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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 18/01; Case 11.450
Session: Hundred and Tenth Regular Session (20 February – 9 March 2001)
Title/Style of Cause: Marco Vinicio Almedida Calispa 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.
Dr. Julio Prado Vallejo, an Ecuadorian national, did not participate in the discussion of this case in compliance with Article 19 of the Commission's Regulations.
Dated: 22 February 2001
Citation: Almedida Calispa v. Ecuador, Case 11.450, Inter-Am. C.H.R., Report No. 18/01, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)
Represented by: APPLICANT: Ecumenical Human Rights Commission
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I. SUMMARY

1. On November 8, 1994, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”), received a complaint submitted by the Ecumenical Human Rights Commission (CEDHU, hereinafter “the petitioner”), claiming that the Republic of Ecuador (hereinafter “the State” or “Ecuador”) had violated rights protected by the American Convention on Human Rights (hereinafter “the American Convention”) with respect to Mr. Marco Vinicio Almeida Calispa, deceased. The complaint alleged violations of Articles 4 (right to life), 5 (humane treatment), and 8 (fair trial), all in conjunction with Article 1(1) of the American Convention.

2. The petitioner reports that on May 31, 1988, Mr. Almeida was arrested, on suspicion of theft, by police officers in the city of Quito. The petitioner claims that the Ecuadorian police, during the interrogations conducted at the Criminal Investigation Service in Pichincha, made use of inhuman and illegal investigative procedures that caused Mr. Almeida's death. The petitioner also claims that the Ecuadorian justice system was negligent in dealing with this case and committed errors at trial that led to the acquittal of the accused. The State does not accept that Mr. Almeida's death was caused by the actions of the police.

3. In this report the Commission concludes that the case meets the admissibility requirements set forth in Articles 46 and 47 of the American Convention. The Commission has therefore decided to declare this case admissible, to notify the parties of that decision, and to

continue analyzing its merits with respect to the alleged violations of Articles 4, 5, and 8 of the American Convention. In addition, the Commission has decided to publish this report.

II. PROCESSING BY THE COMMISSION

4. The Commission received this complaint on November 8, 1994. On March 27, 1995, notes were sent to the State and to the petitioner, and the case was opened. On August 3, 1995, the State replied that it did not have the facts necessary to provide a reply. The IACHR again asked the State to provide information on August 11, 1995. On September 18, 1995, the State submitted its first reply. Processing continued, with information and comments being forwarded to both parties. On May 5, 1999, the IACHR suggested that friendly settlement proceedings could begin. The petitioner accepted this proposal on May 11, 1999. As of the date of this report, February 22, 2001, the State has not replied.

III. POSITIONS OF THE PARTIES

A. Position of the Petitioner

5. On May 31, 1988, Mr. Almeida, aged 26, a messenger-boy for the INDEGA (Coca Cola) company in Quito, was arrested, along with two co-workers, after an accusation that a sum of money (USD \$5,900) had been stolen was made by the company's head of security, Gen. Francisco Freile del Castillo (ret.), a former police chief. The petitioner claims that the victim and another two detainees were taken to the Criminal Investigation Service in Pichincha (SIC-P). Lt. Juan Mosquera Sosa, currently under arrest for his involvement in the Restrepo Arismendy case, took charge of the investigation, along with Police Officers Víctor and Manuel Soto Betancourt, who also happened to be brothers.

6. The petitioner claims that, on June 2, 1988, while the investigation was still in process, Marco Almeida Calispa died as a result of the torture inflicted on him by the Soto Betancourt brothers. According to the petitioner, another detainee told the Court of Constitutional Guarantees that on June 2, 1988, he was taken from his cell, with a blindfold over his eyes and his hands tied, after which he was hung from his thumbs and beaten. One of the officers covered his head with a gas-filled hood and almost asphyxiated him. This witness stated that at 2:30 p.m. on June 2, 1988, he heard Lt. Sosa give the order for Marco Almeida to be brought to the room where his own torture had taken place. He said that "they left the door ajar" and that he was able to see the torture being inflicted, using the same methods as had been used on him, after which they closed the door and he was unable to see any more. On June 3, 1988, in response to his inquiries about Almeida's whereabouts, he was told, by some officers, that Almeida had been released and, by others, that he had been taken to hospital. The petitioner claims that during Marco Almeida's interrogation, Víctor Soto Betancourt (Officer 138) went out to "have a few beers outside the SIC-P complex and, after returning to the room where Marco Almeida was, ran out in desperation to get a bucket of water to try and revive him; however, it was too late, because the gas-filled hood placed over his head had caused his death." [FN1]

[FN1] Submission made by Sonia Arauz, Almeida's widow, Quito, 29/Aug/88.

