

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 21/01; Case 11.605
Session: Hundred and Tenth Regular Session (20 February – 9 March 2001)
Title/Style of Cause: Rene Gonzalo Cruz Pazmino v. Ecuador
Doc. Type: Decision
Decided by: Chairman: Claudio Grossman;
First Vice-Chairman: Juan Mendez;
Second Vice-Chairman: Marta Altolaguirre;
Commissioners: Helio Bicudo, Robert K. Goldman, Peter Laurie.
Commissioner 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: 20 February 2001
Citation: Cruz Pazmino v. Ecuador, Case 11.605, Inter-Am. C.H.R., Report No. 21/01, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)
Represented by: APPLICANTS: Gloria Esthela Pazmino Mosquera and the Comision Ecumenica de Derechos Humanos
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I. SUMMARY

1. On November 4, 1994, Gloria Esthela Pazmiño Mosquera and the Comisión Ecuménica de Derechos Humanos (“CEDHU”) (hereinafter “the petitioner”) presented 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 they denounced the violation of the following rights protected by the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”): the right to life (Article 4), the right to a fair trial (Article 8), and the right to judicial protection (Article 25), in breach of the obligations that appear in Article 1(1), all to the detriment of Mrs. Pazmiño’s son, Mr. René Gonzalo Cruz Pazmiño.

2. The parties reached a friendly settlement agreement in this case on June 11, 1999. This report contains a brief presentation of the facts and the text of the settlement reached, in keeping with Article 49 of the Convention.

II. THE FACTS

3. On June 20, 1987, the youth René Gonzalo Cruz Pazmiño and his mother, Gloria Esthela Pazmiño Mosquera, were leaving a cemetery when two men approached them, one of whom shot at the youth René Gonzalo Cruz Pazmiño, as a result of which he died.

4. The perpetrator of the shots fired at René Gonzalo Cruz Pazmiño turned out to be Army First Sergeant Galo Nerys Alvarez Narvaes.

5. The trial of Alvarez Narvaes began July 13, 1987. The case went before the Second Criminal Law Judge of Pichincha, who ordered the preventive detention of the accused, to be served in a military facility. The opinion of the prosecutor, of December 13, 1989, indicated that there were grave presumptions of responsibility against Sgt. Alvarez Narvaes. This opinion was accepted by the judge (who applies the law), who on April 9, 1992, ordered that the trial begin, and for the case to be removed to the Criminal Court, which would issue a judgment. That order was affirmed by the Superior Court of Justice of Quito on February 2, 1993.

6. The Third Criminal Court of Pichincha was to hand down a judgment after holding the respective hearing. Nonetheless, after finding that the accused had escaped, the examination of the case was suspended on June 11, 1993.

7. According to the petitioner, neither the armed forces or police of Ecuador investigated or carried out sufficient operations to pursue and capture Sgt. Alvarez Narvaes.

III. PROCESSING BEFORE THE COMMISSION

8. On November 4, 1994, the Commission received the complaint in this case. On April 18, 1995, the respective notes were sent to the State and the petitioner. On April 1, 1996, the case was opened. On May 15, 1998, the Commission placed itself at the disposal of the parties to pursue a friendly settlement. On May 25, 1999, the petitioner agreed to pursue a friendly settlement. The friendly settlement agreement was signed on June 11, 1999, in the presence of Carlos Ayala Corao. Mr. Ayala, then a member of the IACHR and its rapporteur for Ecuador, had traveled to Quito to facilitate the agreement. The parties asked the Commission to ratify this friendly settlement agreement in all respects and to supervise its implementation.

IV. FRIENDLY SETTLEMENT AGREEMENT

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

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. Gloria Esthela Pazmiño Mosquera, the mother and legal representative of Mr. René Gonzalo Cruz Pazmiño, 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. Gloria Esthela Pazmiño Mosquera, mother and legal representative of Mr. René Gonzalo Cruz Pazmiño, deceased, with citizen ID number 170589323-6, which is 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. René Gonzalo Cruz Pazmiño, 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 11.605 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 N° 1 and in force since August 11, 1998, is awarding Mrs. Gloria Esthela Pazmiño Mosquera, mother and legal representative of Mr. René Gonzalo Cruz Pazmiño, deceased, in keeping with the provisions of Articles 1045 and 1052 of the Civil Code, a one-time compensatory payment 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. René Gonzalo Cruz Pazmiño and his next-of-kin, as well as any other claim that

his next-of-kin 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 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 Mrs. Pazmiño, mother and legal representative of Mr. René Gonzalo Cruz, deceased, 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 standards 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

Mrs. Gloria Esthela Pazmiño Mosquera, mother and legal representative of Mr. René Gonzalo Cruz Pazmiño, deceased, expressly 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. René Gonzalo Cruz Pazmiño.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

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

11. In April 2000, the compensation agreed upon was paid, in keeping with the friendly settlement agreement, but the interest provided for in the agreement has yet to be paid. On February 27, 2001, during a working meeting, the State informed the Commission that it had instituted criminal proceedings to determine the sanctions and responsibility of the persons implicated in the violations alleged.

VI. CONCLUSIONS

12. The Commission reiterates its recognition of the Ecuadorian State for its decision to resolve this case through by adopting measures of reparation. The IACHR also reiterates its acknowledgment of the petitioner for accepting the terms of the agreement in question.

13. The IACHR will continue to monitor the implementation of the commitment assumed by Ecuador regarding the trial of the persons implicated in the facts alleged and payment of interest for the delay in payment of the compensation.

14. The IACHR ratifies that the possibility of friendly settlement provided for in the American Convention makes it possible to conclude the individual cases in a non-contentious

manner, and has proven, in cases from several countries, to offer an important vehicle for solving alleged violations that can be used by both parties (petitioner and 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 initiated the judicial proceeding to punish the persons implicated in the alleged violation.
2. To urge the State to adopt the necessary measures to conclude implementation of the commitment to prosecute the persons implicated in the facts alleged.
3. To continue to monitor and supervise the implementation of 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 of compliance with 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 OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., February 20, 2001. (Signed): Claudio Grossman, Chairman; Juan Méndez, First Vice-Chairman; Marta Altolaguirre, Second Vice-Chairman; Commissioners Hélio Bicudo, Robert K. Goldman, and Peter Laurie.