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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 29/00, Case 11.992
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Title/Style of Cause: Dayra Maria Levoyer Jimenez v. Ecuador
Doc. Type: Decision
Decided by: Chairman: Helio Bicudo;
First Vice-Chairman: Claudio Grossman;
Second Vice-Chairman: Juan Mendez;
Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie
A member of the Commission, Mr. Julio Prado Vallejo, who is an Ecuadorian national, did not take part in the discussion and did not take part in the voting in the present case, in accordance with article 19(2) of the Regulations of the Commission.
Dated: 7 March 2000
Citation: Levoyer Jimenez v. Ecuador, Case 11.992, Inter-Am. C.H.R., Report No. 29/00, OEA/Ser.L/V/II.106, doc. 3, rev. (1999).
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I. SUMMARY

1. In a petition received by the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "IACHR") on December 10, 1997, the Comisión Ecuémica de Derechos Humanos (Ecumenical Commission for Human Rights) (hereinafter "the petitioner") filed a complaint against the State of Ecuador (hereinafter "Ecuador" or "the State"), for violating the human rights of Mrs. Dayra María Levoyer Jiménez.

2. The petitioner maintains that Mrs. Levoyer Jiménez was detained without judicial order and held in solitary confinement for 39 days, during which time she was subjected to psychological torture. She was held, without a judgment being rendered, for more than five years, with all of the charges against her eventually being dismissed. During her detention, numerous writs of habeas corpus were filed unsuccessfully. Finally, on June 16, 1998, the Constitutional Court ruled in an appeal of the last habeas corpus that she be set free in view of the extended duration of her pretrial imprisonment. Consequently, the petitioner alleges that the State violated her rights to personal liberty, due process, humane treatment, and access to a simple and prompt recourse to have her rights recognized, in accordance with Articles 5, 7, 8, and 25 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention").

3. The petitioner further maintains that the detention and subsequent incarceration of Mrs. Levoyer Jiménez for more than five years is due exclusively to the fact that she is the companion

of Hugo Jorge Reyes Torres,[FN1] who was accused of being the leader of a powerful gang of drug traffickers in Ecuador. The petitioner also alleges that the State violated her right to property, as set forth in Article 21 of the Convention, because the property seized when she was detained has not yet been returned to her. The State argues that domestic remedies have not been exhausted.

[FN1] Mr. Jorge Hugo Reyes Torres was also detained in what was known as “Operación Ciclón” (Operation Cyclone).

4. The Commission has decided to admit the petition and to put itself at the disposal of the parties with a view to reaching a friendly settlement based on respect for the human rights recognized in the American Convention.

II. PROCESSING BY THE COMMISSION

5. On December 29, 1997, the Commission received the complaint from the petitioner, and on March 19, 1998, forwarded it to the government. On July 7 and 13, 1998, the Commission received additional information from the petitioner, which was forwarded to the State in due course. On July 27, 1998, the Commission received the State's response, which was forwarded to the petitioner, who was given 30 days in which to submit its observations. The petitioner's response was received on August 10 and was forwarded to the Government on September 2. The latter was given 30 days in which to respond.

6. On December 10, 1998, the Commission received additional information from the petitioner, which was forwarded to the State in due course. From February to December 1999, the Commission made itself available to the parties so that they could reach a friendly settlement but so far they have failed to do so.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

7. According to the information provided by the petitioner, Mrs. Levoyer Jiménez was detained without a judicial order on June 21, 1992, in "Operación Ciclón" (Operation Cyclone), a police operation in which a large number of people suspected of being members of a gang of drug traffickers were arrested. At the time of her arrest, she was not told why she was being detained. She was held in solitary confinement for 39 days, during which time she is alleged to have been subjected to psychological torture to make her testify. The warrant for her arrest was issued by the mayor after she was detained, on July 30 and 31, 1992, charging her with the crimes of drug trafficking, acting as a “front”, illicit enrichment, and asset laundering (conversión de bienes). In addition, the criminal court of Pichincha issued an arrest warrant on August 11, 1992, nearly two months after her arrest. As a result of that arrest warrant, four sets of proceedings were instituted against Mrs. Levoyer Jiménez and other persons.

