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Title/Style of Cause: Rigoberto Acosta Calderon 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 accordance with Article 17 of the Rules of the Procedure of the IACHR.
Dated: 10 October 2001
Citation: Acosta Calderon v. Ecuador, Case 11.620, Inter-Am. C.H.R., Report No. 78/01, OEA/Ser./L/V/II.114, doc. 5, rev. (2001)
Represented by: APPLICANT: Comision Ecumenica de Derechos Humanos
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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 alleging violation of rights protected in the American Convention on Human Rights (hereinafter “the American Convention”) by the Republic of Ecuador (hereinafter “the State” or “Ecuador”) to the detriment of Mr. Rigoberto Acosta Calderón, a Colombian national, represented by the Comisión Ecuménica de Derechos Humanos [Ecumenical Human Rights Commission] (CEDHU) (hereinafter “the petitioner”). The petition claims violation of Articles 7(3), 7(5), 8(1), 8(2)(e), 24, and 25, in connection with Article 1(1) of the American Convention.

2. The petitioner says that on November 15, 1989, Mr. Acosta was arrested by the Customs Military Police in the “La Punta” area of the city of Lago Agrio, on suspicion of drug trafficking. The detention of Rigoberto Acosta from November 15, 1989 to December 8, 1994, when a final judgment was rendered, allegedly violated Articles 7(3), 7(5), and 8(2) of the American Convention. The petition further alleges violation of Article 8(2)(e) of the Convention because Mr. Acosta did not have access to an attorney during the preliminary inquiry conducted by the military police; a public defender was not appointed for him when he was brought before the criminal court; he was kept away from the place of the proceedings, impairing his right to a hearing with due guarantees by the judge processing the case; and his declaration was only taken

two years afterwards, thus violating his right recognized in Article 8(1) of the American Convention.

3. At no time during Mr. Acosta's trial for drug trafficking did the drugs appear. Accordingly, it was not possible to carry out the procedure that the law provides to demonstrate the physical existence of the crime,[FN2] which consists of the examination, weighing and destruction of the seized substance, which acts must be officially recorded on a certificate. Despite the foregoing, the judge only closed the preliminary hearing on November 16, 1993, and issued an acquittal ruling in favor of the petitioner on December 3, 1993, finding there to be no physical proof of the crime. The acquittal ruling was referred for consultation to the First Chamber of the Superior Court in and for Quito, which nine months later issued a ruling on July 22, 1994 and remanded the case back to the Judge of Lago Agrio in August 1994. The Criminal Court found that the crime had been proven and on December 8, 1994, Mr. Acosta was sentenced to nine years' imprisonment. In the trial of Mr. Rigoberto Acosta Calderón, the preliminary hearing was supposed to have taken 60 days but in this case took four years. Furthermore, the mandatory consultation, which should have been resolved in 15 days, took more than 270 days. Mr. Rigoberto Acosta Calderón was in custody throughout all that time, before being released on July 29, 1996, due to having served part of his sentence as a remand prisoner. The State argues that Mr. Acosta was arrested, tried and convicted for the crime of drug trafficking in accordance with the law in force and, therefore, the Commission should find the petition inadmissible.

[FN2] Article 67 of the Code of Criminal Procedure in force at that time provides as follows: "Appraisal of police proceedings. On the basis of a reasoned opinion and admissible evidence, the Judge shall also appraise the report, inquiry, and evidence prepared by the Judicial Police."

4. The Commission finds in this report that the case meets the admissibility requirements provided in Articles 46 and 47 of the American Convention. Therefore, the Commission decides to declare the case admissible, to notify the parties of this decision, and to continue with its analysis of merits regarding the alleged violations of Articles 7, 8, 24, and 25 of the American Convention.[FN3] The Commission also decides to publish the instant report.

[FN3] The new Rules of Procedure of the Inter-American Commission on Human Rights entered into force on May 1, 2001.

II. PROCESSING BY THE COMMISSION

5. The Commission received the respective complaint on November 8, 1994. On March 1, 1996, the Commission received additional information from the petitioner. Notes were sent to the State on May 2 of that year. On April 27 the Commission requested the petitioner for additional information and repeated its request to the Government to provide information on the facts alleged in the petition. On July 29, 1999, the petitioner replied to the IACHR, providing

the information requested, which was transmitted to the Government for comment on August 20, 1999. On September 27, 1999, the Government sent the IACHR its comments on the last communication from the petitioner. Those comments were forwarded to the petitioner on November 2, 1999. On January 4, 2000, the Government of Ecuador again sent additional information, which was transmitted to the petitioner on February 10, 2000.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

6. On November 15, 1989, Mr. Acosta, a Colombian national, was arrested on the charge of drug trafficking by the Customs Military Police in the “La Punta” sector of the city of Lago Agrio, eastern Ecuador. The petitioner adds that Mr. Acosta was taken to a police station where his preliminary statement was taken and a report prepared that said that the drugs consisted of two pounds, 12 ounces of cocaine paste. On the basis of that report, the Judge of Lago Agrio Criminal Court ordered Mr. Acosta’s arraignment and that he be remanded in custody.

