

Inter-American Court of Human Rights

Case of Trujillo-Oroza v. Bolivia

Judgment of January 26, 2000 (Merits)

In the Trujillo Oroza case,

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), composed of the following judges:

Antônio A. Cançado Trindade, President;
Máximo Pacheco Gómez, Vice President;
Hernán Salgado Pesantes, Judge;
Oliver Jackman, Judge;
Alirio Abreu Burelli, Judge;
Sergio García Ramírez, Judge;
Carlos Vicente de Roux Rengifo, Judge; and
Charles N. Brower, Judge *ad hoc*

also present:

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

pursuant to Articles 55 and 57 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"), renders the following judgment in the instant case, filed by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") against the Republic of Bolivia (hereinafter "Bolivia" or "the State").

I INTRODUCTION OF THE CASE

1. On June 9, 1999, the Commission submitted to the Court the application in this case, in which it invoked Articles 50 and 51 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 32 ff. of the Rules of Procedure. The Commission submitted the case for the Court to decide whether Bolivia had violated the following articles of the American Convention to the detriment of José Carlos Trujillo Oroza: 3 (Right to Juridical Personality), 4 (Right to Life), 5.1 and 5.2 (Right to Humane Treatment), and 7 (Right to Personal Liberty). It also asked to Court to determine whether the State violated Articles 8.1 (Right to a Fair Trial) and 25 (Right to Judicial Protection) to the detriment of José Carlos Trujillo Oroza and his next of kin. Furthermore, it requested that the Court determine whether Bolivia had violated Article 5.1 and 5.2 (Right to Humane Treatment) of the Convention, to the detriment of the next of kin

of the victim. Lastly, it requested that the Court decide whether Bolivia had violated Article 1.1 (Obligation to Respect Rights) of the Convention, as a result of the violation of the above mentioned rights.

Moreover, the Commission requested that the Court order Bolivia:

- a) to conduct a complete, effective and impartial investigation in order to identify, criminally prosecute and punish the State agents responsible for the detention, torture and subsequent forced disappearance of José Carlos Trujillo Oroza, facts that occurred as of December 23, 1971, in Santa Cruz, Bolivia;
- b) to conduct an exhaustive investigation in order to locate and identify the remains of José Carlos Trujillo Oroza and deliver them to his next of kin;
- c) to adopt urgent measures in order to prepare a draft law that classifies the forced disappearance of persons as a crime and incorporates this into the Bolivian Criminal Code;
- d) to adopt the measures necessary to ensure that the victim's next of kin receive an adequate and timely reparation that includes full satisfaction for the corresponding human rights violations, and also payment of a fair compensation for patrimonial and extra-patrimonial damages, including moral damages; and
- e) to assign to the State the payment of the costs and expenses that the victim's next of kin have incurred in order to process this case, both domestically and before the Commission and the Court, and reasonable honoraria for their lawyers.

II FACTS

2. In Section III of its application, the Commission made a statement of the facts on which this case is based. In this respect, it indicated that:

- a) on December 23, 1971, José Carlos Trujillo Oroza, 21 years of age, a student at the Universidad Mayor de San Andrés in La Paz, was arrested although no court order had been issued by a competent authority in Santa Cruz, and transferred to the prison compound known as El Pari;
- b) on January 15, 1972, Gladys Oroza, the mother of José Carlos Trujillo Oroza, confirmed verbally to Colonel Rafael Loayza, Head of Intelligence of the Ministry of the Interior, that her son had been captured. Moreover, she managed to make contact with him and with Ernesto Morán, Chief of Police of Santa Cruz, who authorized her to visit her son for the first time in the El Pari prison;
- c) between January 15 and February 2, 1972, Gladys Oroza managed to visit her son daily in the El Pari prison. During the visits, she confirmed that Mr. Trujillo Oroza had been submitted to evident physical torture.
- d) on February 2, 1972, Gladys Oroza went to the El Pari prison to take lunch to her son and was able to see him through the half-open door of his cell. That same day, at 5 p.m., she returned to the prison accompanied by

