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Title/Style of Cause:	Fabricio Proano, Pablo Proano and Guadalupe Chiriboga v. Ecuador
Doc. Type:	Resolution
Decided by:	Chairman: Oliver Jackman; First Vice Chairman: Elsa Kelly; Second Vice Chairman: Leo Valladares Lanza; Members: Gilda Maciel Correa Russomano, Marco Tulio Bruni-Celli, John Reese Stevenson, Patrick Lipton Robinson
Dated:	12 April 1989
Citation:	Proano v. Ecuador, Case 9641, Inter-Am. C.H.R., Report No. 14/89, OEA/Ser.L/V/II.76, doc. 10 (1988-1989)
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BACKGROUND:

1. On 14 November 1985, a complaint was presented to the Inter-American Commission on Human Rights alleging with the following facts:

FABRICIO PROANO (21 years old), PABLO PROANO (22) and GUADALUPE CHIRIBOGA (19) were arrested on 30 October 1985 by members of the Ecuadorean Police's Flying Squad and have been held incommunicado. It is feared they may be undergoing mistreatment or torture on premises of the police investigation branch.

In the early days the police authorities denied that the arrest had been made, but it was later learned that Fabricio Proano and Guadalupe Chiriboga were being held incommunicado in the provisional detention center in Quito, and that Pablo Proano had been transferred to the Quito hospital, where he underwent surgery for a bullet wound in a lung, and had two fractured ribs.

No reason for their arrest was given either to them or to their families, nor have any charges been filed against them, but the Ecuadorian press has linked their arrest with police measures against the "Alfaro Vive Carajo" (AVC) guerrilla group.

Because of all this, there is fear for their physical integrity and for their lives, in view of the torture (suffocation, beatings, electric shocks, etc.) regularly inflicted on persons suspected of membership in the AVC to extort spurious confessions from them.

It is demanded that they be allowed to receive visits from members of their families, that charges be filed against them, and that they be placed at the disposal of the competent judicial authorities so that counsel may be appointed to defend them or they may be set at liberty.

2. In a note of 25 November 1985, the Commission set the case in motion and asked the Government of Ecuador for information in accordance with Article 34 of its Regulations.

3. On 24 February 1986, the Government of Ecuador replied to the Commission's request for

information in terms that are summarized as follows:

In connection with the case of assault and robbery known to the Pichincha Criminal Investigation Service as No. T1-11761-SIC-P, Pablo Giovanny Proaño Moreno, Guadalupe Chiriboga Nardi, Fabricio Vicente Proaño Moreno, and Jaime René Yepez Arteaga were arrested on Wednesday, 30 October 1985. They had committed armed assault on the home of an officer of the National Police, from whom they took his Government weapon, and then moved on to the warehouse of Dr. Gonzalo Ocaña, from which they stole several portable articles. Finally, also using firearms, they stole a Chevrolet 350 truck bearing license plate P.B.F.-027, whose driver they had induced, with a deceptive promise of a commission, to haul merchandise, to drive it to a place in the vicinity of the warehouse. Thanks to a tip from a minor, police personnel arrived on the scene in several vehicles and succeeded in arresting Pablo Giovanny Proaño Moreno, who, having shot at the arriving police, had been struck by a bullet and fell out of the tree he had climbed into. He was taken, injured, to the Eugenio Espejo Hospital. Also arrested was Guadalupe Chiriboga Nardi, who was wearing a maternity dress over a bundle of rags to simulate an advanced pregnancy. Fabricio Vicente Proaño Moreno was also taken into custody at the scene of the action, and yet others took flight. Also captured were two weapons of the several that the gang had used to commit their attack on Dr. Ocaña's warehouse. From statements by the prisoners it is known that this attack had been planned long before by the Alfaro Vive Carajo terrorist organization, of which the three above-named prisoners are members, as is Mr. Jaime René Yépez Arteaga, arrested in the same neighborhood as the other three. Hence these are not detentions of a political nature, but were designated the same day as captures in flagrante, and the enclosed file records all the crimes committed by this gang: 1. An assault with threat to kill on police officer Manuel Andrade and his family. 2. Theft of Government weapon from officer Andrade. 3. Assault on and robbery from Dr. Ocaña's warehouse. 4. Assault on and robbery of the Chevrolet 350 truck bearing license plate P.B.F.-027 from its owner, Mr. Bolívar Riera Viveros. 5. Illegal possession of weapons. 6. Armed attack on members of the National Police. 7. Illegal association to engage in subversive activities.

