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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 89/00; Case 11.495
Session: Hundred and Eighth Regular Session (2 – 20 October 2000)
Title/Style of Cause: Juan Ramon Chamorro Quiroz v. Costa Rica
Doc. Type: Decision
Decided by: Chairman: Helio Bicudo;
First Vice-Chairman: Claudio Grossman;
Second Vice-Chairman: Juan E. Mendez;
Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo
Dated: 5 October 2000
Citation: Chamorro Quiroz v. Costa Rica, Case 11.495, Inter-Am. C.H.R., Report No. 89/00, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)
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I. SUMMARY

1. On February 28, 1995, the Inter-American Commission on Human Rights (hereinafter “the IACHR” or “the Commission”) received a complaint made against the Republic of Costa Rica (hereinafter “the Costa Rican State,” “the State,” or “Costa Rica”), a submission which was later elaborated upon by the petitioners on August 29, 1995. Both communications reported the alleged violation, with respect to 47 Nicaraguan citizens deported from Costa Rica to Nicaragua on February 22, 1995, of rights enshrined in the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), including that of a fair trial (Article 8) and that of judicial protection (Article 25).[FN1] In this report, the Commission studies the case of one of the deportees, Mr. Juan Ramón Chamorro Quiroz (hereinafter “the victim” or “Mr. Chamorro”),[FN2] who, it is additionally claimed, also suffered a violation of his right to humane treatment, protected by Article 5 of the Convention.

[FN1] Costa Rica ratified the American Convention on Human Rights on April 8, 1970.

[FN2] On August 29, 1995, the Commission separated the case of Mr. Juan Ramón Chamorro Quiroz (Nº 11.495) from that of the other alleged victims, including José Sánchez Guner Espinales, Pedro José Valle Barrera, Reynaldo Risby Jarquin, and Sabu Alvarado Aburto. The latter individuals’ case was reclassified as Nº 11.529.

2. The petitioners claim that Mr. Chamorro, a Nicaraguan citizen who was illegally inside the borders of Costa Rica, was captured on February 21, 1995, by two individuals wearing khaki-colored uniforms and carrying M-16 rifles, one of whom assaulted him and struck him with a

club. The victim, the petitioners further report, was deported the next day, without having been given either the time or the opportunity to invoke domestic legal remedies or to file a complaint before the competent authorities. Moreover, he was unable to return to the country to do so, because he was an undocumented immigrant and lacked the economic wherewithal. The petitioners maintain that Mr. Chamorro's undocumented status does not justify his being refused access to justice, as was the case.

3. The State maintains that the petition is inadmissible because Costa Rica's domestic legal remedies have not been exhausted and holds that in the deportation operation, all applicable domestic and international rules were followed. Mr. Chamorro could have sought a writ of annulment, filed an appeal, or invoked habeas corpus proceedings, and he could also have reported the aggression he allegedly suffered at the hands of agents of the State, but he did not. Moreover, once back in his country of origin, there was nothing preventing Mr. Chamorro from seeking, through established legal channels, his readmission into Costa Rica in order to report the incident to the competent authorities. With regard to the petitioners' claim that the Costa Rican authorities assaulted Mr. Chamorro, the State refutes these allegations and reports that its immigration police do not wear uniforms or carry weapons.

4. The State also maintains that all questions relating to immigration status are matters of national sovereignty.

5. The Commission concludes that it is competent to hear this case and that the petition is admissible under Articles 46(2)(b) and 47 of the Convention.

II. POSITIONS OF THE PARTIES

A. The Petitioners

6. The petitioners report that on February 21, 1995, the Costa Rican authorities captured Juan Ramón Chamorro Quiroz, an undocumented immigrant and Nicaraguan citizen of 30 years of age, who until the previous month had been working harvesting oranges on the Guanacaste estate in Santa Cecilia, Costa Rica. According to a statement given by the victim to the Nicaraguan Human Rights Center (CENIDH), he was arrested at 8:00 p.m. "by two individuals wearing khaki-colored uniforms and carrying M-16 rifles," one of whom gave him "a savage beating with a club, assaulting him over the full length of six blocks until they reached a command post." On February 22, 1995, one day after his arrest, Mr. Chamorro was deported to Nicaragua without having been given the opportunity to invoke the remedies offered by domestic law or to file a complaint.

7. The complainants state that undocumented immigrants who are captured are kept under arrest for several hours before being deported, and that this arrest is an administrative measure against which no relief is admitted, not even habeas corpus. In addition, the undocumented immigrants are directly taken from the place of their arrest to the location where they will be deported, a procedure which is exceedingly summary, takes place almost automatically, and does not allow any access to justice, which is a material impossibility irrespective of whether patently criminal actions have been committed. Moreover, Mr. Chamorro was unable to return to Costa

Rica to file the corresponding complaint, because he was an undocumented immigrant who, precisely because he did not have the economic wherewithal, traveled without a passport and entered the country illegally.