7. The petitioner alleges that there were a series of irregularities in the processing of the case: a) in the proceeding, testimonies were received from persons unconnected with the matter; b) a report was found concerning the weight of the drugs allegedly found at Lago Agrio Hospital, but that document neither mentioned the court order requesting that measure, nor did it state that the report pertained to the proceeding instituted against Mr. Acosta.

8. In addition to the foregoing, the petitioner says that since there was no physical evidence of the crime -that is, an examination and chemical analysis of the alleged drugs to determine what type of drugs they were- the prosecutor refrained from presenting charges against him, for which reason the judge presiding over the case ordered Mr. Acosta’s acquittal on December 3, 1993.

9. On July 22, 1994, the acquittal ruling was referred for consultation to the First Chamber of the Superior Court, which overturned it and issued a summons for Mr. Acosta to appear at the second stage of the trial, with the argument that even though the drugs did not undergo chemical analysis or examination nor were they destroyed, the police report said that he (Mr. Acosta) was arrested with two pounds, 14 ounces of drugs, and that document proved the physical existence of the crime. In respect of the foregoing, the petitioner says that proof of the lack of evidence to convict Mr. Acosta is the separate vote that opposed the criterion that the Chamber adopted when it decided to reverse the acquittal.[FN4]

[FN4] The separate vote states that it was not possible to establish the corpus delicti without a chemical analysis of the drugs.

10. On December 8, 1994, the Criminal Court found Mr. Acosta guilty and sentenced him to nine years’ imprisonment. The petitioner says that an application for his release was only presented to the Criminal Court on July 25, 1996. That request was based on the Code of

Execution of Criminal Sentences, and was heeded on July 29 of that year, when Mr. Acosta was granted parole.

11. Based on the foregoing, the petitioner alleges that the State has committed the following violations of the American Convention: a) violation of Article 7(3), because he was arbitrarily detained for six years and seven months for a crime which he did not commit, given that there was no evidence in the trial of the drugs allegedly found in the possession of Rigoberto Acosta Calderón; b) violation of Article 7(5), because Rigoberto Acosta Calderón was not tried within a reasonable time; he was arrested on November 15, 1989, the preliminary proceeding took four years (it was closed on November 16, 1993), the judge did not order his acquittal until December 3, 1993, which decision was referred for consultation to the First Chamber of the Superior Court and took seven months and 19 days to resolve.[FN5] The case was remanded to the judge who found Rigoberto Acosta Calderón guilty, taking four months and 16 days to render a decision, when the law provides a time limit of 10 days for a ruling; and, c) violation of Article 8(1) and 8(2), because the State did not provide him with counsel to assist him in his defense, since Rigoberto Acosta Calderón lacked the wherewithal to retain an attorney to defend him at the proceeding. Furthermore, his lawful right of defense was impaired by being imprisoned at a place 480 kilometers from the court where his trial was proceeding.

[FN5] Article 401 of the Code of Criminal Procedure in force at that time says that consultations must be decided within 15 days counted from receipt of the case. The acquittal ruling was reversed on July 22, 1994.

12. Finally, the petitioner says that the State has violated Mr. Rigoberto Acosta's right to personal liberty, his right to be presumed innocent, to a hearing by a competent tribunal, to have counsel appointed for him by the State in order to ensure his right of defense, his right to a fair trial, his right to judicial protection, and his right to equal protection; the foregoing rights are protected by Articles 7, 8, 24, and 25 of the American Convention, in relation to Article 1(1) of said Convention.

B. Position of the State

13. The State says in its reply to the petition that on November 15, 1989, the Criminal Court in and for Lago Agrio ordered the arraignment of Rigoberto Acosta Calderón and that he be remanded in custody, basing his decision on a report[FN6] from the Customs Police District Headquarters, which said that Rigoberto Acosta Calderón was carrying two pounds, 14 ounces of cocaine paste. That report also says that according to the preliminary statement taken from Rigoberto Acosta Calderón, he admitted having agreed to carry across a suitcase belonging to a woman whose first name he said was Magola, who had offered to pay him 30,000 sucres to do so. The Tribunal of Napo, for its part, says that there is no record in the case of a certificate of examination of physical evidence; only a photocopy of a document certified by the director of Lago Agrio Hospital and the clerk of the court.

[FN6] Article 157 of the Code of Criminal Procedure in force at that time says, “Grounds for a criminal proceeding. The basis of a criminal action is proof, in accordance to law, of the existence of some punishable deed or omission. Consequently, in order to secure a conviction, both that proof and the responsibility of the accused must be demonstrated in the proceeding.”

14. The State adds that although Rigoberto Acosta Calderón denied criminal responsibility for the crime of which he was accused, the Prosecutor refrained from proffering charges against him. Accordingly, the Second Criminal Court in and for Tugurahua ruled that the accused be acquitted. Subsequently, said ruling was referred for mandatory consultation to the Superior Court of Quito, which reversed the acquittal ruling and ordered the opening of the second stage of the proceeding, arguing that Rigoberto Acosta Calderón had committed the crime recognized in Article 33 of the Drug Control and Trafficking Act [Ley de Control y Tráfico de Estupefacientes] in force at that time. On October 8, 1994, Rigoberto Acosta Calderón was sentenced to nine years’ imprisonment. Later, on July 29, 1996, the Criminal Court in and for Napo ordered the release of Mr. Rigoberto Acosta Calderón.