According to the official information transmitted by the Ministry of the Interior, upon completion of the preliminary investigation by the Pichincha Intendency of Police the three above-named citizens were immediately placed under the orders of the ordinary judges, and since 6 November the case has been under the jurisdiction and within the competence of the First Penal Court of Pichincha, which must decide the case subject of the present communication" (Appended to this Government statement is a copy of the Police report).

4. In a communication of 6 March 1986, the Commission transmitted to the complainant the relevant portions of the information supplied by the Government of Ecuador, with the request that he present his observations or comments within 45 days.

5. On 27 June 1986, the Commission repeated its request to the complainant for observations on the reply of the Government of Ecuador and granted him a new term of 60 days.

6. On 16 September 1986, the complainant presented his observations and comments on the Government's reply, stating that the latter said nothing about the torture to which the prisoners had been subjected while held incommunicado. The complainant also attached copies of the reports of the medical examinations performed by physicians appointed by the First Penal Judge of Pichincha, in the presence of the latter. Those reports contain the following descriptions:

TENTH PENAL JUDGE OF PICHINCHA: We, Drs. Edgar Chiriboga and Miguel Dávila, appointed by Your Honor to carry out a legal-medical examination of the persons mentioned below, report as follows:

1. Mr. Fabricio Vicente Proaño Moreno: male, mestizo, 176 cm tall, weight 132 lbs, heartbeat 72/min., blood pressure 120/80 mm Hg, buccal temperature 37 degrees C, and respiration 28/min. Patient in generally fair condition; no loss of psychomotor activity. Temporally and spatially oriented.

Face: there are three scabs on the right side: a. a round scab with irregular edges, 2.5 cm in diameter, on the forehead; b. in the malar and cheek region, a trapezoidal scab with irregular edges, 3.5 cm by 2 cm on a side, and under this scab and in adjacent areas a violet discoloration indicative of detachment of part of the scab; c. in the middle third of the lower maxilla, a round scab 1.5 cm in diameter. The upper and lower right eyelids exhibit ecchymosis of vinous coffee discoloration, rectangular in shape, 1.5 cm long and 0.5 cm wide, on the upper lid, and 5mm long by 3 mm wide on the lower. Ecchymosis on right half of lower lip spreading toward the oral mucosa.

Neck: limited range of active movement owing to pain expressed by the subject.

Thorax: Anterior region: three yellowish areas at the following locations: a. a round, yellowish ecchymosis 2 cm in diameter at the 5th intercostal space in the left parasternal area; b. a similar ecchymosis at the presternum; c. at the level of the 10th and 11th intercostal spaces on the right side and the medioclavicular line, a yellowish, trapezoidal ecchymosis measuring 6 cm by 5 cm.

Posterior region: there is a round erythematous spot 3 cm in diameter at the vertex of the right shoulder blade, and a similar spot 1.5 cm in diameter in the inside angle of the same shoulder blade. On the inner edge of the left shoulder blade there is a rectangular yellowish spot 4 cm long and 2 cm wide.

Lungs: diminished vesicular murmur at base of right side.

Appendages:

Right anterior: in the middle third of the outer face of the arm, a rectangular violaceous ecchymosis, 4 cm to a side, and on the inner face and at the same level a round violaceous ecchymosis 1.5 cm in diameter. In the lower third of the forearm, five linear scabs arrayed transversally and measuring 2.5 to 3 cm in length.

Left anterior: on the line of the joints between the metacarpal bones and phalanges and on the dorsal side, a violaceous area extending from the second to the fourth fingers. There are scabs in the interdigital folds between the thumbs and index fingers of both hands.

Right posterior: on the outer surface in the middle third of the thigh there are two rounded, yellowish ecchymotic areas in resolution, 2 cm in diameter. On the anterior surface, in the middle third, there are three small, round scabs 2 mm in diameter, which are 5.5 and 6 cm apart. In the middle third of the lower leg, on the inner, anterior and outer surfaces, there is an ecchymotic area of rectangular shape, 5 cm long and 4 cm wide. In the two upper thirds of the lower leg, a 2.5 cm square yellowish area. On the outer malleolus of the foot, an oval scab 4 cm by 2 cm. On the dorsal side of the distal phalanx of the third toe there is a round scab 3 cm in diameter. On the dorsal side of the foot, at the articulation between the metatarsals and phalanges, a violaceous ecchymotic area extending from the second toe to the fourth.