8. According to the petitioners, Mr. Chamorro suffered torture at the hands of agents of the State, which constitutes a violation of his right to humane treatment as enshrined in Article 5 of the Convention. Moreover, he was prevented from reporting that incident to the competent authorities and from invoking domestic legal remedies to challenge the decision to deport him, which constitutes a violation of Article 25 (judicial protection) of the Convention. He was further denied the right of having those remedies substantiated in accordance with the rules of due legal process, which constitutes a violation of Article 8(1) of the Convention.

9. The claimants report that, as indicated by legal medical report No. 64-1995 (Supreme Court of Justice of Nicaragua), on February 23, 1995, forensic physician J.R. Abad Valladares Vallejos examined Mr. Chamorro Quiroz at Carlos Roberto Huembes Hospital in Nicaragua. The medical report[FN3] describes the bruises visible on the victim's body as a result of the blows he received and states that, "it is clear that he was subjected to a beating, with an object like a 'baton,' an instrument carried by Costa Rican police officers and 'used to inflict beatings'." According to the petitioners, responsibility for the acts of violence and attack lay with the rural police, who wear uniforms, carry guns, and are part of the security forces that support the immigration authorities in capturing, arresting, and deporting undocumented immigrants. The General Directorate of Immigration were responsible for the violations and abuses of power. This means, according to the petitioners, that several State agents were actively involved, thus making the State responsible.

[FN3] Certification of Legal Medical Report No. 64-1995, issued on February 23, 1995 by the Supreme Court of Justice of Nicaragua at the request of Police Department No. 3. Examination conducted by forensic physician Dr. J.R. Abad Valladares Vallejos on Mr. Juan Ramón Chamorro Quiroz, in order to determine: (1) the type of injuries to his person, (2) whether the injuries received were serious or minor, and (3) whether this citizen's life was placed in danger.

10. The deportation operation, the petitioners claim, involved Capt. Carlos Valverde, a Costa Rican immigration agent, who refused to allow Mr. Chamorro and the other Nicaraguans to gather together their belongings or to collect the wages they were owed prior to being expelled from the country. According to the complainants, the expulsion took place in accordance with the State's practice of not allocating funds for feeding illegal immigrants who are being deported, not providing transport to expedite their deportation, and not taking steps to ensure they can collect their wages and belongings before being expelled.

11. Finally, the petitioners report that Nicaragua's Head of Immigration and Nationality sent a written protest to the Head of Immigration in Piedras Blancas, Costa Rica, for failing to seek the support of Nicaraguan consular authorities in connection with the entry of the Nicaraguan citizens deported on February 22, 1995. The protest recalled the agreements on this matter entered into by the two governments.[FN4]

[FN4] Note of February 22, 1995, from Subcommander Francisco Manuel Alonso, Head of Immigration and Nationality, Region IV, to Mr. Nicolás Talavera, Head of Immigration in Peñas Blancas, Costa Rica.

B. The State

12. The Costa Rican State indicates that on February 22, 1995, in compliance with Article 118 of the General Law on Immigration and Nationality, its authorities carried out an operation to detect and deport all foreigners who had clandestinely entered the country. According to Costa Rica, operations of this kind are conducted in accordance with national and international rules and established procedures. A file is opened for each detainee, who is informed of the deportation decision. In addition, notice is given to the consular officials of the countries of origin so they can record the entry of each deportee into their national territory. The reports given to Nicaragua regarding deportations of Nicaraguan citizens are intended to assist that country's immigration controls, but this does not mean that its authorities are empowered to intervene in Costa Rica's immigration affairs. Moreover, the General Directorate of Immigration and Nationality works closely with the Costa Rican Red Cross so that organization can send witnesses to monitor that, in its deportation operations, Costa Rica does indeed respect the deportees' human rights.

13. As for the remedies available to Mr. Chamorro, the Costa Rican State cites annulment and appeal (Articles 107 through 112 of the General Law on Immigration and Nationality). It adds that these apply:

in all deportation cases, with the obvious exception of those in which the foreigner entered our territory clandestinely, without observing the rules governing his entry or admission, or when his entry into or continued presence within the country was obtained through false declarations or documents.[FN5]

[FN5] State's written reply of April 25, 1995, p. 3. See, in this regard, Article 107 of the General Law on Immigration and Nationality.

