

| | |
|-----------------------|---|
| Institution: | Inter-American Commission on Human Rights |
| File Number(s): | Report No. 99/00; Case 11.868 |
| Session: | Hundred and Eighth Regular Session (2 – 20 October 2000) |
| Title/Style of Cause: | Carlos Santiago and Pedro Andres Restrepo v. Ecuador |
| Doc. Type: | Decision |
| Decided by: | Chairman: Helio Bicudo; First Vice-Chairman: Claudio Grossman; 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: | Carlos Santiago v. Ecuador, Case 11.868, Inter-Am. C.H.R., Report No. 99/00, OEA/Ser.L/V/II.111, doc. 20, rev. (2000) |
| Represented by: | APPLICANTS: Gay McDougall, Romina Piccoloti (International Human Rights Law Group), Judith Kimerling and Sister Elsie Monge (Comision Ecumenica de Derechos), Patrick F.J. Macrory, Laura M. Reifschneider and Richard Wilson (International Human Rights Law Clinic of the Washington College of Law, American University) |
| Terms of Use: | Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm |

I. SUMMARY

1. On August 6, 1997, Gay McDougall and Romina Piccoloti, representing the International Human Rights Law Group; Judith Kimerling and Sister Elsie Monge, representing the Comisión Ecuémica de Derechos Humanos (CEDHU: Ecumenical Commission for Human Rights); Patrick F.J. Macrory, Laura M. Reifschneider, and Richard Wilson, representing the International Human Rights Law Clinic of the Washington College of Law, American University (hereinafter “the petitioners”), filed a petition with the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) against the Republic of Ecuador (hereinafter “the State” or “the Ecuadorian State,” or “Ecuador”), for violations 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 humane treatment (Article 5); the right to personal liberty (Article 7); the right to a fair trial (Article 8), the rights of the child (Article 19); and the right to judicial protection (Article 25).

2. On May 20, 1998, a friendly settlement agreement was signed, put forth by the Commission, pursuant to which the Ecuadorian State accepted its responsibility for the facts alleged. 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 January 8, 1988, brothers Carlos Santiago and Pedro Andrés Restrepo Arismendy were detained by the National Police of Ecuador, and were later disappeared while under the custody of the National Police.

4. After 11 months during which the parents of these two minors received incoherent and illegal results from the National Police, they began to make this case public, seeking collaboration by the Ecuadorian State, which not only failed to yield any positive result with respect to the fate of the minors, but also brought threats to the family if they were to continue publicizing what happened.

5. In 1990, a Special Commission took charge of this case; it was able to determine that the brothers, both minors, had been detained, tortured, killed and disappeared by the National Police of Ecuador, and that their bodies had been dumped in a small lake.

6. After the results produced by the Special Commission, several judicial proceedings were begun, without ending in a declaration of State responsibility for this act, and without giving any official information on the current whereabouts of the two minors.

III. PROCESSING BEFORE THE COMMISSION

7. On August 6, 1997, the Commission received a petition submitted by the petitioners against the Ecuadorian State, which was transmitted to the State on January 22, 1998. The case was processed in keeping with the Commission's Regulations.

8. On February 24, 1998, the Commission placed itself at the disposal of the parties with a view to initiating the process of pursuing a friendly settlement. On March 4, 1998, a meeting was held at Commission headquarters, in which the petitioners and the State participated in order to draw up the friendly settlement agreement, and finally, on May 14, 1998, this agreement was signed by the parties in the city of Quito, Ecuador.

IV. THE FRIENDLY SETTLEMENT AGREEMENT

9. The friendly settlement agreement adopted by the parties reads as follows:

FRIENDLY SETTLEMENT ENTERED INTO BY THE ECUADORIAN STATE AND MR. PEDRO RESTREPO, FATHER OF MINORS CARLOS SANTIAGO AND PEDRO ANDRÉS RESTREPO ARISMENDY, IN RELATION TO COMPLAINT No. 11.868 BEFORE THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, HEADQUARTERED IN WASHINGTON.

PARTIES APPEARING

The following persons were present at the signing of this friendly settlement agreement: For the first party, Mr. Milton Alava Ormaza, in his capacity as Attorney General, and sole judicial representative of the Ecuadorian State, as accredited in the appointment and certificate of office, duly authenticated, which are attached as qualifying documents, and for the second party Mr. Pedro Restrepo, father of minors Carlos Santiago and Pedro Andrés Restrepo Arismendy, who attests to this capacity by showing his citizenship card and the birth certificates of the minors named, certified copies of which are attached.

The Attorney General, Mr. Milton Alava Ormaza, is appearing under Article 13 of the Constitution of Ecuador, and pursuant to Article 17(d) of the Law Amending the Law on Narcotic and Psychotropic Substances and Rules for the Office of the Attorney General, promulgated in the second supplement of the Registro Oficial No. 173 of October 15, 1997, replacing Article 11 of the Organic Law of the Public Ministry, published in the Registro Oficial No. 871, of June 10, 1979.

