

WorldCourts™

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 113/00; Case 11.335
Session: Hundred and Ninth Special Session (4 – 8 December 2000)
Title/Style of Cause: Guy Malary v. Haiti
Doc. Type: Decision
Decided by: Chairman: Helio Bicudo;
First Vice-Chairman: Claudio Grossman;
Second Vice-Chairman: Juan Mendez;
Commissioners: Robert K. Goldman, Peter Laurie, Julio Prado Vallejo
Dated: 4 December 2000
Citation: Malary v. Haiti, Case 11.335, Inter-Am. C.H.R., Report No. 113/00,
OEA/Ser.L/V/II.111, doc. 20, rev. (2000)
Represented by: APPLICANT: The Lawyers Committee on Human Rights
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 17, 1994, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition from The Lawyers Committee on Human Rights (hereinafter "the petitioners"), pertaining to the murder of Mr. Guy Malary, the Minister of Justice of Haiti.[FN1] According to the petition, Mr. Malary was ambushed and assassinated, together with his two bodyguards and driver, in Port-au-Prince on October 14, 1993. The petitioners state that the evidence suggests that the Haitian Military and Security Forces are responsible for the attack, since it could only have been carried out with the complicity of officers of the Security Forces.

[FN1] Mr. Guy Malary was appointed Minister of Justice by President Jean Bertrand Aristide while he was in exile in Washington, D.C. See: Report on the Situation of Human Rights in Haiti, IACHR, OEA/Ser.L/V/II.85, doc. 9 rev. 1994.

2. The petitioners allege that the State has not made a serious effort to investigate and prosecute the perpetrators of the crime or to compensate the family of Mr. Malary. Furthermore, they request that the petition be accepted because of the unwarranted delay and the ineffectiveness of domestic legal remedies in Haiti.

3. The petition indicates that the State of Haiti violated Article 1, obligation to respect rights; Article 4, right to life; Article 8, right to a fair trial; and Article 25, right to judicial protection of the American Convention on Human Rights (hereinafter "the Convention"), to the

detriment of Mr. Guy Malary; since, in addition to failing to fulfill its duty to protect the right to life, the State did not fulfill its obligations to provide judicial protection when it failed to investigate and sanction the perpetrators by means of the appropriate trial.

4. The State maintains that domestic remedies are still pending, inasmuch as the file related to the assassination of Mr. Malary is still in the investigation phase.

5. The Commission made itself available to the parties to reach a friendly settlement and held three hearings related to the case at which two agreements were reached, which were to serve as a basis for beginning the negotiation process aimed at achieving an agreement between the parties. However, to date, no final agreement has been reached.

6. Following the analysis of the events reported and the documentary evidence contained in the file, the Inter-American Commission, meeting at the 108th session October 2-20, 2000, decided to declare case N° 11.335 admissible.

II. PROCESSING BY THE COMMISSION

7. On September 20, 1994, the Commission processed the case and sent the pertinent parts of the petition to the State, granting it 90 days to submit its comments.

8. On May 2, 1995, the Commission made itself available to the parties to reach a friendly settlement and set a period of 30 days to receive the appropriate responses. By means of a note of June 5, 1995, the petitioners informed the Commission that they were willing to hear the proposal of the Haitian State regarding a friendly settlement. The pertinent parts of the communication were transmitted to the State on July 18, 1995.

9. The State submitted its response on June 28, 1995, and did not make specific reference to a friendly settlement. In its correspondence, it stated that the events that gave rise to the petition had occurred under the de facto regime and that the perpetrators of these acts were not vested with the requisite authority that could lead to the liability of the Haitian State from an international standpoint. Consequently, these persons were individually accountable in both the civil and criminal spheres. Furthermore, it outlined the steps that were being taken by the constitutional Government to shed light on the events that occurred during the de facto Government and to encourage respect for human rights.

10. By means of a communication of August 28, 1995, the State reported that the Haitian judicial authorities were continuing their investigation in order to clarify matters surrounding the assassination of Guy Malary. The State also indicated that the delay in the commencement of this investigation was due to the fact that it was only when the constitutional Government was restored in October 1994 that proceedings were started. This information was forwarded to the petitioner on September 21, 1995.

11. On October 10, 1995, the Commission informed the State that it understood the difficult situation that was being experienced by the country as a result of the change of regime and the reestablishment of the constitutional Government, that it appreciated the efforts that it was

making to strengthen mechanisms for the protection of human rights, and, for this reason, it deemed it appropriate to give the State a reasonable time period to conduct the investigations into the matter being processed by the Commission.

