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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 93/00; Case 11.421
Session: Hundred and Eighth Regular Session (2 – 20 October 2000)
Title/Style of Cause: Edison Patricio Quishpe Alcivar 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
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: Quishpe Alcivar v. Ecuador, Case 11.421, Inter-Am. C.H.R., Report No. 93/00, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)
Represented by: APPLICANTS: Martha Graciela Quishpe Morales, Comision Ecumenica de Derechos Humanos
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I. SUMMARY

1. On November 8, 1994, Martha Graciela Quishpe Morales, with the legal assistance of the Comisión Ecuménica de Derechos Humanos (hereinafter “the Petitioner,” or “CEDHU”) (Ecumenical Commission for Human Rights of Ecuador), presented a petition to the Inter-American Commission on Human Rights (hereinafter “the Commission,” the “Inter-American Commission,” or the “IACHR”) against the Republic of Ecuador (hereinafter “the State,” “the Ecuadorian State,” or “Ecuador”) in which it denounced the violation of the following rights protected by the American Convention on Human Rights (hereinafter “the American Convention,” or the “Convention”): the right to life (Article 4), the right to personal liberty (Article 7), the right to a fair trial (Article 8), and the right to judicial protection (Article 25), and at the same time the general obligation of the Ecuadorian State to respect the rights contained in the American Convention, and to guarantee their free and full exercise (Article 1(1)), to the detriment of Mr. Edison Patricio Quishpe Alcívar.

2. The parties reached a friendly settlement in this case on June 11, 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 September 7, 1992, there was a confrontation with the police that left one police agent dead and Edison Patricio Quishpe Alcívar wounded. A half-hour after this incident, 70 members of the police surrounded Mr. Quishpe Alcívar and threw him from the second floor. His body was dragged and then placed into a police car. Mr. Quishpe's aunt, Mrs. Martha Quishpe, said that her nephew was killed by a police agent because he was blamed for the death of the police agent killed in the confrontation. Edison Quishpe, 24 years old, was arrested, suffered a minor injury to the leg, was beaten about the hands by blows from a rifle butt, by the members of the police, breaking several fingers, and they kicked him in the genitals. He was taken to the police station in the city, with two more persons, where they were also savagely beaten and subjected to cruel treatment, which caused their death.

4. Mr. Quishpe died at the police station, and the medical certificate, autopsy, and eyewitness testimony revealed that they threw a liquid at him (a kind of acid) that burned his body, he was beaten causing damage to his rectum, as the result of some object or liquid being inserted in it.

III. PROCESSING BEFORE THE COMMISSION

5. On November 8, 1994, the Commission received a petition presented by the petitioner against the Ecuadorian State, which was opened that same day. Processing of the case went forward as per the provisions of the regulations.

6. On March 5, 1999, the Commission placed itself at the disposal of the parties to begin to pursue a friendly settlement. On April 5, 1999, the petitioner accepted the offer. On June 11, 1999, the friendly settlement agreement was signed in the city of Quito, Ecuador, in the presence of Mr. Carlos Ayala Corao, a member of the IACHR at that time, and rapporteur for Ecuador, who traveled to Quito to facilitate the agreement.

IV. THE FRIENDLY SETTLEMENT REACHED

7. 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 Mrs. Martha Graciela Quishpe Morales, on behalf and in representation of Mr. Segundo Víctor Quishpe Morales, father and legal representative of Mr. Edison Patricio Quishpe Alcívar, deceased, as appears from the attached power of attorney, 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. Mrs. Martha Graciela Quishpe Morales, on behalf and in representation of Mr. Segundo Víctor Quishpe Morales, father and legal representative of Mr. Edison Patricio Quishpe Alcívar, deceased, as appears in the power of attorney granted by Mr. Segundo Víctor Morales to Martha Graciela Quishpe Morales before the 22nd Notary, of Dr. Fabián E. Solano P.; 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. Edison Patricio Quishpe Alcívar enshrined in Article 4 (right to life), Article 7 (personal liberty), Article 8 (a fair trial), Article 25 (judicial protection), and the general obligation set forth in Article 1(1) of the American Convention on Human Rights and other international instruments, since 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. 11.421 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 Mrs. Martha Graciela Quishpe Morales, as provided for in the special power of attorney, as per the provisions of Articles 1045 and 1052 of the Civil Code, a one-time compensatory payment in the amount of thirty thousand US dollars (US\$ 30,000) 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. Edison Patricio Quishpe Alcívar and his family members, as well as any other claims of the family members of Mr. Edison Patricio Quishpe Alcívar 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 against and shall seek the punishment of 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. Segundo Quishpe Morales 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. Segundo Víctor Quishpe Morales, father and legal representative of Mr. Edison Patricio Quishpe Morales, 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. Edison Patricio Quishpe Alcívar.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

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

9. In April 2000, the compensation agreed upon in the friendly settlement agreement was paid, yet the interest, also provided for in the agreement, has not been paid. To this day, the Ecuadorian State has not carried out its commitment to bring “civil and criminal proceedings against and shall seek the punishment of those persons who are alleged to have participated in the violation in the performance of State functions or under the color of public authority.”

VI. CONCLUSIONS

10. The Commission reiterates its recognition of the Ecuadorian State for its decision to resolve this case by adopting reparative measures, including such measures as needed to bring civil, criminal, and administrative proceedings against those persons who, in the performance of government functions, participated in the alleged violations.

11. The IACHR will continue monitoring the performance of those commitments assumed by Ecuador that are continuing in nature, regarding bringing civil, criminal, and administrative proceedings against those persons who, in the performance of government functions, participated in the violations alleged.

12. The IACHR ratifies that the friendly settlement provision in the American Convention makes it possible to conclude individual cases in a non-contentious manner, and has proven to offer an important vehicle for resolving alleged violations, in cases involving various countries, that may be used by both parties (petitioners and the State).

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To recognize that the State has made payment of US\$ 30,000 in compensation, and has failed to carry out its commitment to punish the persons responsible for the violation alleged and to pay interest for the delinquency in paying the compensation.
2. To urge the State to take the necessary measures to carry out the commitment to pursue civil and criminal proceedings and to seek to impose punishment on those persons who, in the performance of government functions or under the color of public authority, are considered to have participated in the alleged violation, and the payment of interest for the delinquency in payment of the compensation.
3. To continue to monitor and supervise implementation of the friendly settlement, and in that context to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months as to performance of the obligations assumed by the State under this friendly settlement.
4. To make this report public and 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., 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.