Mr. Pedro Restrepo demonstrates, with the relevant documents listed above, and in his capacity as the sole beneficiary of his sons, pursuant to Articles 1045 and 1052 of the Civil Code, in relation to the death of his wife, Mrs. Elena Arismendy de Restrepo, attested to by the death certificate, a certified copy of which is attached.

FIRST – BACKGROUND

1. From the judicial proceedings and other investigations undertaken in Ecuador, it is concluded that on January 8, 1988, brothers Carlos Santiago and Pedro Andrés Restrepo Arismendy, of Ecuadorian nationality, minors, were detained by members of the National Police, and, while in their power, disappeared. They were driving a beige Chevrolet Trooper.

On January 9, 1988, their family members initiated an unsuccessful search in detention centers for minors, hospitals, and all along the route they had apparently followed.

On January 10, 1988, the disappearance of these two minors was reported to the then-Criminal Investigation Service of Pichincha (“SIC-P”).

The commanders of the National Police in charge of the investigation, after a series of dilatory tactics and contradictions, submitted a report that upheld the hypothesis that the Restrepo brothers had disappeared as the result of a traffic accident.

The two youths’ bodies were never found at the supposed accident site.

A Special International Investigative Commission, designated for the purpose by the national government at that time, made up of prominent international figures and by the Attorney General, after intense verification and analysis, concluded that the Restrepo Arismendy brothers disappeared while in the hands of members of the National Police of Ecuador, and that their bodies were cast into Yambo lake, in the province of Tungurahua.

The acts carried out by the official agents of the Ecuadorian State were violative of the constitutional and statutory provisions of our domestic legal order, as well as of the American Convention on Human Rights, of which our country is a signatory, and Articles 19, 20, and 22(1) and (19)(h), and Article 25 of the Constitution of Ecuador.

In addition, there were violations of Articles 1, 3, 4, 5, 7, 8, and 25 of the American Convention on Human Rights.

SECOND - STATE RESPONSIBILITY

The domestic judicial proceeding was characterized by unjustified delays, highly technical arguments, inefficiency, and denial of justice. The Ecuadorian State could not demonstrate that it was not its official agents who illegally and arbitrarily detained brothers Carlos Santiago and Pedro Andrés Restrepo Arismendy, to the point of torturing them and taking their lives, nor could it refute that those actions were at odds with the Constitution, with our country's legal framework, and with respect to the international conventions that guarantee human rights.

THIRD - RECOGNITION OF RESPONSIBILITY AND ACCEPTANCE OF THE ECUADORIAN STATE

In this context, the Ecuadorian State has recognized, before the Inter-American Commission on Human Rights, its culpability in the facts narrated and has undertaken to adopt reparative measures by recurring to the institution of friendly settlement provided for in Article 45 of the Regulations of the Inter-American Commission on Human Rights.

FOURTH – COMPENSATION

In view of the foregoing, the Ecuadorian State, represented by the Office of the Attorney General, makes a one-time payment of US\$ 2,000,000 (two million U.S. dollars or its equivalent in national currency), to Mr. Pedro José Restrepo Bermúdez, pursuant to Articles 1045 and 1052 of the Civil Code, to be paid from the National Budget.

This compensation covers the consequential damages, loss of income, and moral damages suffered by the Restrepo Arismendy family, and shall be paid to Mr. Pedro Restrepo, pursuant to the domestic 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.

FIFTH - COMPENSATION FROM GUILTY PERSONS

This friendly settlement agreement does not include such compensation as the father of the Restrepo Arismendy brothers has the right to claim from the persons responsible for their unlawful and arbitrary detention, torture, death, and disappearance, and who have been found guilty, under Articles 52 and 67 of the Ecuadorian Criminal Code; this compensation has been recognized in the ruling handed down by the President of the Supreme Court of Justice of Ecuador in a judgment of March 31, 1998.

NEW SEARCH FOR THE RESTREPO BROTHERS

Within 90 days at most, counted from the formalization of this agreement, the Ecuadorian State, represented by the Attorney General, undertakes to carry out a complete, total, and definitive search, in Yambo lake, for the bodies of the Restrepo brothers, which, it is considered, may have been cast into it in 1998 or subsequent years, and to recover them if located. To this end, the Ministry of National Defense shall make available a team of scuba divers from the Ecuadorian Navy to the Office of the Attorney General; they will be joined by a team or teams of specialized private organizations, whose assistance will be sought by the Office of the Attorney General or that are provided on a volunteer basis by Ecuadorian or international human rights organizations. The Ministry of Government, for its part, will provide the full collaboration needed to secure this objective.