8. One of the defendants, a Major General in the Army, was subject to special jurisdiction. Consequently, the proceedings were removed to the Superior Court of Quito.[FN2] The President of the Superior Court of Quito (hereinafter called "the Superior Court") established jurisdiction for the judicial proceedings in September and November 1992, and upheld pre-trial detention in the four cases, and orders for imprisonment were issued on December 1, 1992. In 1996, the Attorney General of Pichincha issued an opinion, without accusing Mrs. Levoyer of any of the four charges.

[FN2] Article 5(5) of the Code of Criminal Procedure of Ecuador establishes that "when, any member of a group charged with an offense is subject to special jurisdiction, all members of the group shall be tried by the same special court..." In addition, Article 11 of the same Code provides: "The President of the Supreme Court and the Presidents of the Superior Courts shall be the investigative judge in those cases of special jurisdiction which, by law, it falls to them to hear." One of the persons investigated with Mrs. Levoyer was a Major General in the Ecuadorian Army. Charges against officers in the Armed Forces must be tried in another court, that is special jurisdiction, and, therefore, according to the above-noted provision, determine that the President of the Superior Court shall have exclusive jurisdiction over them (see Law on Armed Forces Personnel, Organic Law of the Judicial Function, and Code of Criminal Procedure). The offences of which the officers in the Armed Forces were charged meant that they had to be tried outside the Courts, in other words under a special jurisdiction. Accordingly, according to the law, the President of the Court of Appeals must hear the reasons for the detention in order to rule on the matter (Armed Forces Personnel Act, Judicial Functions Act, and the Code of Criminal Procedure).

9. In the proceedings for illicit enrichment, although no charges were brought by the Prosecutor, the President of the Superior Court ruled that a plenary be held on the matter on November 22, 1996. This ruling was appealed and brought before the bench in the Fourth Division of the Superior Court, which on April 29, 1998, dismissed the proceedings. In the proceedings for asset laundering, on September 30, 1996, the President of the Superior Court issued a temporary stay of proceedings and ruled for legal consultation, which was resolved by the Fourth Division of the Superior Court on April 29, 1998, also with a ruling of dismissal.

10. In ruling on the legal opinion, the Fourth Division of the Superior Court ordered the dismissal of the proceedings for illicit enrichment and asset laundering, on the basis of Articles 76 and 77 of the Narcotics and Psychotropic Substances Act, which stipulate that a prerequisite for bringing such charges is that a drug trafficking crime must have been committed, which had not been proven in the case.

11. The Attorney General's Office (Ministerio Publico) filed a motion for reversal of the decision handed down by the Fourth Division in both cases (illicit enrichment and asset laundering). As the motion for reversal of judgement was denied, the Prosecutor filed a motion of fact.[FN3] According to the information provided to the Commission, this last motion was being processed in July 1998. Consequently, the judgment dismissing the charges of illicit enrichment and conversion of property was not final. The petitioner alleges that, according to the

jurisprudence of the Supreme Court on motions for reversal, the filing of such a motion was unlawful since the Code of Procedure provides that it may only be used against judgments in the criminal courts when a breach of the law has occurred.[FN4] Therefore, the petitioner argues, the remedy may not be used against rulings for dismissal by a division of the Superior Court, as in the present case.

[FN4] A motion of fact is provided for in Article 395 of the Code of Criminal Procedure as follows: "The motion will be granted when a magistrate or criminal court has denied a motion filed by the deadlines established and as specified in this Code". Accordingly, in denying the motion for reversal, a motion of fact must be filed so that the higher court, the Supreme Court in the present case, can rule on the merits of the motion.

12. In the proceedings relating to acting as a "front" for criminals, on April 29, 1996, the President of the Superior Court ordered that Mrs. Levoyer be released. On March 23, 1998, an order to initiate the second phase of proceedings was handed down, which was appealed. On July 7, 1999, the First Division of the Superior Court upheld the dismissal of the case and ruled that the property be returned to her upon judgement being rendered. The petitioner alleges, therefore, that the right to property has been violated, since as the charge has been dismissed, there will be no judgment, and, therefore, that withholding of the property is tantamount to confiscation. In the proceedings for drug trafficking, on July 19, 1995 a dismissal was ordered. Upon review, the First Division of the Superior Court upheld the dismissal on April 16, 1996.