14. Also available was the remedy of habeas corpus which, under Article 48 of the Costa Rican Constitution, guarantees a person's freedom and physical integrity. The remedy can be sought by any person, by means of a note, telegram, or other written means of communication, which does not require authentication, and must be substantiated promptly (Articles 18 and 19 of the Law of Constitutional Jurisdiction, Law No. 7135 of October 11, 1989). The State claims that although domestic remedies were available to the alleged victim and although Costa Rican law makes it very easy to seek habeas corpus relief, Mr. Chamorro did not initiate action before the courts of Costa Rica either on a personal basis, by means of an attorney, or through the Costa Rican consulates operating in Nicaragua, as he could well have done.[FN6] Consequently, the

petition is inadmissible, since the alleged incidents cannot be considered human rights violations until they have been investigated, judged, and punished by means of the mechanisms offered by domestic law which, in this case, have not been exhausted.

[FN6] Under Article 5.f of the Vienna Convention on Consular Relations, which governs consular functions, the Nicaraguan citizens who were allegedly affected could have filed a complaint at any of Costa Rica's consular offices in Nicaragua. In accordance with that same provision, it would then have fallen to the consular office, acting as an administrative office of the government, to transmit the complaint to the Costa Rican authorities. (See communication of the Government of Costa Rica of February 21, 1997, in reply to a request for information made by the Executive Secretariat.)

15. Moreover, maintains the State, the report signed by a Nicaraguan physician does not constitute proof that Costa Rican authorities were responsible for the injuries described therein, particularly since the petitioners fail to identify the officials who might have participated in the incident. In addition, as indicated in the relevant file (Costa Rican Ministry of Public Security document No. 1098-95-DM of March 20, 1995), Mr. Chamorro was arrested following a complaint from a resident of the town of Santa Cecilia (Santa Cruz, Guanacaste), alleging he had made threats on several occasions and had broken into private property belonging to two local families. Upon arrest, the alleged victim was apparently inebriated, had a number of cuts on his body, and was carrying no documents authorizing his presence in Costa Rica. Thus, the State continues, if Mr. Chamorro had any sort of injury, it was presumably caused by his drunken state, which would have left him vulnerable to accidents of all kinds. Moreover, the petitioners have not demonstrated any causal connection between the State's actions and the injuries suffered by Mr. Chamorro—an indispensable prerequisite if the State is to be blamed for them—for which there could be countless explanations other than the actions of the State. In any event, the assault on Mr. Chamorro could not be blamed on the Costa Rican immigration police whose officers, contrary to the complainant's allegations, do not wear uniforms and are not authorized to bear arms.

16. In any event, says Costa Rica, Mr. Chamorro was entitled to report the incident to the authorities, since all individuals under the State's jurisdiction can, irrespective of their nationality or status (including illegal immigrants), report crimes committed against them or against others, enabling the competent authorities to start an investigation. Furthermore, the actions reported in this case constitute criminal acts, classified as bodily harm and abuse of authority (Articles 329, 123, 124, and 125 of the Costa Rican Criminal Code) and should be prosecuted on an ex officio basis. Hence, had the alleged victim simply filed a complaint, either in person or through a representative (Article 153 of the Code of Criminal Procedure), the perpetrators would not have gone unpunished because criminal proceedings would have begun, the exercise of which is the exclusive domain of the Department of Public Prosecutions and which cannot be interrupted, suspended, or halted until a final judgment is handed down.

17. Mr. Chamorro, however, did not report the alleged bodily harm or abuse of authority committed by State agents while he was still in Costa Rica. And, although he was entitled to so

do, neither did he request reentry into the country through established legal channels in order to take the steps necessary to report those criminal acts to the competent authorities. As for the costs which could have arisen from this, the State reports that access to criminal justice in Costa Rica is free and that the associated expense can ultimately be covered through the awarding of procedural and personal costs at trial, in accordance with Articles 543 and 546 of the Code of Criminal Procedure.

18. Regarding the alleged involvement of Capt. Carlos Valverde in the deportation, the State reported that that person does not belong to the country's border police.

19. Costa Rica adds that the Nicaraguan citizens deported on February 22, 1995, (presumably including Mr. Chamorro) had entered that State's territory without proper authorization, without immigration papers, and having eluded the checkpoints located along its border with the Republic of Nicaragua. According to the State, these individuals:

did not meet the minimum requirements set for entry into Costa Rica, and had certainly not acquired one of the immigration statuses granted by the responsible authorities; thus, their situation was one of absolute illegality.[FN7]

[FN7] The Costa Rican State points out that Articles 33 et seq. of the General Law on Immigration and Nationality (No. 7033, of August 4, 1986, as amended) regulate the different immigration statuses or classifications under which foreigners can be allowed to stay in the country, either as residents (on a permanent or temporary basis) or as nonresidents. The temporary nonresidents include, inter alia, foreign citizens whose presence has been authorized by the competent authorities in light of particular circumstances; e.g., to perform temporary work on farms or in industry, where the domestic workforce is in short supply; such arrangements are formalized by means of special permits or authorizations. The State notes that the alleged victims were not admitted under any such circumstances.