7. The petitioner claims that the police report gives a contradictory version of events: it states that death occurred on the road to Conocoto, where Mr. Almeida, the allegedly confessed thief of the USD \$5,900, was headed. According to this official version, while in police custody on his way to recover the money, Almeida went into convulsions. He was taken to Eugenio Espejo Hospital where, according to the police, he died. However, according to the petitioner, the hospital certificate states that the victim was dead upon arrival,[FN2] and a nurse reported that Officer 138, Víctor Soto Betancourt, who delivered the body, said that he did not know the person's identity and that the corpse had been found in Conocoto.

[FN2] "We do not know for certain the time of Marco Vinicio Almeida Calispa's death." Dr. Galo A. Hidalgo, Study and Analysis of Autopsy Report: Mr. Marco Vinicio Almeida Calispa.

8. That same day, June 2, 1988, according to the police report, an autopsy was performed by forensic pathologists José Vergara and Víctor Montalvo. The final report was conditional on the results of tests on samples sent to the laboratory, but those procedures, according to the petitioner, were performed with inexplicable negligence, in that samples of certain important organs were not submitted for analysis. The petitioner also states that the pathologists' conclusion supported the police version of events, in which the officers claimed that Mr. Almeida could have ingested toxic matter in his food. In the autopsy report, the forensic pathologists concluded that:

[The] apparent cause of death [was the] ingestion of an organic-phosphoric substance which, because it is highly toxic, rapidly causes unstoppable vomiting in the victim; in this case, because his stomach was full, the trachea was blocked by alimentary matter, leading to asphyxiation, and this was the necessary and apparent cause of his violent death.

9. The petitioner also states that further to the investigations, the Court of Constitutional Guarantees asked the holder of the pathology chair at Central University, Dr. Galo Hidalgo, to analyze the autopsy report. He remarked on the absence of important evidence and the contradictions surrounding the cause of Marco Almeida's death in the autopsy report. Dr. Hidalgo noted that the autopsy was performed a full 18 hours after the victim's death, even though the body was delivered to the morgue at 5:20 p.m. on June 2, 1988, the day the victim died. The physicians responsible for the autopsy attempted to justify the shortcomings that Dr. Hidalgo detected by arguing that there was a shortage of proper instruments for forensic practice in Ecuador. Dr. Hidalgo concluded that the information provided was inadequate for reaching a firm conclusion regarding the cause of Mr. Almeida's death.[FN3]

[FN3] "I can state that, in my opinion, the information available is insufficient for reaching firm conclusions about the causes and mechanics of Mr. Marco Vinicio Almeida Calispa's death." Dr. Galo A. Hidalgo, Study and Analysis of Autopsy Report: Mr. Marco Vinicio Almeida Calispa.

10. The petitioner claims that the autopsy report was the main evidence in the dismissal, by the First Police District Court, of the attempted prosecution of the two police officers and in the conclusion those proceedings reached, which held that Marco Almeida “did not die as a result of the torture he suffered in life” and thus acquitted the two officers in whose custody Marco Almeida had been held.

11. The petitioner reports that the victim’s relatives filed a complaint for the illegal death of Marco Almeida with the Fifth Police Precinct. This complaint, however, disappeared. Another police precinct subsequently initiated proceedings, and the case was passed on to the First Criminal Court of Pichincha. On January 23, 1989, the First Criminal Judge ordered the arrest of the Soto Betancourt brothers, but the police authorities did not obey the court’s order.

12. On April 11, 1989, the Judge of the First Police District asked the First Criminal Judge to disqualify himself from hearing the case; the matter was then transferred to the Superior Court of Justice for a ruling on jurisdiction.

13. The petitioner filed a claim with the Court of Constitutional Guarantees which, on September 21, 1989, decided to instruct “the Police Chief, in pursuit of his specific functions, to order police officers to adapt their procedures to the provisions of law and the Constitution, particularly as regards respect for human rights.”

14. The petitioner reports that the Superior Court disqualified itself from the jurisdiction hearing; consequently, the case was passed on to Ecuador’s Supreme Court of Justice, where no action was taken for a period of two years. As a result of this, claims the petitioner, important procedures were delayed, such as an examination of the crime scene which, in the meantime, had been dismantled and remodeled. On February 10, 1992, the Second Circuit of the Supreme Court of Justice resolved the jurisdiction dispute in favor of the First Judge of the First Police District who, on May 24, 1994, called for a full trial and issued documents indicting the accused police officers. On November 21, 1994, the First Police District Court revoked the indictment and ordered a definitive dismissal of the charges made against the accused.