13. As each of the various proceedings against Mrs. Levoyer was dropped, orders for her release were issued. However, these orders could not be executed since the Code of Criminal Procedure requires that all motions for dismissal be heard by the Superior Court. Accordingly, one after another, the proceedings were reviewed by different chambers of the Superior Court of Quito as mentioned above. In proceedings that involve offenses punishable under the Narcotics and Psychotropic Substances Act, the defendant must remain in custody for the duration of the proceedings even though a case may have been dismissed. The petitioner maintains that for any other offense, the defendant would have been released before the decision was reviewed.

14. The report the Commission received from the petitioner on December 10, 1998, noted that, after Mrs. Levoyer was detained, in addition to the four proceedings mentioned above, the following proceedings were instituted:

Proceedings for illegal possession of firearms, in which a temporary stay was ordered on November 7, 1994.

A customs proceeding, initiated on March 11, 1994, which was ordered dismissed on December 22, 1995.

Proceedings for asset laundering brought by Banco de los Andes, initiated on June 23, 1994, in which a full trial was ordered on January 23, 1998.

Proceedings for asset laundering brought by Banco Sociedad General de Crédito, initiated on January 30, 1996. As of July 1998, these proceedings were in the preliminary phase.

15. In the proceedings for asset laundering brought by Banco de los Andes, the Second Division of the Superior Court, after several incidental pleas, referred the case to the associate judges of that same bench, who dismissed the charges on July 5, 1999. Apparently, the bench found that three cases for asset laundering had been instituted on the basis of Operation Cyclone, in violation of the prohibition of double jeopardy.

16. The petitioner notes that during her detention Mrs. Levoyer filed many writs of amparo or habeas corpus in an effort to seek her release, on grounds that her detention was a violation of the Constitution, the law, and human rights treaties. Writs were filed on July 26, 1994, on April 3, 1995, in March 1996, on October 18, 1997, and on November 18, 1997. All of these motions were filed with the President of the Supreme Court of Justice, who did not rule on any of them. Finally, as mentioned earlier, on June 16, 1998, the Constitutional Court heard an appeal of her final writ of habeas corpus and ordered that she be released.

17. On April 15, 1998, a writ of habeas corpus was filed, requesting that the Mayor of Quito[FN5] release Mrs. Levoyer immediately. The petition was denied on April 21, 1998, a ruling that was appealed on April 24, 1998 before the Constitutional Court.

[FN5] Article 93 of the Constitution of Ecuador provides that habeas corpus be filed "... with the mayor of the jurisdiction in which the person is charged, or before an individual acting in his stead...."

18. The Second Division of the Constitutional Court, in a ruling handed down on June 16, 1998, considered that the terms specified in Law 04 12[FN6] had been exceeded, reversed the Mayor's decision, and ordered that Mrs. Levoyer Jiménez be released. The Constitutional Court noted in its ruling that the exception in the narcotics and psychotropic substances Act to the application of Article 114(1) of the Criminal Code, for offenses considered thereunder, had been declared unconstitutional by that same Court in Resolution N° 119-1-97 of December 24, 1997. Accordingly, it added, it was no longer in force. On these grounds, the Court considered the time requirements specified in Article 114(1) to be met and ordered the release of Dayra María Levoyer Jiménez, which occurred a few days later.

[FN6] Law 04 amended the Criminal Code, adding Article 114(1), which establishes: "persons who are detained, without receiving an order of dismissal or that the second stage of proceedings be opened, for a time equal to or greater than one-third of the time established by the Criminal Code as the maximum sentence for the offense of which they were accused, shall be released by the judge hearing the proceedings. Similarly, persons who are detained, without having received a judgment, for a period equal to or greater than one-half of the time specified in the Criminal Code as the maximum penalty for the offense of which they were accused, shall be released immediately by the criminal court hearing the proceedings."

19. Mrs. Levoyer Jiménez was released in June 1998, six years after she had been detained. So far, all of the charges against her have been dismissed.

B. The State's position

20. On July 27, 1998, the State's response was received. It argues that in the instant case a violation of human rights cannot be considered to have occurred because domestic remedies have not been exhausted.