In cases in which the deported foreigner has entered Costa Rican territory illegitimately, clandestinely, and with total disrespect toward our country's laws and sovereignty, the only possible action is his immediate deportation. This government does not recognize the usefulness of beginning proceedings in such cases.

20. The Costa Rican State further holds that all matters relating to immigration status belong to the realm of its national sovereignty, as has been recognized on repeated occasions by domestic and international jurisprudence.

III. PROCESSING BY THE COMMISSION

21. On February 28, 1995, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a complaint against the Republic of Costa Rica (hereinafter "the Costa Rican State," "the State," or "Costa Rica"), which was later elaborated upon by the petitioners on August 29, 1995. The relevant part of the complaint was transmitted

to the State on June 15, 1995, giving it a period of 90 days to reply. The case was duly identified as No. 11.495.

22. On June 29, 1995, the Commission received a note from the Costa Rican State, dated April 25, 1995, replying to the complaint. This information was transmitted to the petitioner on July 17 of that year.

23. On August 17, 1995, the Commission received a comments document from the petitioner dated August 14, the relevant parts of which were transmitted to the State on August 29, 1995.

24. On August 29, 1995, the Commission separated file N°11.495 (Juan Ramón Chamorro Quiroz) from that of the remaining deportees, including Messrs. José Sánchez Guner Espinales, Sabu Alvarado Aburto, Pedro José Valle Barrera, and Reynaldo Risby. This second file was duly identified as N° 11.529.

25. On January 17, 1996, the State's comments on the petitioner's remarks of January 4 were received. The relevant parts of this communication were sent to the petitioner on January 24, 1996.

26. The petitioner submitted additional information in documents dated February 26 and September 11, 1996. The State also sent additional information on June 13, 1996, and February 21, 1997.

27. On September 9, 1998, the Commission asked the State to supply the 47 deportees' administrative files, together with a copy of a letter sent on February 22, 1995, to the Head of Immigration in Sapoá, Nicaragua, by Mr. Nicolás Talavera, Head of Immigration and Nationality in Peñas Blancas, Costa Rica, containing a list of the names of the individuals deported on that date.

28. On December 24, 1998, the Costa Rican State reported, inter alia, that it had been unable to obtain the alleged deportees' administrative files since the complaint did not provide their names and the General Directorate of Immigration did not file its deportation records by date but by name. Regarding Mr. Chamorro, it reported that the General Directorate of Immigration's records contained no file for that name. Regarding the request to submit a copy of Mr. Talavera's letter, as described in the previous paragraph, the State reported that it was not possible because Mr. Nicolás Talavera, Head of Immigration in Peñas Blancas, did not keep records of the letters he signed. The relevant parts of this information were transmitted to the petitioners on January 5, 1999, together with a request for their comments. This request was repeated on September 12, 2000.

29. In a letter dated September 19, 2000, received by the Commission on September 20, the petitioners reported that they had reached an agreement with the Nicaraguan Human Rights Center (CENIDH), under which the Center would serve as a joint petitioner before the IACHR in this case. At the Commission's request, the petitioners included a copy of the letter from Mr. Nicolás Talavera, Head of Immigration in Peñas Blancas, Costa Rica (which the State had been unable to provide), together with its annex, the list of deportations carried out on February 22,

1995. On September 27, 2000, the Commission sent the State the relevant parts of this document and its annex, giving it a period of 15 days to return its comments on the matter. In that same communication, the Costa Rican State was informed that the Commission had accepted the involvement of the CENIDH as joint petitioner in the case of Mr. Juan Ramón Chamorro Quiroz, N° 11.495.

30. On September 20, 2000, after receiving the list of Nicaraguan citizens deported on February 22, 1995, the Commission once again asked the State to submit copies of those individuals' administrative files. To this end the State was furnished a copy of the letter sent on that same date by Mr. Nicolás Talavera, Head of Immigration and Nationality in Peñas Blancas, Costa Rica, to the Head of Immigration in Sapoá, Nicaragua, under which he was sending "45 Nicaraguan citizens, traveling as deportees," together with a list of their full names. The State was provided with this list so it could consult its deportation records which, as it had already reported, were filed by name and not by date.