Left posterior: on the inner surface of the thigh, in the vicinity of the inguinoscrotal area, there are twelve scabs of different sizes, the largest measuring 1.5 cm in length and 0.5 cm in width. On the anterior surface of the upper third of the thigh there are three round, violaceous ecchymotic areas, 1.5 cm in diameter. In the prepatellar area there is a rectangular greenish-yellowish spot 5 cm long by 2 cm wide, and in the middle third of the lower leg a rectangular, violaceous ecchymosis measuring 12 cm by 6 cm. There are two round scabs, each 3 mm in diameter, one in the middle third and the other in the lower third. At the line of articulation between the metatarsals and phalanges, on the dorsal surface, there is an ecchymotic area extending from the 2nd toe to the 4th; a round, dorsal scab 5 mm in diameter on the second phalanx of the fourth toe, and a square scab, 5 mm to a side, on the inner surface of the big toe. The examination was conducted in the polyclinic of García Moreno Prison at 16:00 p.m. on 6 November 1985 in your presence, Your Honor.

2. Mr. Pablo Giovanni Proaño Moreno: male, mestizo, between 25 and 30 years of age, 170 cm tall, weight 139 lbs, heartbeat 88/min., blood pressure 125/70 mm Hg, buccal temperature 36.5 degrees C, respiration 28/min. Temporally and spatially oriented. No loss of psychic activity. Diminished motor activity.

Thorax: Right hemithorax: 1. Transverse dressing from posterior to anterior region and from the 5th to the 10th intercostal spaces. Removal of the dressing brought into view a round wound in process of cicatrization, some 10 mm in diameter, at the intersection of the posterior axillary line and the 6th intercostal space. 2. A surgical wound (a right posterolateral excision) running obliquely--down and

forward from the posterior region at the level of the 7th intercostal space. 3. Some 5 cm in from the posterior edge of the excision, a straight perpendicular scar some 8 cm long, running from the 6th intercostal space downward. Palpation found diminished expansibility of the right hemithorax; subject complained of pain on manual exploration in the area of the aforementioned wounds. Slight dullness to percussion found from the 7th to the 9th right intercostal spaces and dullness from the 10th intercostal space to the base of the pulmonary area. To auscultation, reduced vesicular murmur from the 7th to the 9th intercostal spaces, and complete inaudibility thereof from the 10th right intercostal space to the base of the pulmonary area.

To complete our report we consulted clinical history No. 187370 of the Eugenio Espejo Hospital, which contains a surgical protocol under the name of Mr. Pablo Proaño on surgery performed by Dr. James Franco on 30 October 1985 beginning at 17:00 p.m. and ending at 20:45 p.m.; the protocol refers to rupture of the 8th, 9th, and 10th right costal segments and to destruction of the 10th pulmonary segment. We also consulted the radiological report contained in the aforementioned clinical history, which refers to an AP plate of the thorax requested on 30 October 1985 by the Emergency Ward, taken of the patient in question, which, among other information, notes the presence of a metal fragment visible in soft tissues on the right side of the lumbar region. We append the present report and xerox copies of the surgical protocol and radiological report in question.

Abdomen: Right flank: bandage 5 cm by 5 cm in the anterior region. Removal of the bandage exposed 2 straight-edged 1-cm long wounds oriented transversally, one along the prolongation of the anterior axillary line some 7 cm from the lower edge of the rib cage, and the other along the prolongation of the median axillary line 7 cm from the lower edge of the rib cage.

Right lumbar region: four thread-like scabs, each 1 cm long, oriented longitudinally.

Right gluteal region: Ecchymotic area 20 cm by 5 cm. Left gluteal region: rectangular ecchymosis 1 cm by 5 cm on outer surface, and nine punctiform scars 1 mm in diameter, arranged in the form of a horseshoe.

Appendages:

A greenish, triangular ecchymosis at the interdigital fold between the thumb and index finger on the back of the left hand.

This examination was made on 7 November 1985, in the Cardiothoracic Surgery ward of Eugenio Espejo Hospital, room 4B, bed 29, starting at 9:30 a.m., in your presence, Your Honor.