21. It argues that Article 249 of the Code of Criminal Procedure establishes that, once an indictment has been made, preliminary proceedings are suspended for five years, during which time new evidence may be presented as to the defendant's innocence or guilt. In addition, Article 252 of the Code provides that, once that period has lapsed, and provided that the proceedings have not been re-opened, the court shall issue a ruling of dismissal.

22. Accordingly, the State considers that since the periods provided for in Article 249 have not expired, and until preliminary proceedings may be closed under the terms of Article 252, domestic remedies have not been exhausted.

23. In this same vein, it notes that in the proceedings for illicit enrichment a full trial was ordered and, therefore, domestic proceedings have not yet concluded.

24. The State has reported that the following proceedings are ongoing against Mrs. Levoyer (as of May 14, 1998):

Proceedings 91-92, for illicit enrichment. A full trial against her, as co-perpetrator, was ordered on November 25, 1996. That order is on appeal before the Fourth Division of the Superior Court of Quito.

Proceedings 92-92 on charges of being a "front". A full trial against her, as co-perpetrator, was ordered on March 23, 1998. It is on appeal and has been referred for consultation.

Proceedings 93-92 for drug trafficking. A temporary stay was ordered with respect to the proceedings and to the accused, on July 19, 1995. The order has been referred for review and appeal before the First Division of the Superior Court of Quito.

Proceedings 94-92 for asset laundering and transfer. The case was dismissed. A motion for annulment has been brought by the Office of the Public Prosecutor of Pichincha.

Proceedings 76-94 for money laundering. A full trial against her, as co-perpetrator, was ordered on January 20, 1998. The order is on appeal before the Second Division of the Superior Court of Quito.

As mentioned earlier, the courts ordered that most of the charges be dismissed.

IV. ANALYSIS ON ADMISSIBILITY

25. The Commission now moves on to analyze the admissibility requirements of the petition established in the American Convention.

A. Jurisdiction of the Commission *ratione materiae*, *ratione personae*, *ratione loci*, and *ratione temporis*.

26. The Commission has jurisdiction to hear the petitioner's complaint *ratione materiae*, *ratione personae*, *ratione loci*, and *ratione temporis* insofar it concerns violations of Articles 5, 7, 21, 8, and 25 of the Convention to the detriment of Dayra Maria Levoyer Jiménez, an Ecuadorian citizen, it is against the State of Ecuador, a State party to the Treaty, and the violations were allegedly committed on Ecuadorian territory after the country had ratified the Convention[FN7]. With respect to competence *ratione personae*, the Ecumenical Council of Human Rights (CEDHU) is a nongovernmental organization that is legally recognized in Ecuador and, pursuant to Article 44 of the Convention, entitled to file petitions with the Commission. In view of the foregoing, the Commission is competent to examine the complaint filed by the petitioner. The Commission, therefore, proceeds to determine whether the case satisfies the requirements established in Articles 46 and 47 of the American Convention.

B. Other admissibility requirements of the petition

a. Exhaustion of domestic remedies

27. More than five years elapsed from the outset of the judicial proceedings until submission of the complaint to the Commission, without any judgment being rendered against the alleged victim. During that time, Mrs. Levoyer Jiménez remained in pre-trial detention. At this time, all of the charges against the alleged victim have been dismissed. Therefore, the Commission is of the view, without this implying any opinion as to the merits of the question, which will be addressed in due course, that there may have been an unwarranted delay in the judicial proceedings in this case, that is, one of the exceptions referred to in Article 46(2)(c) of the Convention, whereby petitioners are exempted from the requirement of exhausting domestic remedies.

28. The Commission notes that in at least one of the proceedings charges against the alleged victim were temporarily dismissed. This implies, according to the information furnished by the State, that the case will remain open for five years, during which time it could be reopened if new evidence is presented as to the victim's innocence or guilt. This possibility leaves the case pending, making it impossible to exhaust domestic remedies within a reasonable period.

29. Furthermore, as to the alleged violation of Article 7 of the Convention, the petitioner maintains a series of writs of amparo and habeas corpus were filed within domestic jurisdiction throughout the period that the alleged victim remained in custody. A ruling was not taken on most of these writs (see paragraph 14). One last writ of habeas corpus was filed and again dismissed and was appealed to the Constitutional Court. This action was resolved once the

petition was before the Commission. The Commission is of the view that, given the number of writs of habeas corpus filed, the requirement that domestic remedies be exhausted has been met.