Guisela Brun, President of the Red Cross. She was informed by Elías Moreno, Head of the El Pari Police Commissariat, that her son was not there and had been transferred to the Police Station for questioning, together with two other detained men, Carlos López Adrián and Alfonso Toledo Rosales;

e) on February 3, 1972, Gladys Oroza returned to El Pari at 7 a.m. but none of the three young men were there any longer. She went to the Police Station accompanied by Beatriz de Toledo, wife of Alfonso Toledo, who had been detained together with her son. Oscar Menacho, member of the Department of Political Order (hereinafter "DPO"), told them that the three prisoners had been taken to Montero, a town close to the city of Santa Cruz. Percy González Monasterio, at that time deputy head of the DPO in Santa Cruz, told them that "everything had been resolved and that they should wait for the head of the DPO, Ernesto Morant." Justo Sarmiento Alanis, another DPO agent told them that the prisoners had been transferred by plane to El Paraguay. Finally, Ernesto Morant arrived at the Police Station and, at the request of Gladys Oroza, produced a radiogram signed by Antonio Guillermo Elío, Deputy Secretary of the Ministry of the Interior, ordering that Carlos López Adrián, Alfonso Toledo Rosales and José Carlos Trujillo Oroza be liberated. Subsequently, it was established that the radiogram was a piece of evidence fabricated by the Ministry of the Interior in order to hide the crimes and ensure the impunity of the authors.

f) in view of the foregoing, Mrs. Oroza filed various petitions and took different steps before the executive and legislative branches of the government, but was unable to file a complaint before the Bolivian courts due to political instability in the country, where fragile democratic periods were interrupted by frequent coups d'état, the exile of direct next of kin, fear of repression by State agents and the Judiciary's lack of independence with regard to the Executive; and

g) it was only on January 8, 1999, that the State of Bolivia initiated a judicial investigation de oficio, although it had known about the facts immediately, in particular inasmuch as its own agents were responsible for those facts.

III COMPETENCE OF THE COURT

3. The Court is competent to hear the instant case. Bolivia has been a State Party to the American Convention since July 19, 1979, and recognized the obligatory jurisdiction of the Court on July 27, 1993.

IV PROCEDURE BEFORE THE COMMISSION

4. As a result of a complaint filed on September 28, 1992, the Commission began processing the case with a note of February 18, 1993, and requested Bolivia to provide pertinent information about the facts and any element that would allow it to be determined whether remedies under domestic law had been exhausted in the instant case.

5. On June 14, 1994, Bolivia replied to the Commission's request, stating that it acknowledged its "responsibility for the facts denounced."

6. On September 5, 1994, in a letter to the Commission, the State acknowledged the facts denounced and described the investigations conducted and the steps taken with regard to the disappearance of Mr. Trujillo Oroza, which had occurred on February 2, 1972.

7. On October 13, 1994, pursuant to Article 48.f of the Convention, the Inter-American Commission placed itself at the disposal of the parties in order to reach a friendly settlement; however, "after a long process of meetings and hearings before the Commission, the parties did not reach an agreement."

8. On October 24, 1997, Bolivia submitted a communication to the Commission in which it summarized the statement of Edgar Montaña, Deputy Minister of Human Rights, who represented Bolivia in a hearing before the Commission on October 10, 1997, and who once again acknowledged the State's responsibility for the disappearance of the victim. However, in the same communication, the State indicated that the proceeding before the Commission "ha[d] not strictly adhered to the terms of the American Convention" and that the petitioner had violated Article 46 of this Convention by not exhausting domestic remedies, since no legal action had been initiated or concluded in Bolivia seeking punishment of the guilty parties or compensation for the alleged moral damages. Furthermore, it argued that Bolivia has experienced a continuous democratic process since 1982 and that due legal process existed under its domestic legislation for protection of the rights that had been violated; it also called attention to the fact that "only twenty years after the disappearance of the said person a complaint had been brought before the Commission."

9. On February 25, 1998, the State offered compensation of US\$40,000 (forty thousand United States dollars) to the victim's mother, in a hearing before the Commission. However, Bolivia stated that there would be certain difficulties in initiating the corresponding investigation by the Office of the Prosecutor and suggested that it should be the victim's mother who initiated this before the Public Ministry. It indicated that the case was barred by the statute of limitations and that the victim's mother had never filed a complaint before the corresponding judicial organs, not even after 1982, when the country returned to the democratic system. It added that it would be difficult and expensive to recover the victim's remains.

