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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 22/01; Case 11.779
Session: Hundred and Tenth Regular Session (20 February – 9 March 2001)
Title/Style of Cause: Jose Patricio Reascos 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: Patricio Reascos v. Ecuador, Case 11.779, Inter-Am. C.H.R., Report No. 22/01, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)
Represented by: APPLICANT: Comision Ecumenica de Derechos Humanos

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I. SUMMARY

1. On February 18, 1997, the Comisión Ecuménica de Derechos Humanos (hereafter “CEDHU” or “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 it alleged violations of the following rights protected by the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”): the right to personal liberty (Article 7), the right to a fair trial (Article 8), and the right to judicial protection (Article 25), all in breach of the obligations set forth at Article 1(1), to the detriment of Mr. José Patricio Reascos.

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

II. THE FACTS

3. At 8:00 a.m. of September 12, 1993, Mr. Reascos, who was inebriated, was detained in the San Roque sector of the city of Quito by members of the Office of Criminal Investigation. When he was searched, a packet of marijuana was found that the petitioner had acquired for personal consumption.

4. Mr. Reascos was taken to the offices of Interpol and later transferred to the Center for Provisional Detention. The Third Criminal Court of Pachinko heard the case, and on October 16, 1993, instituted criminal proceedings and, considering that the requirements of Article 177 of the Code of Criminal Procedure[FN1] were satisfied, ordered that Mr. Reascos be held in pre-trial detention.

[FN1] Article 177 of the Code of Criminal Procedure stipulates:
The Judge may order pre-trial detention when he or she deems it necessary, so long as the following procedural data appear:

1. Indicia that trigger a presumption of the existence of an offense that merits deprivation of liberty; and,
2. Indicia that trigger a presumption that the accused is the perpetrator of or accomplice to the offense that is the subject of the proceeding.

The record shall indicate the indicia that are the grounds for the detention order.

5. The petitioner stated that at the moment the complaint was submitted to the IACHR on February 18, 1997, and despite the constant requests for a speedy trial, this had not happened, as more than three years had elapsed without a formal indictment.

6. The petitioner reported that under Article 65 of the Law on Narcotic and Psycho tropic Substances of Ecuador, drug consumption should be sanctioned by a maximum of two years in prison, even if one is given the maximum penalty provided by law.[FN2] At the time the complaint was received at the IACHR, Mr. Reascos had already served more time than the maximum penalty that could have been imposed on him. Accordingly, on November 4, 1996, he filed a writ of amparo with the President of the Superior Court of Justice of Quito, which was dismissed on November 6, 1996.

[FN2] Article 65 of the Law on Narcotic and Psychotropic Substances stipulates:
Reduced penalties for possession for personal use: the punishment shall be one month to two years in prison when, in view of the small amount and all other circumstances, the possession of substances subject to control, one can deduce that they are for the immediate personal use of the possessor.

In this case, having confirmed his or her physical or psychological dependency on narcotic or Psycho tropic substances, after a report by the forensic experts at the Office of the Attorney General, the judge may suspend the application of the penalty and submit the guilty person to curative security measures for the time needed for his or her detoxification and rehabilitation.

This article was repealed on June 9, 1998.

7. The petitioner declared that the investigation in the case, which according to Article 231 of the Code of Criminal Procedure should not last more than 60 days, was drawn out over three years.

8. On June 4, 1997, the Third Criminal Court of Pachinko sentenced Mr. Reascos to 16 months of correctional prison for the crime of drug consumption, and ruled that the verdict should be consulted with the superior court. At the time of this verdict, Mr. Reascos had been detained for three years and nine months. On September 16, 1997, the Superior Court affirmed the verdict of the court below, and so Mr. Reascos was released September 20, 1997, having been imprisoned for a total of four years. Accordingly, his right to be tried within a reasonable time was violated, and likewise his right to be presumed innocent until proven otherwise.

III. PROCESSING BEFORE THE COMMISSION

9. On March 3, 1997, the Commission received the complaint, originally sent on February 18, 1997. On July 28, 1997, it began the processing of this case and asked the Government of Ecuador to provide relevant information within 90 days. On September 24, 1997, the petitioner sent additional information. On September 30, 1997, Ecuador submitted its response to the IACHR with reports prepared by the National Police and the Superior Court of Quito. On December 8, 1998, the IACHR made itself available to the petitioner and the State to pursue a friendly settlement. On January 8, 1999, and February 1, 1999, respectively, the State and petitioner accepted. The friendly settlement agreement was signed in the presence of Carlos Ayala Corao, at the time a member of the IACHR and rapporteur for Ecuador, who traveled to Quito to facilitate the agreement. The parties asked the Commission to ratify this agreement in its entirety and to supervise its implementation.

IV. THE FRIENDLY SETTLEMENT AGREEMENT

10. The friendly settlement agreement signed by the parties states 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 Mr. José Patricio Reascos, acting on his own behalf, 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. Sister Elsie Hope Monge Yoder, on behalf of and in representation of Mr. José Patricio Reascos, as appears in the special power-of-attorney executed before the 33rd Notary of Quito, Mr. Nelson Prado; 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. José Patricio Reascos enshrined in Article 7 (personal liberty), Article 8 (a fair trial), and 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 N° 11.779 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 Mr. José Patricio Reascos, a one-time compensatory payment of twenty thousand US dollars (US\$ 20,000), 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. José Patricio Reascos, and any other claim that Mr. José Patricio Reascos or 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 Mr. José Patricio Reascos 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

Mr. José Patricio Reascos 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. José Patricio Reascos.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

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

12. CEDHU informed that Commission that “on June 11 [1999] an agreement was signed by which the State undertakes to punish the persons responsible for the violations alleged and to pay fair compensation within three months ... and on May 30, 2000, it proceeded to pay the victim the amount corresponding to compensation, yet did not pay the interest, also provided for in the agreement.” On February 27, 2001, during an informal meeting, the State informed the Commission that the criminal proceedings have been initiated to determine the responsibility and punishment of the persons implicated in the alleged violations.

VI. CONCLUSIONS

13. The Commission reiterates its recognition of the Ecuadorian State for its decision to resolve this case by adopting measures of reparation, including those necessary to punish the persons responsible for the violations alleged. The IACHR also reiterates its recognition of the petitioner for accepting the terms of the agreement.

14. The IACHR will continue to monitor compliance with the commitment assumed by Ecuador with regard to the trial of the persons presumed responsible for the facts alleged, and payment of the interest for arrears.

15. 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 acknowledge that the State has made payment of US\$ 20,000 as compensation, and the beginning of judicial proceedings to punish the persons implicated in the facts alleged.
2. To urge the State to adopt the measures needed to comply with the commitments pending with respect to the trial of the persons presumed to be responsible for 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.