SEVENTH - FREEDOM OF ACTION

The Ecuadorian State undertakes not to interfere in the constitutional and statutory rights of freedom of expression and freedom of assembly of the Restrepo family, their sympathizers, and human rights organizations that join this cause for the purpose of commemorating the death of Carlos and Pedro Andrés Restrepo Arismendy or for other purposes related to this event. The National Police and Armed Forces shall guarantee these natural and juridical persons the free exercise of these guarantees, in keeping with Ecuadorian law.

EIGHTH - RELIEF

The Office of the Attorney General, in representation of the Ecuadorian State, states for the record that, in relation to Mr. Pedro Restrepo, his deceased wife, and his family in general, no charges are or have been pending for activities outside the law, or outside of what is moral, and that any speculation, rumor, or suspicion stated or conveyed through private persons or authorities against the honor or good name of the persons indicated are absolutely tendentious and lack any basis whatsoever. To the contrary, the Office of the Attorney General has sufficient grounds to state, with no doubt, that Mr. Restrepo and his family, through their legitimate and honorable efforts, have contributed, as have other foreign citizens, to the progress of Ecuador.

NINTH - PUNISHMENT OF PERSONS NOT PLACED ON TRIAL

The Ecuadorian State, through the Office of the Attorney General, pledges to encourage the State Attorney General and the competent judicial organs, to bring criminal charges against those persons who, in the performance of their police functions, are considered to have participated in the death of brothers Carlos Santiago and Pedro Andrés Restrepo Arismendy. The Office of the Attorney General undertakes to encourage the public or private organs with competence to contribute legally supported information that makes it possible to bring those persons to trial. If it takes place, this trial shall be carried out subject to the constitutional and statutory order of the Ecuadorian State, and, consequently, shall not proceed against those persons who have been subject to a final judgment by the Supreme Court of Justice of Ecuador, or in the event that the offenses attributable to them have legally prescribed.

TENTH - 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 or the Inter-American Court of Human Rights on compliance with the obligations assumed by the State in this friendly settlement.

ELEVENTH - LEGAL BASIS

The compensatory damages that the Ecuadorian State is awarding to Mr. Pedro Restrepo are provided for in Articles 23 and 25 of the Constitution for violations of the constitutional and statutory provisions of Ecuadorian law, and the provisions of the American Convention on Human Rights, of which Ecuador is a signatory country.

TWELFTH - NOTIFICATION

Mr. Pedro Restrepo specifically authorizes the Attorney General to notify the Inter-American Commission on Human Rights of this friendly settlement, so that the Commission may confirm and ratify it in its entirety.

THIRTEENTH - ACCEPTANCE

The parties, in their respective capacities, freely and voluntarily express their conformity with and their acceptance of the content of the preceding clauses and state for the record that this ends case No. 11.868 before the Inter-American Commission on Human Rights, and that in the future they will have no claims to file over this case.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

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

11. Under the agreement, the Ecuadorian State fulfilled its main obligation to pay Mr. Pedro José Restrepo Bermúdez, the father of the minors, the sum of US\$ 2,000,000.00 (two million U.S. dollars) as compensation for the consequential damages, lost earnings, and moral damages suffered by the Restrepo Arismendy family.

12. In addition, the Ecuadorian State undertook to carry out a total, definitive, and complete search for the bodies in the Yambo lake, and to recover them, if located. As of two years after the signing of the friendly settlement agreement, this commitment has not been carried out.

13. Nor has the Ecuadorian State carried out its commitment to request the judicial bodies with jurisdiction to prosecute criminally the persons considered to have participated in the torture, disappearance, and death of the Restrepo Arismendy brothers, and in covering up those acts.

VI. CONCLUSIONS

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

15. The IACHR will continue to monitor compliance with the continuing commitments assumed by Ecuador to bring civil, criminal, and administrative proceedings against the persons who, while performing government functions, participated in the violations alleged.

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 settling violations alleged 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\$ 2,000,000 as compensation, and note that it has failed to carry out its commitment to search for the bodies and to punish the persons responsible for the violation alleged.
2. To urge the State to take the measures needed to comply with the commitments still pending to carry out the total, definitive, and complete search for the bodies of the two brothers, and the criminal trial of the persons considered to have participated in the torture, disappearance, and death of the Restrepo Arismendy brothers, as well as in covering up those acts.
3. To continue to monitor and supervise compliance with the settlement agreement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to report “periodically, upon request of the Inter-American Commission on Human Rights or the Inter-American Court of Human Rights, as to the performance of the obligations assumed by the State under this friendly settlement.”
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 Washington D.C., on this the 5th day of October, 2000. (Signed): Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Commissioners: Marta Altolaguirre, Robert K. Goldman and Peter Laurie.