10. On August 19, 1998, the Commission informed Bolivia that, pursuant to Article 45.7 of its Regulations, it declared that its role as organ of conciliation for a friendly settlement in the instant case had terminated.

11. On March 2, 1999, during its 102nd Regular Session, the Commission held a public hearing with the parties in this case. During this hearing, the State presented to the Commission a copy of the communication of January 8, 1999, addressed by Mary Severich Siles, District Public Defense Coordinator of Santa Cruz to the District Prosecutor of that city, in which she requested the Office of the Prosecutor to order "the Judicial Police to commence proceedings in relation to the disappearance of José Carlos Trujillo Oroza."

12. On March 2 and 5, 1999, Bolivia submitted additional information regarding the "steps taken to date, since the complaint was filed on January 9, 1999, together

with a list of those sentenced for human rights violations who are currently serving their sentences in the Republic of Bolivia.”

13. As may be seen from the Inter-American Commission’s application before the Court, among other elements that the Commission took into consideration when processing the case are the following two documents from the State:

a. a communication of June 9, 1994, in which the National Secretary of the Internal Regime and Police informed the Minister of Justice that “names of persons allegedly linked to the matter are mentioned and, consequently, it has been deemed appropriate to instruct the National Police and the Judicial Technical Police to continue investigations until they are concluded;” and

b. a communication of December 16, 1996, addressed by the Ministry for Foreign Affairs to Gladys Oroza de Solón Romero, the victim’s mother, in which the State made a formal, express acknowledgement of the detention, torture and forced disappearance of the victim. Furthermore, it referred to the authors of the facts denounced by recognizing that “the alleged masterminds and perpetrators worked as civilian agents of the agencies of repression of that government and, under international legislation recognized by the Republic of Bolivia, this entails the responsibility of the Bolivian State.”

14. On March 9, 1999, during its 102nd Regular Session, the Commission approved Report No. 26/99 based on Article 50 of the Convention; this was forwarded to the State on the same day. In this Report, the Commission recommended:

1. that a complete, impartial and effective investigation be conducted in order to identify, criminally prosecute and punish the State agents responsible for the detention and subsequent forced disappearance of José Carlos Trujillo Oroza, facts that occurred as of December 23, 1971, in Santa Cruz, Bolivia.

2. that an exhaustive investigation be carried out in order to locate, identify and deliver the remains of José Carlos Trujillo Oroza to his next of kin. To this end, it would be opportune for the State to contract the services of experts in forensic medicine, since the technical knowledge and experience of such professionals could facilitate this procedure.

3. that urgent measures be adopted in order to prepare a draft law that classifies the forced disappearance of persons as a crime and incorporate it into the Bolivian Criminal Code.

4. that the Inter-American Convention on Forced Disappearance of Persons, an international instrument that was signed by the Bolivian State on September 14, 1994, be ratified.

6. that the necessary measures be adopted so that the next of kin of the victim receive an adequate and timely reparation that signifies full satisfaction for the human rights violations established herein, and also payment of fair compensation for patrimonial and extra-patrimonial damages, including moral damages.

Furthermore, the Commission agreed:

to transmit this report to the State of Bolivia and grant it a period of two months to comply with its recommendations. This period will be calculated from the date the report is transmitted to the State, which shall not be authorized to publish it. Likewise,

the Commission agrees to notify the petitioners that a report has been approved, pursuant to Article 50 of the American Convention on Human Rights.

15. On March 17, 1999, Bolivia replied to the Commission's Report indicating that the State's decision to unilaterally initiate an investigation to clarify the facts had been ignored in the sections "Analysis" and "Recommendations" of the Report, which are the most relevant, and is only mentioned in the section "Summary." Furthermore, Bolivia indicated that it had already complied with the recommendations to prepare a draft law that classifies forced disappearance as a crime and to ratify the Inter-American Convention on Forced Disappearance of Persons. Lastly, it requested that the Commission incorporate the aforementioned information in the Report objectively, so that it could be taken into consideration when the case was being examined.