12. On May 15, 1996, the State reiterated its position that it could not be held liable for the actions of the de facto Government. The foregoing communication was forwarded to the petitioner on August 7, 1996.

13. The Commission held a hearing on March 5, 1999. During the hearing, the petitioners stated that due to a lack of willingness or a lack of preparation, the State had failed to fulfill its obligations under the Convention, given the fact that the investigation was inadequate and the Office of the Public Prosecutor had not properly prepared the case. The State indicated that work was being done on the Malary case, that the investigation was ongoing, and proceedings have been instituted against some of the persons involved. The State indicated that it was also experiencing serious financial, technical, and security-related problems with the investigation. In the end, the Commission made itself available to the parties to reach a friendly settlement.

14. The petitioners submitted a draft agreement to be concluded between the parties on April 14, 1999. In it, it proposed the commencement of negotiations aimed at reaching a friendly settlement provided that the State furnish, within a specific time period, detailed information related to the domestic processing of the case. This draft agreement was sent to the State on April 19, 1999.

15. On May 4, 1999, the parties met with the Commission with a view to reaching a friendly settlement. The petitioners submitted a draft "Memorandum of Agreement," in which they outlined the comments and requests to the Government of Haiti. The State representative indicated that he disagreed with the petitioners' request for information on the status of domestic proceedings, given the fact that the investigation phase of a case is confidential under Haitian law. At the end of the meeting, the parties agreed to prepare a joint petition addressed to the Government of the United States requesting documents related to the investigation. The State of Haiti agreed to provide the Commission with an account of the actions taken related to the investigation and the prosecution of the perpetrators. The Commission indicated that it would transmit the pertinent information to the petitioners.

16. On July 2, 1999, the petitioners asked the Commission to consider the case at its next session, in light of the fact that the State had not fulfilled its commitments. This petition was forwarded to the State on July 13, 1999. The petitioners repeated their request on July 30, 1999, which was transmitted to the State on August 7, 1999.

17. On August 26, 1999, the parties met at the headquarters of the Commission with a view to reaching a friendly settlement. The result was that the State agreed to submit a report to the Inter-American Commission on the investigation, domestic proceedings related thereto, and status of the case every three months. If four months went by without this action being taken, the period of discussion for a friendly solution would be considered to have ended. The agreement, written in French, was transmitted to the State on August 27, 1999.

18. On November 1, 1999, the petitioners informed the Commission that the State had made a few changes to the original agreement document, among them, the modification of the time periods, and they indicated their acceptance of these changes. The State informed the Commission that it had agreed to sign the revised agreement on November 19, 1999, and the petitioners were notified of this on November 29, 1999. On December 6, 1999, the petitioners informed the State of the receipt of the signed agreement.

19. On January 20, 2000, the petitioners requested another hearing, which was granted, to obtain information on the progress made in the Malary case. Based on a request made by the State in a communication of February 18, 2000, the hearing was postponed. On March 2, 2000, the petitioners sent the Commission an additional memorandum seeking up-to-date information on the case and asked the State to respond to a series of questions prior to July 3, 2000, failing which they would ask the Commission to declare the case admissible. This communication was sent to the State on March 16, 2000.

20. During the course of the on-site visit by the Inter-American Commission to Haiti, the parties met with representatives of the Commission in Port-au-Prince on August 23, 2000, in order to obtain information on the status of the case. No final agreement was reached.

III. POSITION OF THE PARTIES

A. Position of the petitioner

21. The petitioners assert that there is strong evidence linking officers of the Haitian Security Forces to the assassination of Mr. Malary, a factor that makes the State liable from an international standpoint. The fact that the events occurred during the de facto regime does not alter this liability.

22. The petitioners allege that the investigation into the assassination and the institution of criminal proceedings against the suspects have been impeded by the negligence and inaction of Haitian officials. Although it is true that the events occurred during the de facto regime, no significant progress has been made since the restoration of the constitutional Government in October 1994. Three years after the assassination, arrest warrants were issued for eleven persons, only three of whom were arrested and two of whom were prosecuted. The other person who was arrested was released, allegedly by mistake, and the State made no effort to detain the other eight persons involved. The petitioners maintain that the State has failed to obtain additional key evidence.

23. According to the petitioners, the trial of the two suspects was tainted with serious irregularities since the jury was partial and the competent authorities failed to remedy this; consequently, the State failed to fulfill its obligation to ensure an impartial trial. As a result of the lack of preparation of the Office of the Public Prosecutor, the evidence submitted to the jury was scant and not submitted in the proper manner, and the appeal was not filed in a timely manner and was thus rejected.