3. Miss Guadalupe Chiriboga Nardi: female, 165 cm tall, white, weight 130 lbs, heartbeat 64/min., blood pressure 120/80 mm Hg/min. Age 20-25 years. General condition good. Temporally and spatially oriented. No loss of psychomotor activity.

Head: Slight edema at external commissure of left upper eyelid.

Thorax: Subject complains of pain to digital pressure at supraspinal and bilateral paravertebral points of the 8th to the 12th dorsal vertebrae.

Lumbar region: Subject complains of pain to digital pressure at supraspinal bilateral paravertebral points of the 1st to the 5th lumbar vertebrae.

Abdomen: Yellowish ecchymosis of oval shape, 2 cm in diameter, in the iliac fossa on the right side. Greenish-yellowish, irregularly shaped ecchymosis on the anterosuperior iliac spine on the left side, measuring 2 cm by 1 cm.

Appendages:

Upper right: Ecchymosis 1 cm in diameter in posterior region of the shoulder. Eleven punctiform scabs on the dorsal surface of the wrist and hand. Complete loss of sensation in fleshy part of the thumb.

Upper left: Round scab 3 mm in diameter on posterior surface of the elbow. On the left thumb and interdigital fold, 5 punctiform skin gouging 2 mm in diameter on the dorsal surface. The dorsal skin of the thumb is greyish compared with the right thumb. Blackish area 1 cm long by 0.5 cm wide on the skin along the external edge of the thumb, and complete loss of sensation in the fleshy part thereof.

Lower right: Ecchymotic area 6 cm long by 4 cm wide on antero-internal surface of the thigh, violaceous in the upper part and yellowish elsewhere. Ecchymotic area at the knee. Three prepatellar skin indentations 2 mm in diameter. Yellowish oval ecchymosis, 1.5 cm by 2 cm, on the popliteal fossa. On

the inner surface of the leg, eight round scabs 2 mm in diameter. A round scab 5 mm in diameter in the inner malleolar region. The subject expresses great pain on abduction of the limb.

Lower left: Yellowish and violaceous ecchymotic area 17 cm long by 13 cm wide on the front and inner surface of the upper half of the thigh. Thread-like scar 1 cm long on the knee. A half-moon shaped ecchymosis 5 cm by 2 cm on the inner and upper surface of the leg. On the outer surface of the same leg, 2 transverse indentations 4 cm long. On the outer malleolus, 3 punctiform scabs 3 cm in diameter. The subject expresses great pain on abduction of the limb.

The examination was performed in the medical dispensary of the Women's Jail of Quito on 7 November 1985 starting at 11:30 a.m., in your presence, Your Honor.

This is all that we are truthfully able to say.

7. By a note dated October 24, 1986, the Commission transmitted the petitioner's observations to the Government of Ecuador and requested it to provide any reports it deemed pertinent to the case within 30 days.

8. The Government of Ecuador replied to that communication from the Commission on December 16, 1986, and transmitted to it a copy of the documentation that the Government had previously submitted to the Commission. The Government also requested the Commission to provide it with copies of the medical reports and examinations referred to by the petitioner.

9. By a note dated January 9, 1987, the Commission transmitted to the Government of Ecuador copies of the medical reports and examinations provided by the petitioner.

10. By a note dated February 27, 1987, the Commission again asked the Government of Ecuador to furnish, within 30 days, any information it deemed pertinent to the instant case.

On March 4, 1987, the Government of Ecuador responded to the Commission's request as follows:

[In reference to] the case of citizens Fabricio Proaño Moreno, Pablo Proaño Moreno, and Guadalupe Chiriboga Nardi, and with regard to the fact that "the Government of Ecuador has not responded to the specific question of whether or not those three persons were subjected to ill-treatment or torture while they were held incommunicado during the period of their detention.

I must state emphatically that, according to the reports received from the corresponding police officials, none of the complainants was the object of ill-treatment or torture as they have claimed. Indeed, as a result of the armed clash that occurred, one of them, Pablo Proaño Moreno, received a bullet wound, for which he was immediately taken to a health center to receive proper medical care. He had fallen from a tree from which he had been shooting. Consequently he was never in a police station to give his statement, let alone to be tortured.

As for the existence of "medical reports and examinations that would seem to corroborate such allegations," it would be interesting to see the name or names of the medical staff that issued those medical reports, the context of the reports, and the dates on which they were issued. In any case, I should say that for legal purposes the only documents considered valid are those reports and certificates issued by forensic surgeons.