15. The State says that the parole application on behalf of Rigoberto Acosta Calderón was denied by the Director of Social Rehabilitation of Ambato and the Superior Court in and for Ambato because it was expressly prohibited under Article 115 of the Narcotic Drugs and Psychotropic Substances Act [Ley de Sustancias Estupefacientes y Psicotrópicas].

16. Finally, the State says that international responsibility cannot be imputed to the Government of Ecuador because, according to the foregoing facts, Rigoberto Acosta Calderón was arrested, tried, and convicted in accordance with the law in force in the country, and that he eventually regained his freedom 24 months before completing his sentence.

IV. ANALYSIS OF ADMISSIBILITY

A. The Commission’s competence *ratione personae*, *ratione loci*, *ratione temporis*, and *ratione materiae*

17. The petitioner is entitled to lodge petitions with the IACHR under Article 44 of the American Convention. The petition cites as an alleged victim an individual on whose behalf Ecuador undertook to respect and ensure the rights recognized in the American Convention. Insofar as the State is concerned, the Commission finds that Ecuador has been a state party to the American Convention since December 28, 1977, when it deposited its respective instrument of ratification. Accordingly, the Commission has *ratione personae* competence to examine the petition.

18. The IACHR has *ratione loci* competence to take up the petition because it claims violations of rights protected in the American Convention that allegedly took place in the territory of a state party to that treaty.

19. The IACHR has *ratione temporis* competence inasmuch as the duty to respect and ensure the rights recognized in the American Convention was in force for the State at the time when the alleged violations contained in the petition are said to have occurred.

20. Finally, the Commission has *ratione materiae* competence because the petition alleges violations of human rights protected by the American Convention.

B. Other admissibility requirements for the petition

a. Exhaustion of domestic remedies

21. The Commission finds firstly that the State has not provided any explanation for the period of three years and nine months that it took the court to conduct the preliminary hearing, or why the courts took four years and 11 months, a period longer than that which the law provides, to reach a decision on the legal situation of Rigoberto Acosta Calderón. The State argues that, insofar and inasmuch as they led to his conviction, the arrest, trial, and conviction of the petitioner were carried out in accordance with the law.

22. The State does not dispute exhaustion of domestic remedies, which were concluded with the judgment of October 8, 1994, when Mr. Acosta was sentenced to nine years' imprisonment.

b. Deadline for lodging the petition

23. Article 46(1)(b) of the Convention says that the petition must be lodged within a period of six months from the date on which the petitioner is notified of the final judgment that exhausted domestic remedies. In this case, the petitioner argues that he did not have an effective recourse against the unwarranted delay in the Ecuadorian judicial system, which resulted in the excessive period that he was held as a remand prisoner and, consequently, under Article 46(2)(a) of the Convention he is exempt from the requirement to exhaust domestic remedies.[FN7]

[FN7] Article 46(2)(a) provides, "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."

24. The petitioner lodged the case with the Commission on November 8, 1994; in other words, one month after Rigoberto Acosta Calderón was notified of the conviction of October 8, 1994 that sentenced him to nine years' imprisonment. Given that it "is not concerned with" Mr. Costa's "innocence or guilt in the crimes imputed to him by the Ecuadorian courts",[FN8] the Commission finds that the petition was presented on time.

[FN8] Cf. Inter-Am. Ct.H.R., Suárez Rosero Case, Judgment of November 12, 1997, para. 37.

c. Duplication of proceedings and res judicata

25. The Commission finds that the subject matter of the petition is not pending in another international proceeding for settlement, nor is the petition substantially the same as one previously studied by the Commission or by another international organization. Accordingly, the requirements set forth in Articles 46(1) (c) and 47(d) have also been met.

d. Nature of the alleged violations

26. The Commission finds that the allegations, if proven, could establish violations of the rights recognized in Articles 7, 8, 24, and 25 of the American Convention. Furthermore, in its examination of the merits the Commission will analyze the procedural requirement of consultation under Ecuadorian law, and whether or not the nature and effects of consultation might violate the rights to personal liberty, a fair trial, and judicial protection, all of which are recognized by the American Convention. Based on the foregoing, the Commission considers that the requirements contained in Article 47(b) of the Convention have been met.

V. ConclusiOn

27. Based on the factual and legal arguments given above and without prejudging the merits of the matter, the Commission concludes that this case meets the admissibility requirements set forth in Articles 46 and 47 of the American Convention.

The Inter-American Commission on Human Rights,

Decides:

1. To declare this case admissible as regards Articles 7, 8, 24, and 25 of the American Convention.
2. To transmit this report to the petitioner and the State.
3. To continue with the analysis of merits in this case.
4. To publish this report 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 10th day of October, 2001. (Signed): Claudio Grossman, President; Juan Méndez, First Vice-President; Marta Altolaguirre, Second Vice-President; Commission members Hélio Bicudo, Robert K. Goldman, and Peter Laurie.