

AMNESTY INTERNATIONAL

PERU @SUPREME COURT ANNULS HABEAS CORPUS ON "DISAPPEARED" STUDENT; BOMB ATTACK ON THE FAMILY LAWYER

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Amnesty International is concerned about the "disappearance" of Ernesto Castillo Páez in Lima, Peru and the subsequent bomb attack on Dr. Augusto Zúñiga Paz, a human rights lawyer working on his case. Amnesty International is also concerned at the failure of the Peruvian judicial system to uphold a petition for habeas corpus filed in favour of Ernesto Castillo.

Habeas Corpus Petition

Upheld in Lower Court

On 21 October 1990 twenty-two-year-old sociology student at the Catholic University of Lima (Universidad Católica), Ernesto Castillo, was detained by members of the police in the Parque Central of the Villa El Salvador neighbourhood of Lima, the capital. Eye witnesses to the arrest said that he was handcuffed, forced into the boot of a police car and driven away. He has not been seen again. Police authorities have denied any knowledge of his detention.

On 25 October a petition of habeas corpus was submitted before a tribunal by Ernesto Castillo's father. On 31 October the Judge of the 24th Court in Lima, Elva Greta Minaya Callo, responded to the petition by issuing a resolution stating that there was evidence to conclude that the student had been detained by the police. She ordered his immediate release.

The case of Ernesto Castillo is exceptional: apparently it is the first time in Peru that a habeas corpus has been declared "justified" (fundada) by a Judge since early 1983, when "disappearances" were first reported in the context of counter-insurgency activities.

In Peruvian law the right to habeas corpus is enshrined in Article 295 of the Political Constitution of Peru and in Law 23,506. Articles 2 and 12 of Law 23,506 protect the

freedom of the individual and aim "to return things to the state prior to the violation, or threat of violation, of a constitutional right". Law 23,506, in its Article 16, also states that the authorities responsible for a detention have a duty to bring the detainee before a judge on the day the habeas corpus is presented, and to release him immediately, should the judge prove the detention to have been arbitrary. In her resolution, the judge concluded that the above articles of the Constitution and of the law on habeas corpus had been violated.

The Judge also stated that she observed serious irregularities at the San Juan de Miraflores police station when she visited it. When asked to produce the register of detentions, she was shown instead, a ledger that did not correspond to the one asked for. The police then produced an already completed register of detentions which appeared to have been tampered with, and finally admitted that the current register had been lost. The police subsequently handed over to the 24th Court of Lima the relevant register, claiming it had been located. The Judge, however, claims that this register had also been tampered with. In her resolution she stated:

"[The police] subsequently submitted to the Court a register of detentions which [they] claimed to be the lost one but which also appears to have been recently tampered with ... since it lacks the appropriate entry on its first page and other irregularities ... "

Higher Court Upholds Lower Court's Decision

On 27 November, 37 days after the detention of Ernesto Castillo, a higher court, the Eighth Correctional Tribunal (Octavo Tribunal Correccional) upheld the resolution issued by the lower court on 31 October. The resolution of the Eighth Correctional Tribunal stated that not only is the continued detention of Ernesto Castillo illegal, but also an abuse of authority, since police officers denied Ernesto Castillo's detention and failed to release him, in spite of the lower court's order. In upholding the lower court's resolution, the Eighth Correctional Tribunal invoked Article 2 (Section 20(g)) of the Peruvian Constitution¹ and Article 4 (Section (a)) of Law 24,651.²

The Eighth Correctional Tribunal's resolution ordered that certified copies of all the legal proceedings in relation to the case be submitted to the Chamber of Deputies, that it may take the necessary measures regarding the constitutional responsibilities of the Minister of the Interior, General EP Adolfo Alvarado Fournier, for the actions of the police in detaining Ernesto Castillo. The resolution also ordered that similar measures be taken with regards to the Provincial Prosecutor so that a denunciation may be prepared against the heads of two police services: the Director of the General Police, General Víctor Manuel Alva Plasencia and the Head of the police Anti-Terrorism Division, DIRCOTE, Dirección Contra el Terrorismo, General PNP Enrique Oblitas Jaén, and others, reported to be responsible for the violations committed against Ernesto Castillo. According to reports, on 5 December the Eighth Correctional Tribunal, in accordance with its resolution, submitted the case to the 14th Provincial Prosecutor so that formal procedures may be initiated against the above-mentioned police generals.

Supreme Court Annuls Habeas Corpus Petition

According to Article 21³ of the law which enshrines the right to habeas corpus (Law 23,506), resolutions on habeas corpus which are upheld by two courts are definitive. However, on 19 December, the State Prosecutor, Daniel Espichán Tumay took the legal recourse of requesting that the Supreme Court annul the writ of habeas corpus. The lawyer for the Castillo family, Dr. Augusto Zúñiga Paz, then presented an oral statement before the Supreme Court, asking that this legal recourse be declared unfounded. However, the Supreme Court granted the State Prosecutor's request.