30. In this same vein, it is important to add that the many writs of habeas corpus filed by the petitioner are grounds for determining not only whether she was deprived of her freedom but also whether an alleged violation of her right to physical and psychological integrity took place.[FN8] Accordingly, in the present case, the petitioner exhausted the remedies under domestic jurisdiction referred to in Article 5 of the Convention.

[FN8] Ecuador ratified the American Convention on December 28, 1977.

b. Time period for submission

31. Article 46(1)(b) of the Convention notes that the petition must be submitted within six months from the time the victim is notified of the final decision exhausting domestic remedies. The Commission is of the view that based on the observations made in the previous paragraph, this requirement does not apply in the present case in accordance with Article 46(2) of the Convention.

c. Duplication of procedures and res judicata

32. The Commission understands that the subject of the petition is not pending in another international proceeding for settlement, nor is it substantially the same as one previously studied by this or another international organization. Therefore, the requirements established in Articles 46(1)(c) and 47(d) have also been satisfied.

d. Characterization of the facts

33. The Commission considers that if the facts related by the petitioner in her presentation are proven in its analysis of the merits of the case, they could constitute a violation of rights guaranteed by the Convention.

34. The petitioner maintained that a violation of Article 5 of the Convention occurred since the alleged victim was subjected to psychological torture. The Commission considers that if it is proven that the alleged victim was kept in solitary confinement for an inordinate period of time that could constitute a violation of Article 5 of the Convention.[FN9] As the Commission maintained in Report 64/99, and in consonance with the Inter-American Court of Human Rights, "the mere verification that a person has been held incommunicado for a long period is indicative of the fact that such person has been subjected to cruel and inhuman treatment.[FN10] Accordingly, the Commission finds that with respect to Article 5 the allegation of being held incommunicado, if proven, could constitute a violation of the aforesaid article.

[FN9] See IACHR, Habeas Corpus in emergency situations (Arts. 27(2), 25, and 8 of the American Convention on Human Rights.), Advisory Opinion OC-8/87 of January 30, 1987, paragraph 35.

[FN10] Article 5(2) of the Convention establishes that “No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.”

35. With respect to the alleged violation of Article 21 in conjunction with Articles 8 and 25, the Commission considers that in the present case proceedings against the alleged victim dragged on for more than five years. Although most of the proceedings were dismissed, judgment is still pending in some. The return of the property requested by the alleged victim is subject to termination of these proceedings. The petitioner alleges that pursuant to the domestic law applicable in this case, such property would not be returned unless a final judgment is rendered.[FN11] The petitioner goes on to say that this would not happen if the case is dismissed, and would thus constitute a violation of Article 21 of the Convention.

[FN11] Report 64/99, Case 11.778 (Ecuador) Ruth del Rosario Garcés Valladares, April 13, 1999, paragraph 45, IACHR, ANNUAL REPORT, 1998.

36. A decision on this issue, and on the issue regarding the duration of the proceedings, presupposes an analysis of the merits of the case. Accordingly, the Commission resolves to postpone the question of admissibility of the alleged violations of Articles 8, 21, and 25 of the Convention until its consideration of the merits of the case.

37. Accordingly, as there is no obvious basis to declare the petition groundless or out of order, the Commission considers that the requirements set out in Articles 47(b) and 47(c) of the Convention have been satisfied.

V. CONCLUSIONS

38. The Commission concludes the case is admissible pursuant to Articles 46 and 47 of the American Convention.

39. Based on the foregoing considerations of fact and law, and without prejudging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible with respect to the alleged violations of Articles 5, 7, 8, and 25 of the American Convention.

2. To postpone until the report on the merits the question of the admissibility of the alleged violation of Article 21, in conjunction with Articles 8 and 25, of the American Convention.
3. To notify the petitioner and the State of this decision.
4. To continue with its examination of the merits of the case.
5. To place itself once again at the disposal of the parties with a view to reaching a friendly settlement based on respect for the rights recognized in the American Convention, and to invite the parties to state their views regarding this possibility;
6. To publish this decision and include it in the Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., March 7, 2000. Signed by Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Juan Méndez, Second Vice-Chairman; Commissioners: Marta Altolaguirre, Robert K. Goldman, and Peter Laurie.