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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 97/00; Case 11.584
Session:	Hundred and Eighth Regular Session (2 – 20 October 2000)
Title/Style of Cause:	Carlos Juela Molina v. Ecuador
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 Dr. Julio Prado Vallejo, of Ecuadorian nationality, did not participate in the discussion of this case, in keeping with Article 19 of the Commission's Regulations.
Dated:	5 October 2000
Citation:	Juela Molina v. Ecuador, Case 11.584, Inter-Am. C.H.R., Report No. 97/00, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)
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## I. SUMMARY

1. On December 19, 1995, Carlos Alberto Juela Molina (hereinafter “the petitioner”) submitted a petition to the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) against the Republic of Ecuador (hereinafter “the State”), in which he alleged violations of the following rights protected by the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”): the right to humane treatment (Article 5) and the right to personal liberty (Article 7), in breach of the obligations set forth at Article 1(1), to the detriment of Mr. Juela Molina.

2. On February 26, 1999, the parties reached a friendly settlement agreement in this case. This report contains a brief presentation of the facts and the text of the agreement, in keeping with Article 49 of the Convention.

## II. THE FACTS

3. On December 21, 1989, when he was 15 years old, the petitioner was detained at 1:30 p.m. at the intersection of Bahía and Loja streets by police agent Marco Acosta Iza; the stated reason for the arrest was the robbery of a pair of eyeglasses. At that very moment he was brutally beaten by the agent, who kicked him in the stomach, causing him to vomit blood. The petitioner stated that the witnesses present appealed to the agent to stop.

4. Later, the petitioner was taken by the agent to the offices of police investigation, at that time known as the Criminal Investigation Service of Pichincha (Servicio de Investigación Criminal de Pichincha: SIC-P), where he was locked in a cell, and where he was beaten and kicked once again.

5. As he was in great pain and was vomiting, he was taken to the Hospital Eugenio Espejo, where he underwent emergency surgery, as the physicians found his duodenum was perforated and had lesions.

6. After the forensic examination was performed that determined that the petitioner would be physically incapacitated for 30 to 60 days, criminal proceedings were instituted against agent Acosta Iza in the Eighth Criminal Court of Pichincha; nonetheless, the judge disqualified himself from the case, and removed the case to the Second Court of the First District of the National Police. The trial began on April 2, 1990. In the trial first instance court it was ordered that police agent Acosta Iza be arrested, but he was released on bond. When the agent failed to appear in court as required, the judge executed the bond and ordered the arrest of the accused, for trial. On April 9, 1992, he was ordered discharged from the police on grounds of professional misconduct.

7. Given the lack of cooperation of the police agents in making the arrest, he was not arrested until 1995. Immediately the accused filed a motion to bar the action on grounds that the statute of limitations had run. This request was granted, on appeal, by the First District Court of the National Police, and the case was archived, which exhausted domestic remedies, as the State has acknowledged.

8. The lack of diligence in processing the case on a timely basis and the non-existence, in the domestic jurisdiction, of a legal mechanism for seeking to punish the person responsible kept the petitioner from receiving compensation for the damages arbitrarily imposed on him by the police agent who was accused.

### III. PROCESSING BEFORE THE COMMISSION

9. On January 18, 1996, the Commission received the complaint in this case, and on March 1, 1996, it began its processing, proceeding in conformity with the Commission's Regulations. The Ecuadorian State, in its response of July 21, 1998, accepted its responsibility. That response was transmitted to the petitioner on September 2, 1998, when the IACHR proposed to begin to pursue a friendly settlement. On October 12, 1998, the petitioner also noted his willingness to pursue a friendly settlement. On February 25, 1999, the State informed the Commission that the agreement had been signed, and attached the document.