24. The petitioners allege that the delay was unwarranted and that the domestic remedies were not effective or timely. In addition to the violation of Article 4 of the Convention in the context of the assassination of Mr. Malary, the pertinent investigation and trial were tainted by irregularities and errors that prevented compliance with the obligations of Haiti under Articles 1, 8, and 25 of the Convention. Consequently, the conduct of the Haitian State is tantamount to violation of the Convention. The petitioners indicate that because the judicial system is overburdened and financially strapped, remedies are ineffective and not enough to produce specific results, and that this system is tainted by a lack of independence and impartiality. However, the foregoing does not justify the negligence of the State in prosecuting those responsible for the murder of Mr. Malary.

B. Position of the State

25. The State maintains that it cannot be held liable for the human rights violations of the de facto Government that occurred between September 30, 1991 and October 14, 1994 and that the perpetrators must be held personally accountable for their actions.

26. That fact notwithstanding, the State maintains that proceedings are pending relating to the Malary case, and that it is working on the case. The investigation was not instituted immediately by the de facto Government; however, after the restoration of the constitutional Government, the Office of the Public Prosecutor instituted proceedings, and at the moment the investigation is ongoing and arrest warrants are pending. While it is true that there were delays, they resulted from technical, financial, and security-related difficulties encountered by the State, and the fact that many of the witnesses fear for their safety.

27. The State indicates that the proceedings are currently in the investigation phase, and, for this reason, it is prohibited under Haitian law from divulging information related thereto. However, a public trial will be held, during which the State will ensure that past mistakes are not repeated.

28. With respect to prosecution of the two persons involved, the State maintains that the competent authorities acted appropriately and in accordance with the obligations set forth in the American Convention for obtaining an impartial trial. Although it is true that there were some problems with the preparation of the indictment by the Office of the Public Prosecutor, this is not a chronic problem faced by the State, since it is interested in discovery of the truth and the sanctioning of the perpetrators. The State maintains that the appeal was filed in a timely manner; however, Haitian law establishes that when a jury hands down a verdict, a court of cassation cannot change it.

29. The Haitian State maintains that it wants to request and seek available information that sheds light on the events, and it is doing so and will continue to do so in order to conduct a proper investigation.

30. The State points out that it is emerging from a period of dictatorship; consequently, it has to overcome many obstacles. However, it is working on several fronts to respect human rights. Examples of this include the judicial reform project, the creation of a National Truth and Justice

Commission, and the establishment of a criminal investigation division within the Ministry of Justice to investigate crimes and disappearances that occurred during the period of dictatorship.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence of the Commission

31. The Commission is competent to review this petition since it pertains to actions that allegedly violate human rights protected under the American Convention, namely, the obligation to respect rights (Article 1); the right to life (Article 4); the right to a fair trial (Article 8); and the right to judicial protection (Article 25), as provided for in Article 44 of the Convention, to which Haiti has been a party since September 27, 1977.

32. The Commission will now analyze whether this petition meets the formal requirements for admissibility set forth in Articles 46 and 47 of the American Convention on Human Rights.

B. Exhaustion of domestic remedies

33. Article 46(1)(a) of the American Convention states:

A dmission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.

34. The Commission has repeatedly pointed to the "assistive and complementary" nature of the inter-American system for the protection of human rights, as reflected in Article 46(1)(a) of the Convention, which permits States to settle issues beforehand within their own legal framework before becoming involved in international proceedings.

35. In this case, the petitioners assert that although they reported the alleged human rights violations to the domestic legal authorities stipulated in Haitian legislation, the remedies failed to produce any result.

36. The Haitian State disputed the allegations of the petitioners regarding the exhaustion of domestic remedies. The State alleges that investigation is ongoing; consequently, domestic remedies have not been exhausted.

37. As has been stated repeatedly, the mere existence of domestic remedies is not enough to require exhaustion thereof by a petitioner. These remedies must be effective and adequate in terms of providing protection to everyone. Consistent with the foregoing, Article 46(2) of the Convention describes some situations in which provisions are made for an exception to the requirement related to the exhaustion of domestic remedies:

The provisions of paragraphs 1.a and 1.b of this article shall not be applicable when:

- a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

38. In this case, the petitioners submitted the petition to the Inter-American Commission on August 17, 1994, that is, nine months after occurrence of the events reported, during which time the State did not launch an investigation into the assassination of Mr. Guy Malary. After the restoration of the constitutional Government, the petitioners waited for domestic remedies; however, to date, a full investigation into the case, leading to the sanctioning of the perpetrators, is yet to be conducted.