IV. ANALYSIS

A. The Commission's Competence *Ratione Loci*, *Ratione Personae*, *Ratione Temporis*, and *Ratione Materiae*

31. The Commission is competent to examine the petition as submitted by the petitioners. The allegations, if proven true, could constitute violations of rights set forth in the Convention with respect to certain individuals subject to the jurisdiction of the Costa Rican State, at a time when the obligation of respecting and guaranteeing the rights enshrined in that instrument were in force for that nation. The Commission will now proceed to analyze whether the case at hand meets the other requirements set by Articles 46 and 47 of the American Convention.

B. Other Requirements for Admissibility

a. Exhaustion of Domestic Remedies

32. Article 46(1)(a) of the Convention stipulates that one requirement for a petition to be admitted is that "the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law."

33. In the first stage of the processing of this case, the State sought to have it ruled inadmissible on the grounds that domestic remedies had not been exhausted, arguing that there was no proceeding or antecedent to indicate that the alleged victim had tried to exhaust the remedies offered by domestic law or had presented the corresponding complaint.

34. Although the State claimed, at the onset of this case, that the remedies of annulment and appeal were available to the Nicaraguan citizens deported on February 22, 1995, it later made it clear that they had no such right, pursuant to Article 107(b) of the General Law on Immigration and Nationality, since their situation was absolutely illegal—in other words, because that they had entered the State's territory without proper authorization, without immigration papers, and having eluded the checkpoints located along its border with the Republic of Nicaragua.[FN8]

[FN8] Additional communication sent by the Costa Rican State on June 13, 1996, and received by the Commission on July 10.

35. The petitioners' position is that Mr. Chamorro was not "materially" able to invoke domestic legal remedies before leaving the country because he was taken directly from where he was captured to the place where he was deported. According to the petitioners, detaining undocumented immigrants for several hours before deporting them is an administrative measure, taken within highly summary, almost automatic, proceedings, that does not allow them the opportunity of filing or attempting to seek any domestic remedy, including habeas corpus. In addition, since they had no papers and no means of economic support, they were unable to reenter Costa Rica to formulate complaints or invoke the applicable legal remedies, as claimed by the State.

36. Based on the above, and considering the State's own claims as set forth in paragraph 19 of this report, the Commission believes that the victim is exempted from the requirement of exhausting the internal legal remedies of Costa Rica, given the existence of the exception set forth in Article 46(2)(b) of the Convention, which stipulates that paragraphs 1(a) and 1(b) thereof do not apply when:

the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them.

b. Filing Period

37. Article 46(1)(b) of the American Convention states that for a petition to be admitted, it must be "lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment."

38. However, under Article 46(2)(b), the six month rule does not apply when the alleged victim has not had access to domestic legal remedies, as happened in the case at hand. Thus, pursuant to Article 46(2)(b) and Article 38(2) of its Regulations, the IACHR holds that the petition was submitted within a reasonable period of time following the date upon which the alleged rights violation took place.

c. Duplication of Proceedings and Res Judicata

39. Articles 46(1)(c) and 47(d) of the Convention, respectively, set the following requirements for admissibility: that the subject of the petition or communication is not pending in another international proceeding for settlement, and that it is not substantially the same as one previously studied by the Commission or by another international body.

40. The Commission understands the complaint is not the same as any other petition already examined by it or by any other international body. The Commission therefore concludes that the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention have been met.

d. Nature of the Alleged Incident

41. Article 47(b) of the Convention provides that any petition that “does not state facts that tend to establish a violation of the rights guaranteed by this Convention” shall be inadmissible.

42. The Commission believes that the alleged actions, if proven true, could constitute violations of the rights enshrined in Articles 5, 8(1), and 25 of the Convention, in conjunction with the terms of Article 1(1) thereof.

43. Based on the foregoing, the Commission concludes that the requirement set forth in Article 47.b of the American Convention has been met.

V. CONCLUSIONS

44. The Commission concludes that it is competent to hear this case and that the petition is admissible under the terms of Articles 46.2.b and 47 of the Convention.

45. Based on the foregoing considerations of fact and law, and without prejudging the substance of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition admissible, in that it addresses alleged violations, by the State, of Articles 5, 8(1), and 25 of the Convention, in conjunction with the terms of Article 1(1) thereof.
2. To give notice of this decision to the parties.
3. To continue with its analysis of the merits of the complaint, and,
4. To publish this decision and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the fifth day of October, 2000. (Signed): Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Juan Méndez, Second Vice-Chairman; Commissioners Marta Altolaguirre, Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.