B. Position of the State

15. In its reply to the complaint, the State maintains that the ruling of the First Police District Court established “that the cause of the violent death [of Marco Almeida] was the regurgitation of alimentary matter and the consequent asphyxia, produced by the ingestion of a highly toxic phosphoric substance, in connection with which the accused have been cleared of responsibility.”

16. Ecuadorian police report N° 913-SICP, dated June 2, 1988, claims that the victim was leading the police officers to the location of the stolen money when:

unexpectedly we saw the detainee Almeida Calispa go into convulsions and lose consciousness; we therefore immediately returned to the city and went to Eugenio Espejo Hospital so he could be given timely medical attention; however, upon arrival there, the preparations for a preliminary examination indicated that he had just died, probably of a heart attack.

17. The State claims that Mr. Almeida's death was due to causes beyond the officers' control, as shown in the police report and confirmed by the autopsy. According to the State, prior to his arrest Mr. Almeida had ingested a toxic substance which, ultimately, led to his death.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence of the Commission *Ratione Materiae*, *Ratione Personae*, *Ratione Temporis*, and *Ratione Loci*

18. The Commission has competence *ratione materiae*, in that the allegations set forth in the petition, if proven true, could constitute violations of Articles 4, 5, and 8 of the American Convention.

19. Under Article 44 the petitioner is entitled to submit complaints to the Commission, and the victim in this case is an individual with respect to whom Ecuador had undertaken to guarantee and respect the rights enshrined in the American Convention. As regards the State, the Commission notes that Ecuador has been a state party to the American Convention since ratifying it on December 28, 1977. The Commission therefore has competence *ratione personae* to examine the complaint.

20. The IACHR has competence *ratione temporis* in that the sequence of events began in June 1988, when the obligation of respecting and ensuring the rights enshrined in the American Convention was already in force for the Ecuadorian State.

21. The parties have no doubts or disagreements about the fact that the incidents described in the petition took place in Ecuadorian territory, in an area under the jurisdiction of the State. Thus, the competence *ratione loci* of the Commission is clear.

B. Other Requirements for Admissibility

a. Exhaustion of Domestic Remedies

22. The Commission first of all notes that the State has offered no explanation for the two years it took to settle the question of the jurisdiction of the courts involved with the complaint, a period of time longer than was strictly necessary. On February 10, 1992, the Second Circuit of the Supreme Court of Justice resolved the jurisdiction dispute in favor of the First Judge of the First Police District who, on May 24, 1994, called for a full trial and issued documents indicting the accused police officers. However, on November 21, 1994, the First Police District Court revoked the indictment and ordered a definitive dismissal of the charges made against the accused. Thus, domestic remedies were exhausted with respect to the police officers' criminal responsibility in the death of Marco Almeida.

b. Timeliness of the Petition

23. Article 46(1)(b) of the Convention states that a petition must be lodged within a period of six months from the date on which the petitioner is notified of the final judgment exhausting domestic remedies. The petitioner lodged the case with the Commission on November 8, 1994—that is, five months and 16 days after the First Judge of the First Police District called for a full trial and 13 days before the final judgment. The Commission notes that petitioner submitted the petition *ad cautelam*, with reservations about possible delays in resolving the case that could potentially cause violations of due process. Understanding that the time it took to rule on the jurisdiction issue meant that upon lodging the complaint the petitioner had legitimate doubts about the time it would take to process the case, and because the petition was in any event lodged within the six-month period, the Commission holds that the terms of Article 46(1)(b) have been met. In addition, the Commission believes that the State tacitly accepted that the petition was lodged within the period set by Article 46.1.b by failing to argue otherwise.

c. Duplication of Proceedings and Res Judicata

24. The Commission understands that the substance of the petition is not pending in any other international proceeding for settlement, and that it is not substantially the same as any petition previously studied by the Commission or other international body. Hence, the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention have also been met.

d. Characterization of the Alleged Facts

25. The Commission holds that the petitioner's claims describe events that, if proven true, could tend to establish a violation of the rights protected by Articles 4, 5, and 8 of the American Convention; thus, the requirements of Article 47(b) have been satisfied.

V. CONCLUSION

26. Based on the above legal and factual considerations, the Commission concludes that the case at hand satisfies the admissibility requirements set forth in Articles 46 and 47 of the American Convention and, without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this case admissible with respect to Articles 4, 5, and 8 of the American Convention.
2. To transmit this report to the petitioner and to the State.
3. To continue with its analysis of the merits of the case.
4. To publish this report and to include it in the Commission's 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., on the 22nd day of February, 2001. (Signed): Claudio Grossman,

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Chairman; Juan Méndez, First Vice-Chairman; Marta Altolaguirre, Second Vice-Chairman;
Commissioners Hélio Bicudo, Robert K. Goldman, and Peter Laurie.