Lastly, I wish to say that it is not unusual for this type of statement to be made, with no basis in fact, deliberately to damage the reputation of the National Police and as the inveterate practice of the members of the terrorist group Alfaro Vive, Carajo, when they fall into the hands of justice in order to become the accusers rather than the accused. I am also pleased to tell you, with regard to Mr. Fabricio Proaño Moreno and Miss Guadalupe Chiriboga Nardi, that the Ministry of Foreign Affairs requested the competent Ecuadorean authorities to expand the respective reports.

12. On March 30, 1987, the Commission transmitted to the petitioner the pertinent parts of the reply sent by the Government of Ecuador and gave him a period of 45 days to make such observations as he

deemed pertinent. Since it did not receive a reply, in a note dated March 4, 1988, the Commission once again asked the petitioner to respond promptly to its request.

13. On May 19, 1988, the petitioner replied by sending for the second time copies of the reports of the medical examinations of those concerned, which included all the information on the names of the expert witnesses and the place where the examinations were done.

14. In a letter dated July 8, 1988, the Commission sent the Government of Ecuador the additional information provided by the petitioner and gave it 60 days to provide any additional observations or information that it deemed pertinent. To date the Commission has not received any answer concerning the expansion of the reports referred to in the note dated March 4, 1987.

CONSIDERING:

a. That the petition lodged meets the formal requirements for admissibility established in Article 46 of the American Convention on Human Rights, to which Ecuador is a State Party, and in Article 32 of the Regulations of the Commission.

b. That the procedures before the Commission have been exhausted and the deadlines established in Article 34 of the Regulations have passed.

c. That there has been an unwarranted delay in the administration of justice, since three years and six months have elapsed without a court issuing a decision on these violations human rights -torture and ill-treatment-, as established in Article 46.2.c of the American Convention.

d. That the information provided by the Government of Ecuador on Fabricio Proaño and Guadalupe Chiriboga is totally insufficient since it is limited to reporting on the case against them for assault and theft, which does not refute the statements made in the petition on the torture and ill-treatment to which they were subjected.

e. That the information provided by the Government on Pablo Giovanni Proaño, indicating that he was wounded as a result of the armed clash that occurred with the police and was immediately taken to a hospital, which is why he was not "in a police station to give his statement, let alone to be tortured," suggests that he was not the victim of any ill-treatment or torture. That the above is corroborated by a medical examination report provided by the petitioner.

f. That the evidence presented by the petitioner, such as photographs and certificates of medical examinations done by medical staff designated by the judge trying the case against the defendants, permits the reasoned presumption that the series of lesions covering the major part of the bodies of Guadalupe Chiriboga and Fabricio Proaño, resulted from the torture and ill-treatment to which they were subjected by the members of the Ecuadorean police.

g. That the information furnished by the Government of Ecuador does not refute the evidence presented by the petitioner and makes it possible to confirm the Commission's conviction that the facts set out in the complaint are genuine.

h. That the facts behind the complaint are not, by their nature, likely to be settled through application of the procedure of friendly settlement provided for in Article 48.1.f of the American Convention on Human Rights and Article 45 of the Regulations of the Commission.

i. That since the procedure of friendly settlement is not applicable, the Commission must comply

with the provisions of Article 50.1 of the American Convention on Human Rights and issue its opinion and conclusions on the matter before it for consideration.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
RESOLVES:

1. To declare that the Government of Ecuador has violated the right to personal integrity embodied in Article 5 of the American Convention on Human Rights through the actions of its agents that led to the use of torture and ill-treatment against Guadalupe Chiriboga and Fabricio Proaño.
2. To declare that it cannot be proven from the information presented in this case that the Government of Ecuador is to be held liable for the torture and ill-treatment of Pablo Giovanni Proaño.
3. To recommend to the Government of Ecuador that it conduct an exhaustive investigation of the torture and ill-treatment to which Guadalupe Chiriboga and Fabricio Vicente Proaño were subjected in order to identify those responsible and bring them to justice so that they may receive the sanctions specified in the criminal legislation for such offenses and that it take the necessary steps to prevent such serious acts from recurring.
4. To transmit this report to the Government of Ecuador so that it may make the observations it deems pertinent within 90 days from the date of dispatch of the report.
5. If the Government of Ecuador has not made its observations within that period, the Commission shall include this report in its Annual Report to the General Assembly in accordance with Article 63.g of its Regulations.