### IV. THE FRIENDLY SETTLEMENT AGREEMENT

10. The Friendly Settlement Agreement signed by the parties reads as follows:

#### FRIENDLY SETTLEMENT AGREEMENT

## I. BACKGROUND

The Ecuadorian State, through the Office of the Attorney General, with a view to promoting and protecting human rights and given the great importance of the full observance of human rights at this time for the international image of our country, as the foundation of a just, dignified, democratic, and representative society, has decided to take a new course in the evolution of human rights in Ecuador.

The Office of the Attorney General has initiated conversations with all persons who have been victims of human rights violations, aimed at reaching friendly settlement agreements to provide reparations for the damages caused.

The Ecuadorian State, in strict compliance with the obligations it acquired upon signing the American Convention on Human Rights and other international human rights law instruments, is aware that any violation of an international obligation that has caused damages triggers the duty to make adequate reparations--monetary reparations and criminal punishment of the perpetrators being the most just and equitable form. Therefore the Office of the Attorney General and Mr. Carlos Alberto Juela Molina, each of their own right, have reached a friendly settlement, pursuant to the provisions of Articles 48(1)(f) and 49 of the American Convention on Human Rights and Article 45 of the Regulations of the Inter-American Commission on Human Rights.

## II. THE PARTIES

The following persons were present at the signing of this Friendly Settlement Agreement:

- a. Dr. Ramón Jiménez Carbo, Attorney General of the State, as indicated in his appointment and certificate of office, which are attached as qualifying documents;
- b. Mr. Carlos Alberto Juela Molina, on his own behalf, as appears from the copy of citizenship document number 171171521-7; a copy of that document is also attached as a qualifying document.

## III. STATE RESPONSIBILITY AND ACCEPTANCE

The Ecuadorian State acknowledges its international responsibility for having violated the human rights of Mr. Carlos Alberto Juela Molina enshrined in Article 5(2) of the American Convention on Human Rights and other international instruments, considering that Mr. Carlos Alberto Juela Molina was arbitrarily detained and tortured, and that the violations were committed by State agents, which could not be disproved by the State, giving rise to State responsibility.

Given the above, the Ecuadorian State accepts the facts in case No. 11.584 before the Inter-American Commission on Human Rights and undertakes the necessary reparative steps to compensate the victims, or their successors, for the damages caused by those violations.

## IV. COMPENSATION

In view of the foregoing, the Ecuadorian State, through the Attorney General, as the sole judicial representative of the Ecuadorian State, pursuant to Article 215 of the Constitution of Ecuador, enacted in Official Register No. 1 and in force since August 11, 1998, is awarding Mr. Carlos Alberto Juela Molina a one-time compensatory payment in the amount of fifteen thousand US dollars (US\$ 15,000) or the equivalent in local currency, calculated at the exchange rate in effect at the time the payment is made, to be paid from the National Budget.

This compensation covers the consequential damages, loss of income, and moral damages suffered by Mr. Carlos Alberto Juela Molina, as well as any other claims that Carlos Alberto Juela Molina or his family members may have, regarding the subject of this agreement, under domestic and international law, and is chargeable to the National Budget. To this end, the Office of the Attorney General will notify the Ministry of Finance, for it to carry out this obligation within 90 days of the signing of this document.

#### V. PUNISHMENT OF THE PERSONS RESPONSIBLE

The Ecuadorian State pledges to bring civil and criminal proceedings and pursue administrative sanctions against those persons who are alleged to have participated in the violation in the performance of State functions or under the color of public authority.

The Office of the Attorney General pledges to encourage the State Attorney General, the competent judicial organs, and public agencies or private institutions to contribute legal evidence to determine the liability of those persons. If admissible, the prosecution will be subject to the constitution and laws of the Ecuadorian State; and therefore, it will not proceed against the persons who have been object of final judgment by the national courts, in relation to the alleged violations.

