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| Institution: | Inter-American Commission on Human Rights |
| File Number(s): | Report No. 96/00; Case 11.466 |
| Session: | Hundred and Eighth Regular Session (2 – 20 October 2000) |
| Title/Style of Cause: | Manuel Inocencio Lalvary Guaman 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, an Ecuadorian national, did not participate in the discussion of the case, pursuant to Article 19 of the Commission's Regulations. |
| Dated: | 5 October 2000 |
| Citation: | Lalvary Guaman v. Ecuador, Case 11.466, Inter-Am. C.H.R., Report No. 96/00, OEA/Ser.L/V/II.111, doc. 20, rev. (2000) |
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I. SUMMARY

1. On November 8, 1994, Manuel Inocencio Lalvary Guamán (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 American Convention” or the “Convention”): the right to humane treatment (Article 5) and the right to personal liberty (Article 7), in violation of the obligations set forth at Article 1(1), to the detriment of Mr. Lalvary Guamán.

2. The parties reached a friendly settlement agreement in this case on February 26, 1999. 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 May 26, 1992, the jewelry store owned by Mr. Angel Guamán, where Mr. Segundo Malla, the petitioner’s brother-in-law, works, was robbed. Mr. Angel Guamán accused his employee of having performed the robbery. On July 7, 1992, Mr. Malla was detained at his home, and taken to the Office of Criminal Investigation of Pichincha (Oficina de Investigación del Delito de Pichincha) (hereinafter “OID-P”), where he was tortured by agents of the OID-P; he recognized agent José Alvarado. Through efforts by Mr. Malla’s attorney, he was released that same day; no police report was drawn up nor any statement signed. On July 8, 1992, a

police report was presented with a statement, supposedly signed by Mr. Malla, in which he stated he was guilty and implicated the petitioner as an accomplice. The Sixth National Commissar initiated proceedings, without any detention, against Segundo Malla and Manuel Lalvay. In those proceedings, expert handwriting evidence was requested of the signature that appears in the statement of the police report, and it was determined that the signature at the OID-P was falsified. In the wake of this expert's report, on October 25, 1993, the Ninth Criminal Judge provisionally dismissed charges against the petitioner and Mr. Malla. On April 6, 1993, the petitioner was arrested arbitrarily at his shop by OID-P agents, without a judicial warrant, giving as the reason that he had supposedly been accused of being a criminal by residents of the La Colmena neighborhood. The petitioner identified the agents as José Alvarado Pinzón, Luis Ortíz Flores, Jorge Espinoza Méndez, and others whose names are unknown.

4. The petitioner also alleged that the day after his arrest, on April 7, 1993, after being transferred to the Police Barracks, at approximately 10 a.m., he was taken by agents Ortíz and Espinoza to the place called "La Terraza," where agent José Alvarado was present, and where the petitioner was the victim of physical abuse and torture by the agents. The petitioner alleges that agent Alvarado told him that it was all so that he would learn that he was not going to be subject to any trial for falsification of signatures, and that the petitioner had better take responsibility for what he, Alvarado, was being accused of. The fact that the harassment continued for two more years led to this complaint before the Commission. He alleged that he was stripped and his hands tied behind his back, after which he was submerged in a tank of water. In addition, he said, a pillowcase with gas was placed on his head, and that, when he was almost unconscious, he was held up by rope and then violently dropped to the floor, fracturing his teeth. In addition, he stated he was tortured by electric shock. When they saw he could bear no more, they stopped the torture.

5. After this torture session, the petitioner was taken to the Office of Miscellaneous Matters to have his statement taken. The intent of the agents was to coerce him into accepting that he had committed a crime, and into signing the statement. To this end, he was subjected to further physical abuse. When he refused to sign the statement, he was taken once again to the CDP, where he was held until his release.

6. The petitioner filed charges against these agents for torture, bodily injury, abuse of authority, kidnapping, and unlawful entry.

7. On April 15, 1994, the petitioner was once again visited at his shop by agents of the former OID-P, renamed Judicial Police, who attempted to arrest him without a judicial warrant. After the petitioner put up resistance, the agents summonsed him April 18 to the offices of the Police, for questioning. On April 16, the petitioner appeared, with his attorney, at the Fourth Police Station, to inform the authorities of what had happened the previous day. The petitioner stated that on April 18 he went to the police with a member of the Comisión Ecuémica de Derechos Humanos (hereinafter "CEDHU") to comply with the oral summons from the agents, but once he was there it was discovered that no such summons had issued, nor were those agents present. On April 19, Captain Diego Cruz visited the petitioner to ask that he try to pick out the agents who visited him from photos, but they did not appear in any of them.