On 1 February 1991 the Supreme Court heard a complaint from Dr. Zúñiga in which he argued that the hearing granted on 19 December should not have proceeded. However, on 7 February, in an apparently controversial decision, the Supreme Court declared the habeas corpus annulled due to irregularities committed in the investigations conducted by the lower court judge.

International Human Rights Standards Contravened

In Peru, Articles 101 and 105 of the Constitution grant the status of national and constitutional law to international human rights treaties ratified by the state.

In Amnesty International's opinion, the detention of Ernesto Castillo contravenes Article 7, read in conjunction with Article 1(1), of the American Convention on Human Rights (ACHR)⁴ and Article 2 (Section 3) and Article 9 (Sections 1 and 4) of the International Covenant on Civil and Political Rights (ICCPR)⁵, both of which were ratified by Peru in 1978.

Bomb Attack on Dr. Augusto Zúñiga Paz, Lawyer for Castillo Family

On 15 March 1991 Dr. Augusto Zúñiga Paz, the lawyer working on the Ernesto Castillo case and head of the legal office of the Comisión de Derechos Humanos (COMISEDH), the Commission for Human Rights in Lima, was the victim of a bomb attack.

A large envelope was delivered by hand to the offices of COMISEDH, addressed to Dr. Zúñiga. It reportedly bore a stamp on it saying that the envelope originated from the offices of the Secretary to the President of Peru. On opening the envelope, an explosive device was detonated, severing Dr. Zúñiga's left hand and forearm, and causing considerable damage to his office.

Since the presentation of the habeas corpus petition was filed before the lower court, Dr. Zúñiga had reportedly received several death threats and was informed that his life was in danger. However, in spite of informing the Supreme Court of these threats, Dr. Zúñiga was not granted any protection. There are therefore grounds to believe that the attack on Dr. Zúñiga and the "disappearance" of Ernesto Castillo may be connected.

Background Information

Amnesty International has received reports of over 3,000 "disappearances" in Peru since the beginning of 1983. Most "disappearances" are preceded by detentions carried out by uniformed members of the security forces, who refuse to acknowledge the detentions. Many detainees "disappear" indefinitely without their relatives ever discovering their fate, while others are released after days or weeks in secret custody, during which time they may be subjected to torture.

In July 1990 President Alberto Fujimori assumed power. In his inaugural speech he stated that "the unconditional respect and promotion of human rights will be a firm line of action during my government" and that a national commission would be set up to guarantee respect for human rights. By the end of January 1991 the government had not publicly spelt out the specific terms of reference for such a commission nor appointed the person to head it.

According to independent human rights organizations in Peru, 83 persons have reportedly "disappeared" in the first eight months of President Fujimori's rule. Of these, 15 were subsequently freed and 25 were reportedly found dead. The rest, 43 people, remain unaccounted for. Ernesto Castillo is one of them.

The pattern of reported "disappearances" by the security forces in Peru, and the failure to thoroughly investigate them and bring to justice the perpetrators, means that the Peruvian authorities are not fulfilling their national and international obligations. A consequence of this failure is that gross violations of human rights have been permitted to occur with impunity.

Attacks on human rights defenders have been regularly reported to Amnesty International in the context of increasing human rights violations (see Attacks on Human Rights Defenders, 1988-90, AI Index AMR 46/39/90, June 1990).

NOTES

(1) Article 2 (Section 20(g)) of the Peruvian Constitution states (unofficial translation):

Nobody may be detained by the police without the decision and written order of a judge except when caught in flagrante delicto;

In any case, the detainee must be brought before a competent judge within 24 hours ... Cases of terrorism, espionage and illicit drug trafficking are excepted; the alleged offenders in these cases may be held in preventative detention for a term not exceeding 15 full days, the Public Ministry and the Judge having been duly informed. The Public Ministry and a Judge assume jurisdiction over the case prior to the expiry of the term.

(2) The Judge in the Eighth Correctional Tribunal, invoking Article 4 (Section (a)) of Law 24,651, stated that the police have a legal duty to inform the Public Ministry and a judge "in writing", "immediately" and "within 24 hours from the time of detention" of any case in which a person is being held for a period of up to 15 days.

(3) Article 21 of the Peruvian law on habeas corpus (Law 23,506) states (unofficial English version):

An appeal may only be lodged within a period of two working days after notification of the resolution by the higher court and only proceeds when the habeas corpus has not been upheld.

(4) Article 7 of the American Convention on Human Rights states (official English version):

1. Every person has the right to personal liberty and security.

2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or a law established pursuant thereto.

3. No one shall be subject to arbitrary arrest or imprisonment.

4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.

5. Any person detained shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

Article 1(1) of the Convention states (official English version):

The States Parties to this Convention undertake to respect the rights and freedoms recognised herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

(5) Article 2 (Section 3) of the International Covenant on Civil and Political Rights states (official English version):

Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 9 (Section 1) of the Covenant states (official English version):

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

Article 9 (Section 4) of the Covenant states (official English version):

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

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