39. The Commission notes, with respect to the exhaustion of domestic remedies, that the investigation was launched in late 1994 following the October 1993 events. As a result of this investigation, eleven arrest warrants were issued in May 1996. Of this number, only three persons were arrested: Robert Lecorps, Jean-Ronique Antoine, and Marcel Morissaint. The first two were tried and acquitted, and the third was released without being prosecuted for the assassination of Mr. Malary.

40. The Commission notes that a period of seven years has elapsed from the time the events occurred without the launching of a full investigation that permits responsibility to be assigned to the guilty parties and punishment imposed on them. For this reason, it holds the view that that period exceeds reasonable limits.

41. After analyzing the information provided by the parties, the Commission points to the unwarranted delay in reaching a decision on domestic remedies. For this reason, in this case, the exception to prior exhaustion of domestic remedies provided for in Article 46(2)(c) of the American Convention is applicable.

42. In this regard, the Inter-American Court has pointed out:

when certain exceptions to the rule of non-exhaustion of domestic remedies are invoked, such as the ineffectiveness of such remedies or the lack of due process law, not only is it contended that the victim is under no obligation to pursue such remedies, but, indirectly, the State in question is also charged with a new violation of the obligations assumed under the Convention. Thus, the question of domestic remedies is closely tied to the merits of the case.[FN2]

[FN2] Inter-American Court of Human Rights, Preliminary Objections, Velásquez Rodríguez case, Judgment of June 26, 1987, para. 91.

43. In the view of the Commission, in the case at hand, the existence of effective domestic remedies such as due process is closely linked to the merits of the case given the obligation of the State to provide those remedies pursuant to Articles 8 and 25 of the American Convention. In light of the foregoing, the issues related to the effectiveness of domestic remedies will be analyzed in conjunction with the merits of the case.

44. Based on the elements reviewed, the Commission holds the view that this case has met the admissibility requirement related to the exhaustion of domestic remedies set forth in Article 46(1)(a) of the American Convention.

C. Time period for submission of the petition to the IACHR

45. Article 46(1)(b) of the American Convention states that "the petition or communication must be within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment," if it is to be admissible.

46. In this case, that time period is not applicable, in light of the unwarranted delay in the decision regarding domestic remedies, based on the exception provided for in Article 46(2)(c) of the Convention. Article 38(2) of the IACHR Regulations indicate that the time period shall be one that the Commission deems reasonable, from the date on which the alleged violation of human rights occurred, depending on the circumstances of each case.

47. This petition was submitted to the IACHR on August 17, 1994, nine months after the events occurred. To date, the State has failed to launch an investigation, despite the fact that the murder is being investigated on its own initiative. After the restoration of the constitutional Government, the Commission decided, on October 10, 1995, to grant the State a reasonable time period to conduct the appropriate investigations, in light of the fact that the State was facing a difficult transition. Similarly, the petitioners decided to wait for new developments that would shed light on the case. However, to date, no significant progress has been made that would permit the perpetrators to be identified and sanctioned.

48. In light of the foregoing and in view of the fact that the State has not raised any objection to the time period for submission of the petition, the Commission holds the view that it meets the requirement of submission within a reasonable time period, pursuant to the provisions of Article 38(2) of the IACHR regulations.

D. Duplication of proceedings

49. Article 46(1)(c) of the Convention states that if a petition or communication is to be admitted by the Commission, the subject thereof must not be pending in another international proceeding. Furthermore, Article 47(d) of the Convention stipulates that the Commission shall declare inadmissible any petition or communication that is a duplication of one previously studied by the Commission or by another international organization.

50. The allegations of the parties and documents contained in the case file do not indicate that the petition is pending in another international proceeding or is a duplication of a petition

previously studied by the Commission or by another international organization. Consequently, the Commission holds the view that this case meets the admissibility requirements contained in Articles 46(1)(c) and 47(d) of the American Convention on Human Rights.

V. CONCLUSIONS

51. The Commission concludes, based on the information presented herein, that the petition meets the admissibility requirements set forth in Articles 46 and 47 of the American Convention on Human Rights. The Commission is therefore competent to hear Case N° 11.335.

52. Based on the foregoing arguments of fact and of law, and without prejudice to the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES TO:

1. Declare this case admissible with respect to the alleged violation of Articles 4, 8, and 25 of the American Convention.
2. Notify the parties of this decision.
3. Continue with the analysis of the merits of this case.
4. Publish this decision and include it in its Annual Report to the OAS General Assembly.

Approved by the Inter-American Commission on Human Rights on December 4, 2000.
(Signed): Hélio Bicudo, Chairman; Claudio Grossman, First Vice Chairman; Juan Méndez, Second Vice Chairman; Commission members: Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.