#### VI. RIGHT TO SEEK INDEMNITY

The Ecuadorian State reserves the right to seek indemnity, pursuant to Article 22 of the Constitution of the Republic of Ecuador, from those persons found responsible for human rights violations through a final and firm judgment handed down by the country's courts or when administrative liability is found, in keeping with Article 8 of the American Convention on Human Rights.

#### VII. TAX EXEMPTION AND DELAY IN COMPLIANCE

The payment made by the Ecuadorian State to the other party to this agreement is not subject to any current or future taxes, except for the 1% tax on capital flows.

In the event that the State is delinquent for over three months from the date the agreement is signed, it must pay interest on the amount owed, corresponding to the current bank rate of the three largest banks in Ecuador for the duration of its delinquency.

#### VIII. REPORTING

The Ecuadorian State, through the Office of the Attorney General, agrees to report every three months to the Inter-American Commission on Human Rights on compliance with the obligations assumed by the State in this friendly settlement agreement.

In keeping with its consistent practice and obligations under the American Convention, the Inter-American Commission on Human Rights will oversee compliance with this agreement.

#### IX. LEGAL BASIS

The compensatory damages that the Ecuadorian State is awarding to Mr. Carlos Alberto Juela Molina are provided for in Articles 22 and 24 of the Constitution of the Republic of Ecuador, for violation of the Constitution, other national laws, and the norms in the American Convention on Human Rights and other international human rights instruments.

This friendly settlement is entered into based on respect for the human rights enshrined in the American Convention on Human Rights and other international human rights instruments and on the policy of the Government of Ecuador to respect and protect human rights.

#### X. NOTIFICATION AND CONFIRMATION

Mr. Carlos Alberto Juela Molina specifically authorizes the Attorney General to notify the Inter-American Commission on Human Rights of this Friendly Settlement Agreement, so that the Commission may confirm and ratify it in its entirety.

#### XI. ACCEPTANCE

The parties to this agreement freely and voluntarily express their conformity with and their acceptance of the content of the preceding clauses and state for the record that they hereby end the dispute before the Inter-American Commission on Human Rights on the international responsibility of the State for violating the rights of Mr. Carlos Alberto Juela Molina.

#### V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

11. The Commission determined that the settlement agreement is compatible with the provisions of Article 48(1)(f) of the American Convention.

12. On September 27, 1999, CEDHU informed the Commission that on the very day seven months after the signing of the agreement between the petitioner and the State, the State proceeded to make payment of the compensation agreed upon.

13. According to the petitioner, the State has not taken any initiative to punish the persons responsible, since the action was declared prescribed by the Second Court (Segundo Juzgado) of the First Police District, which had the State accede to the demand put forth before the IACHR.

#### VI. CONCLUSIONS

14. The Commission reiterates its recognition of the Ecuadorian State for its decision to settle the case through reparative measures, including those needed to punish the persons responsible for the violation alleged. The IACHR also reiterates its recognition of the petitioner for accepting the terms of the agreement in question.

15. The IACHR will continue monitoring compliance with the commitment assumed by Ecuador to bring to trial the persons considered responsible for the facts alleged, which to date has not been done.

16. The IACHR ratifies that the possibility of friendly settlement provided for in the American Convention makes it possible to conclude individual cases in a non-contentious manner, and has proven, in cases from several countries, to offer an important vehicle for resolving violations alleged, which may be used by both parties (petitioner and the State).

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To recognize that the State has made payment of US\$ 15,000 as compensation, and that it has failed to carry out its commitment to punish the persons responsible for the violation alleged.
2. To urge the State to take the measures needed to comply with the pending commitments to punish the persons responsible for the violation alleged.
3. To continue to monitor and supervise compliance with each and every point of the friendly settlement agreement, and in this context to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months regarding performance of the obligations assumed by the State under this friendly settlement agreement.
4. To make this report public and to include it in its 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., October 5, 2000. (Signed) Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Juan Méndez, Second Vice-Chairman; Commissioners: Marta Altolaguirre, Robert K. Goldman, and Peter Laurie.