16. On May 7, 1999, Bolivia expanded its previous brief, requesting that the Commission reconsider Report No. 26/99, since it allegedly omitted information and was based on arguments that had been rectified by Bolivia "with the offer of acquiescence to the terms of the arrangements suggested by the petitioner (the victim's mother), with the sole condition of confidentiality during the course of the proceeding." Moreover, the State manifested its surprise regarding the Commission's recommendations, as many of them had already been complied with.

17. With regard to the investigation of the facts, Bolivia indicated that, in order to continue this, the victim's mother should ratify the complaint before the domestic authorities. It said that the Commission had not referred to the 21 years that had elapsed between the fact and the complaint presented to the Commission. It added that no complaint had been presented before the judicial authorities throughout the democratic period enjoyed by Bolivia since 1982, and this attitude shows that the petitioner "is hiding some political motive." Moreover, Bolivia stated that, in 1979, the victim's mother denounced that her son had been shot to death, as can be seen in the Congress of the Republic's file corresponding to the action on responsibilities against the national government of that time, which showed that the petitioner had filed the same case twice, with different characterizations (before the Congress of the Republic and before the Commission).

18. With regard to the State's reply, in summary, the Commission advised that:

- a) it had not only evaluated and examined the information provided by Bolivia, but had also recorded it when processing and analyzing the case in the Report;
- b) the effort made by the State to investigate the facts and punish those responsible was insufficient, since in January 1999, Mary Severich, District Public Defense Coordinator of the Ministry of Justice in Santa Cruz, requested the Prosecutor to order the Judicial Police to commence steps to establish responsibility and punish the guilty parties but since January and until the day the application was presented to the Court, Bolivia did not provide evidence that would demonstrate any jurisdictional activity tending to punish those responsible;
- c) the State did not comply with the Commission's recommendation to prepare a draft law classifying forced disappearance of persons as a crime and incorporate it into the Criminal Code; it even contradicted itself, because

in one communication it indicated that disappearance was already contemplated under its criminal laws and in a subsequent communication that it would propose a draft Criminal Code in which crimes against personal safety such as forced disappearance were characterized;

d) it is unnecessary for the victim's mother to ratify the complaint under domestic jurisdiction, because it should be prosecuted *de officio*, because it is an offense involving a criminal action;

e) the situation in Bolivia at the time the facts occurred (violence and political instability) did not allow the victim's next of kin to access effective remedies in order to determine the whereabouts of the victim, who disappeared as of February 2, 1972. For the same reason, they were unable to file an application for habeas corpus;

f) guarantees of due legal process for the protection of the rights violated to the detriment of Mr. Trujillo Oroza do not exist in the domestic legislation; and

g) Bolivia has still not deposited the instrument ratifying the Inter-American Convention on Forced Disappearance of Persons before the Secretary General of the Organization of American States.

19. The Commission considered that the reply presented by Bolivia to Report No. 26/99 did not demonstrate adequate compliance with its recommendations; consequently, on May 9, 1999, it decided to submit the case to the Court.

V

PROCEEDING BEFORE THE COURT

20. The application in this case was submitted to the Court on June 9, 1999.

21. The Commission appointed Alvaro Tirado Mejía as delegate; Hernando Valencia Villa, Deputy Executive Secretary of the Commission, and Milton Castillo Rodríguez, Principal Specialist of the Secretariat as lawyers; and Viviana Krsticevic, Raquel Aldana and María Claudia Pulido, members of the Center for Justice and International Law (CEJIL) and José Miguel Vivanco, Director of Human Rights Watch/Americas, as assistants. In accordance with the provisions of Article 22.2 of the Rules of Procedure, the Commission advised that the assistants represented the victim's next of kin.

22. On June 24, 1999, the Secretariat of the Court (hereinafter "the Secretariat"), following instructions of the President of the Court (hereinafter "the President"), pursuant to the provisions of Articles 33 and 34 of the Rules of Procedure, requested the Commission to forward certain annexes to the application that were incomplete or illegible, as soon as possible. On June 25, 1999, once the President had examined them, the Secretariat notified the application and its annexes to the State. Furthermore, it informed the State that it should appoint an agent and a deputy agent and designate a judge *ad hoc* within one month, submit preliminary objections within two months, and reply to the application within four months. On June 30, 1999, the Commission replaced the incomplete or illegible annexes.