8. On September 8, 1994, members of the petitioner's family, Mrs. Piedad Malla, his wife, and Mr. Segundo Malla, his brother-in-law, were also assaulted, with blows and cuts, by Mr. Angel Guamán, who originally accused the petitioner of having robbed jewels from his jewelry store. The victims turned to the Fourth Police Station to lodge the complaint; Angel Guamán also went there, asking that the Commissar arrest the above-mentioned persons. Immediately the Commissar issued the arrest warrant, in response to which a member of CEDHU went to the Police Station to set forth the case and ask that the warrants be revoked.

9. On October 20, 1994, the petitioner was detained once again at his shop with no judicial warrant, and taken to the offices of the Judicial Police, where his identity card was taken from him, and several photos were taken of him, from different angles, for no apparent reason. Three hours later the petitioner was released. The petitioner stated that until the day his complaint was filed with the Commission, November 8, 1994, he continued to be a victim of constant harassment by the Judicial Police, especially as they told him they were going to visit him at certain times, yet none of the threats was ever carried out.

10. Due to indigence, on not being able to pay the fees for defense counsel, the petitioner discontinued the private accusation against the agents of the OID-P for torture, as a result of which the case was declared abandoned by the judge. Thus, the case passed into the hands of a prosecutor, and the petitioner ceased being a party to the proceedings, and so was not able to claim compensation. The petitioner stated that the Ecuadorian State has international responsibility beyond the penalty that may be imposed on the individuals who directly violate a given human right.

III. PROCESSING BEFORE THE COMMISSION

11. On November 8, 1994, the Commission received the complaint in this case, which was not opened until April 18, 1995. The case was processed as per the Commission's Regulations.

12. On February 1, 1999, the petitioner sent information in which it stated that the Office of the Attorney General of Ecuador had initiated direct conversations with the petitioner aimed at initiating the friendly settlement process based on elements accepted by the petitioner. On February 25, 1999, the respective agreement was signed in the city of Quito, Ecuador.

IV. THE FRIENDLY SETTLEMENT AGREEMENT

13. 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. Manuel Inocencio Lalvay Guamán 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. Manuel Inocencio Lalvay Guamán, on his own behalf, as appears from the copy of citizenship document number 170780779-6, which belongs to Mr. Manuel Inocencio Lalvay Guamán; 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. Manuel Inocencio Lalvay Guamán enshrined in Articles 5 and 7 of the American Convention on Human Rights and other international instruments, considering that Mr. Manuel Inocencio Lalvay Guamán was illegally detained, tortured, and persecuted, 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. 11.466 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. Manuel Inocencio Lalvay a one-time compensatory payment in the amount of twenty-five thousand US

dollars (US\$ 25,000) 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. Manuel Inocencio Lalvay Guamán, as well as any other claims that Manuel Inocencio Lalvay Guamán 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.

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. Manuel Inocencio Lalvay Guamán 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. Manuel Inocencio Lalvay Guamán 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. Manuel Inocencio Lalvay Guamán.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

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

15. On September 27, 1999, CEDHU informed the Commission that on that day, seven months after the signing of the agreement by the petitioner and the State, the State proceeded to make payment of the compensation agreed upon. As regards punishing the persons responsible, in 1993 proceedings were initiated, for the crime of torture against José Alvarado and others, at the Second Court of the First Police District (Segundo Juzgado). On June 30, 1997, the judge issued a reasoned order, which was affirmed by the First District Police Court on October 27, 1997. The accused appealed that order to the Corte Distrital Policial, which in its ruling of October 27, 1997, affirmed the order of the lower court, remanding the proceedings to the Juzgado for the case to continue.

16. Despite the court's order requesting the General Command of the Police to indicate a day and time for its members to meet and hand down a judgment, the Command never indicated the date of the hearing, thus the court that should have sat in judgment of this crime never met. For this reason, on April 28, 1999, the Second Judge of the First District ruled that the action had prescribed; this decision was affirmed by the District Court of the Police on June 23, 1999. The accused continue on active duty in the Police.

VI. CONCLUSIONS

17. The Commission reiterates its recognition of the Ecuadorian State for its decision to settle the case by adopting compensatory measures. The IACHR also reiterates its recognition of the petitioner for accepting the terms of the agreement.

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

19. The IACHR ratifies that the friendly settlement procedure 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 settling 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\$ 25,000 as compensation, and 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 for carrying out the commitments still pending with respect to bringing to trial the persons considered responsible for the facts 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 inform the IACHR, every three months, as to the performance of the obligations assumed by the State under this friendly settlement agreement.
4. To make this report public and 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.