appeal. Lori Berenson subsequently filed another appeal with the Supreme Military Court, which also upheld the decision. Lastly, the alleged victim lodged an appeal for review of the final decision, which was also denied.

10. The petitioners claim that pursuant to Article 6 of Decree Law 25659 subsequently amended by Article 2 of Decree Law 26248, a final sentence cannot be examined by a civilian court. According to the attorneys, the standards mentioned stipulate that actions for *Amparo* (protection of rights and freedoms guaranteed by the Constitution but violated by the judicial or executive branch) are to be heard by the same military personnel, who initiated the original proceedings.

11. The argument put forward by the petitioners seems to be corroborated by statements made by the Supreme Council of Military Justice which ruled that Lori Berenson may not have a new trial in a civil court "because that would violate the constitutional principle of *res judicata* and the protection of sentences handed down by military courts".¹

12. Nonetheless, in its response to the petition, the State contended that the petitioners had not exhausted all domestic remedies. In this regard, it merely stated that "the petitioner at the end of the trial was entitled to file an action of '*amparo*' for alleged violation of the guarantees of due process. However, the petitioner preferred not to avail herself of this remedy, which constitutes an omission not covered by the American Convention and the Rules of Procedure of the IACHR and cannot be taken as a presumption of admissibility based on procedure. It is important to note that such an omission does not mean that the said remedy had been exhausted."

13. In its communication, the State fails to explain why such remedy is considered effective, given that the case in question involves a conviction upheld by two higher military courts. Nor does the State refute the petitioners' contention that under the law the remedy of "*amparo*" would need to be brought before the same military courts that had decided the case.

¹ Republica, July 29 or 30, 1998.

14. In these circumstances, the jurisprudence of the Inter-American Court of Human Rights is applicable in the sense that "the State claiming non-exhaustion has an obligation to prove that domestic remedies exist and that they are effective".² Accordingly, the Commission is of the view that the petitioners' arguments, in conjunction with the statements made by the Supreme Council of Military Justice, seem to be valid insofar as domestic remedies were effectively exhausted.

2. Deadline for filing the petition

15. The petition was filed within six months of the final decision, as specified in Article 46(1)(b) of the Convention. Indeed, the attorney representing Lori Berenson was notified of the Supreme Military Court's decision on the appeal for review on August 8, 1997, and the petition was filed on January 22, 1998.

3. Other international bodies

16. The petition satisfies the requirements set out in Article 46(1)(c) that the case not be pending a decision before another international body or constitute the duplication of a petition already examined and decided on by the Commission or by any other international body to which the State belongs.

V. CONCLUSION

17. The Commission concludes that it is competent to hear the present case and that it is admissible in accordance with the conditions set out in Articles 46 and 47 of the American Convention.

18. On the basis of these points of fact and of law and without prejudice to the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, DECIDES:

1. To declare the present case admissible.
2. To notify the parties of the present decision.
3. To continue examining the questions of substance.
4. To place itself at the disposition of the parties with a view to finding an amicable solution based on respect for the rights protected under the American Convention and to invite the parties to respond within a period of two months as to what they have decided in that regard
5. To make the present report public and to include it in the annual report of the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Court of Human Rights, on the eighth day of December 1998. (Signed): Carlos Ayala Coroa, Chairman; Robert K. Goldman, First Vice Chairman; Jean Joseph Exumé, Second Vice Chairman; and commissioners Alvaro Tirado Mejía, Claudio Grossman, Hélio Bicudo, and Henry Forde.

² Inter-American Court of Human Rights, Case of Neira Alegría et al, Preliminary Objections, judgement of December 11, 1991.