23. In a communication received by the Court on July 20, 1999, Bolivia appointed Gastón Ríos Anaya as its agent. On July 22, 1999, the State rectified its previous communication and advised that it was appointing Gastón Ríos Anaya as judge *ad hoc* and Fabián Volio Echeverría as agent. On July 27, 1999, Bolivia submitted Mr. Ríos Anaya's curriculum vitae.

24. On August 20, 1999, on the President's instructions, the Secretariat sent a note to Gastón Ríos Anaya, informing him that it had observed from his curriculum vitae that, at that time, he was Legal Advisor to the Ministry of the Presidency of the Republic. Accordingly, based on Articles 18 and 19 of the Statute of the Court (hereinafter "the Statute"), in order to ensure the transparency of the proceeding and pursuant to the Statute, it requested him to advise whether, due to the exercise of this position, he was a member or official of the executive branch of government, and whether he was subject to any kind of hierarchical subordination within the executive branch.

25. On August 26, 1999, Mr. Ríos Anaya sent a communication in which he indicated that he had performed the function of Legal Advisor to the Ministry of the Presidency of the Republic until the first quarter of 1998 and that, at that time, he was not "subject to any kind of hierarchical subordination within the executive branch"; he attached a certification confirming this fact. He also stated that "he ha[d] no incompatibility, impediment or disqualification for the position."

26. On September 7, 1999, Bolivia presented a brief in which it indicated that Gastón Ríos Anaya had resigned as judge *ad hoc* and that Charles N. Brower had been appointed to replace him.

27. On September 8, 1999, the State submitted its brief with preliminary objections.

28. On September 9, 1999, the State transmitted a copy of Charles N. Brower's curriculum vitae.

29. On October 5, 1999, Charles N. Brower forwarded the record of the sworn declaration with his acceptance of the position of judge *ad hoc* in the instant case.

30. On November 9, 1999, Bolivia presented a brief as "evidence of progress in the judicial investigation opened in order to clarify the Trujillo Oroza Case."

31. On November 22, 1999, the Commission submitted its brief with observations on the State's preliminary objections.

32. On December 6, 1999, the President of the Court invited the State and the Commission to a public hearing on the preliminary objections, which was held on January 25, 2000, at the seat of the Court. At that time, the declaration of a witness offered by the State would also be heard.

33. In a brief of January 21, 2000, the State indicated that "it had decided to withdraw the preliminary objections to [the] application that it had filed, because the Government of the Republic wished to reach a friendly settlement with the victim's next of kin." It also requested the Court to pronounce judgment in order to "conclude this stage and open the reparations stage."

34. In an order of January 25, 2000, the Court decided:

1. To consider that the preliminary objections filed by the State of Bolivia had been withdrawn.
2. To continue with the proceeding on the merits of the case and, to this end, to change the purpose of the public hearing on preliminary objections convened by the President of the Court in an order of December 6, 1999, so as to consider other aspects of the brief submitted by the State of Bolivia on January 21, 2000.

35. On January 25, 2000, the public hearing on this case was held.

There appeared before the Court

for the State of Bolivia:

Fabián Volio Echeverría, Agent; and
Ambassador Oscar Daza Márquez.

for the Inter-American Commission:

Hélio Bicudo, Delegate;
Milton Castillo Rodríguez, Lawyer; and
Viviana Krsticevic, Assistant.

VI ACQUIESCENCE

36. At the public hearing of January 25, 2000, Bolivia acknowledged the facts presented by the Commission in Section III of its application, which are summarized in paragraph 2 of this judgment. In the same way, the State acknowledged its international responsibility in the instant case and accepted the legal consequences deriving from the facts mentioned (*supra*, para. 2).

37. During the public hearing, the State's agent declared that

[a]s the Government had already manifested to the victim's mother, the Government representatives had stated before the Commission, we presented in a brief on preliminary objections and we reiterate at this time, the Government of the Republic of Bolivia formally acknowledges responsibility for the facts and consequently withdraws the preliminary objections.

[I]n the report on preliminary objections [...] the Government of Bolivia requested [...] that, if the Honorable Court dismissed the preliminary objections, it should declare as follows: a) that the State of Bolivia acknowledged the facts; b) that the State of Bolivia had already given written satisfaction to the petitioner and her family, offering the corresponding apologies and thereby providing moral satisfaction; c) that the State of Bolivia had modified and was modifying its domestic legislation so as to avoid the reoccurrence of such facts and so that the forced disappearance of persons was punished; d) that the criminal judicial investigation opened on the Government's initiative to judge those suspected of the facts is a satisfactory measure for investigating the facts, in order to punish the guilty parties and find the victim's body; e) that the State of Bolivia has offered the petitioner and her family total compensation of forty thousand United States dollars and that this amount is fair and reasonable.

38. In this respect, the Inter-American Commission expressed its satisfaction for the formal declaration acknowledging responsibility made by the State.

39. Article 52(2) of the Rules of Procedures stipulates that

[i]f the respondent informs the Court of its acquiescence in the claims of the party that has brought the case, the Court shall decide, after hearing the opinions of the latter and the representatives of the victims or their next of kin, whether such acquiescence and its juridical effects are acceptable. In that event, the Court shall determine the appropriate reparations and indemnities.

40. Based on the statements of the parties during the public hearing on January 25, 2000, and, on the acceptance of the facts and the acknowledgement of responsibility by Bolivia, the Court considers that the dispute between the State and the Commission with regard to the facts that originated the instant case has ceased (*Cf. Caracazo Case*. Judgment of November 11, 1999. Series C No. 58, para. 41; *Benavides Cevallos Case*. Judgment of June 19, 1998. Series C No. 38, para. 42; *Garrido and Baigorria Case*. Judgment of February 2, 1996. Series C No. 26, para. 27; *El Amparo Case*. Judgment of January 18, 1995. Series C No. 19, para. 20 and *Aloeboetoe et al Case*. Judgment of December 4, 1991. Series C No. 11, para. 23).

41. Consequently, the Court considers that the facts referred to in paragraph 2 of this judgment have been acknowledged. The Court also considers that, as the State expressly acknowledged, it incurred international responsibility for violating the rights protected by Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5.1 and 5.2 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8.1 (Right to a Fair Trial) and 25 (Right to Judicial Protection), in relation with Article 1.1 (Obligation to Respect Rights) of the Convention, to the detriment of the persons mentioned in paragraph 1 of this judgment, and as set forth in that paragraph.

42. The Court recognizes that Bolivia's acquiescence is a positive contribution to this proceeding and to the exercise of the principles that inspire the American Convention on Human Rights.

43. In view of Bolivia's acknowledgement of responsibility, it is in order to proceed to the reparations stage (*Cr. Caracazo Case, supra* 40, para. 44; *Aloeboetoe et al Case, supra* 40, para. 23; *El Amparo Case, supra* 40, para. 21 and *Garrido and Baigorria Case, supra* 40, para. 30), during which the Court will examine the petitions of the victim's next of kin or their representatives and of the Commission, and also the observations of the State relating to this stage.

VII

Therefore,

THE COURT,

DECIDES:

unanimously,

1. To accept the acquiescence to the facts and the acknowledgement of responsibility made by the State.
2. To declare, in accordance with the terms of the State's acknowledgement of responsibility, that it violated the rights protected by Articles 1.1, 3, 4, 5.1 and 5.2, 7, 8.1 and 25 of the American Convention on Human Rights to the detriment of the persons cited in paragraph 1 of this judgment, as set forth in that paragraph.
3. To open the reparations proceedings and authorize the President to adopt the corresponding measures.

Done in Spanish and in English, the Spanish text being authentic, at San José, Costa Rica, the twenty-sixth day of January 2000.

Antônio A. Cançado Trindade
President

Máximo Pacheco-Gómez

Hernán Salgado-Pesantes

Oliver Jackman

Alirio Abreu-Burelli

Sergio García-Ramírez

Carlos Vicente de Roux-Rengifo

Charles N. Brower, Judge *ad hoc*

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary