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File Number(s): Report No. 94/01; Petition 12.299
Session: Hundred and Thirteenth Regular Session (9 – 17 October and 12 – 16 November 2001)
Title/Style of Cause: Juan Fernando Cabrera Guerrero v. Ecuador
Doc. Type: Decision
Decided by: President: Claudio Grossman;
First Vice President: Juan Mendez;
Second Vice President: 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 17 of the Commission's Rules of Procedure.
Dated: 10 October 2001
Citation: Cabrera Guerrero v. Ecuador, Petition 12.299, Inter-Am. C.H.R., Report No. 94/01, OEA/Ser./L/V/II.114, doc. 5, rev. (2001)
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I. SUMMARY

1. On June 22, 2000, the Inter-American Commission on Human Rights (hereinafter “the IACHR” or “the Commission”) received a complaint submitted by Juan Fernando Cabrera Guerrero (hereinafter “the petitioner”) against the Republic of Ecuador (hereinafter “the State” or “Ecuador”), accusing it of illegal arrest and failing to provide compensation for that illegal arrest. The petitioner claimed violations of Articles 7(5) (right to personal liberty), 8 (right to a fair trial), 11 (right to privacy), and 17 (rights of the family) of the American Convention on Human Rights (hereinafter “the American Convention”), all in breach of the obligations set forth in Article 1(1) thereof. In turn, the State replied that the petition did not meet the requirements set forth in Article 46(1)(a) and (b) and asked the IACHR to dismiss the complaint.

2. In this report, the IACHR analyzes the available information in accordance with the American Convention and concludes that the petitioner did not lodge his petition within six months following the date on which the alleged victim was notified of the final ruling. Consequently, the Commission decides to declare the petition inadmissible under Articles 46(1)(b) and 47(a) of the American Convention and Article 32 of its Rules of Procedure, to transmit it to the parties, to make it public, and to order its publication in its Annual Report.[FN1]

[FN1] The new Rules of Procedure of the Inter-American Commission on Human Rights came into force on May 1, 2001.

II. PROCESSING BY THE COMMISSION

3. On June 22, 2000, the IACHR received the complaint in the instant case. On June 30, 2000, the Commission began processing the petition and transmitted the relevant communications to the State and to the petitioner. The State sent its reply on August 30, 2000, which was received by the Commission on September 20, 2000. The Commission continued with the formalities for collecting comments from the parties set forth in its Rules of Procedure.

III. POSITIONS OF THE PARTIES

A. Petitioner

4. The petitioner, an engineer, lives and works in Guayaquil, Ecuador. He claims that on August 10, 1995, at approximately 11 o'clock, he was arrested by agents of Interpol[FN2] on Av. 25 de Julio in the city of Guayaquil, without there being a judicial order for his arrest. He was told he was being detained on suspicion of involvement in an illegal marijuana transportation operation. The petitioner also claims that he was kept incommunicado for twelve days, with no contact whatsoever with his family or personal attorney, in breach of Article 24(6) of the Ecuadorian Constitution,[FN3] which rules that no one may be detained without a judicial order for more than 24 hours.

[FN2] Interpol is the International Criminal Police Organization.

[FN3] Article 24(6) of the Ecuadorian Constitution stipulates that: "No person shall be deprived of his freedom except with the written order of a competent judge, in the cases, for the time, and with the formalities set forth in law; this shall not apply to those arrested in flagrante delicto, who may be kept under arrest without being charged for up to 24 hours. This does not apply to disciplinary arrests provided for by law within the state's security forces. No person may be kept incommunicado."

5. The petitioner claims that during that time, he was forced to confess to having been involved in criminal acts that he did not commit. He says that his home was searched without a warrant from a competent judge; moreover, no evidence against him was found.

6. The petitioner reports that after being held incommunicado for twelve days, he was referred to the Second Criminal Judge of Guayas, who ordered the proceedings against him initiated on August 22, 1995, marking the start of criminal trial No. 333-95. The Second Judge ordered the petitioner to be held in preventive custody. This judge was removed, and the proceedings were transferred to the Ninth Criminal Judge of Guayas.

7. The petitioner also attests that after the investigatory phase of the proceedings, the Ninth Criminal Prosecutor of Guayas, Julio Piza Obregón, issued a ruling in which he did not accuse the petitioner of any crime whatsoever. The judge ordered the proceedings dismissed because of the lack of evidence indicating the petitioner's guilt.

8. The petitioner reports that the Ninth Criminal Judge ordered the referral of this dismissal order to the Superior Court of Justice in Guayaquil and did not order his release, even though there is no legal provision requiring the accused to remain in prison while an order is referred to a higher court. The referral was received by the Prosecuting Minister of Guayas and Galápagos, Justo Loor Choez, who refrained from accusing the petitioner of any crimes. Once that ruling was issued, the proceedings were referred to the fifth chamber of the Superior Court of Justice of Guayaquil for resolution.

9. The petitioner claims that the fifth chamber resolved to summon the petitioner to trial for the crime referred to in the proceedings, basing its decision on the testimony of another defendant, Oscar Jiménez Foronda, who had made a statement reporting the petitioner's involvement in the offense. Consequently, investigatory proceedings was ordered to be opened against the petitioner for his complicity in the commission of the crime described and criminalized by Article 62 of the Law on Narcotics and Psychotropic Substances.[FN4]

[FN4] Article 62 of the Law on Narcotics and Psychotropic Substances reads as follows: "Any person who buys, sells or otherwise transfers ownership of, distributes, markets, imports, exports, or, in general, illegally traffics in narcotic, psychotropic, or other controlled substances shall be punished with imprisonment of between 12 and 16 years and a fine of between 60 and 8,000 times the current general minimum wage. Illegal trafficking in narcotic, psychotropic, or other controlled substances shall be taken as covering all market transactions and transfers of ownership of said substances carried out in contravention of the terms of this Law."

10. The petitioner claims that the statement given by Jiménez Foronda at the offices of Interpol was completely different to the statement he gave the judge during the investigatory phase of proceedings. The petitioner further adds that in a judgment handed down on December 24, 1997, Ecuador's Constitutional Tribunal declared Article 116 of the Law on Narcotics and Psychotropic Substances to be unconstitutional,[FN5] which enabled the fifth chamber to summon the petitioner to attend investigatory proceedings. That article allowed police reports and pretrial statements given by the accused to the prosecutor to indicate serious assumptions of guilt. He also claimed that Article 108 of the Ecuadorian Code of Criminal Procedure does not allow the judge to admit codefendants as witnesses.[FN6]

[FN5] Article 116 of the Law on Narcotics and Psychotropic Substances provided as follows: "The police report and the pretrial statement given by the accused in the presence of the public prosecutor shall constitute a serious assumption of guilt, provided that the corpus delicti is proven." The substance of this article was declared unconstitutional by Ecuador's Constitutional Tribunal on December 24, 1997.

[FN6] Article 108 of the Ecuadorian Code of Criminal Procedure stipulates that: “In no case shall the judge admit codefendants as witnesses. Neither shall he receive testimony from the defendant’s spouse or from his relatives by blood to the fourth degree or by marriage to the second.”

11. The fifth chamber of the Superior Court of Justice referred the criminal case to the Fourth Criminal Tribunal of Guayas for it to issue judgment. For that, the petitioner reports, a public hearing was held at which his defense attorneys invoked Article 108. At that hearing, the public prosecutor, Roberto Cabrera Castillo, did not accuse him of any crime. Nevertheless, claims the petitioner, the court convicted him on January 18, 1999, declaring him guilty of the crime described and criminalized by Article 62 of Law on Narcotics and Psychotropic Substances, with a four-year prison sentence. This ruling was referred to the corresponding district Court of Justice for consultation. On July 22, 1999, after studying the proceedings, the fifth chamber of the Superior Court of Justice of Guayaquil acquitted the petitioner and ordered his immediate release.

12. The petitioner reports that after he was released, on December 21, 1999, he took his case to the attorney general in compliance with Article 22 of the Ecuadorian Constitution,[FN7] to sue the State for the judicial error and secure compensation in the amount of USD \$4 million. He also holds that since he received no reply from the attorney general, in compliance with the rule that says if a public official fails to respond to a petition lodged by a citizen within a period of fifteen days his silence shall be taken as constituting tacit acceptance, the petitioner believes that the State has accepted his claim. Nevertheless, the State has at no time contacted him to pay him the compensation sought. With this, the petitioner claims that all the remedies provided by domestic law have been exhausted.

[FN7] Article 22 of the Constitution of Ecuador provides as follows: “The State shall have civil responsibility in cases of judicial error, for inappropriately administering justice, for actions leading to the imprisonment or arbitrary arrest of an innocent person, and for violations of the provisions set forth in Art. 24. The State shall have the right to recovery with respect to the responsible judge or official.”

13. The petitioner holds that the four years it has taken to resolve his situation violates the rights protected by Articles 7(5) and 8(1) of the American Convention. He also holds that Article 8(2) was violated, in that he was kept in preventive custody for a lengthy period and his freedom was restricted beyond the limits strictly necessary to ensure the efficient course of the investigation and to keep him from escaping from justice. He states that keeping him incommunicado for twelve days violates the rights enshrined in Articles 11 and 17 of the American Convention, in that incommunicado detention constitutes an undue restriction of his family’s right to be informed about his situation.

B. State

14. According to the State, the petitioner has not exhausted the remedies that domestic law provides for dealing with his claim, and he has exceeded the deadline of six months following the final ruling which released him during which any petition with the Commission must be lodged. Consequently, the State holds that the IACHR cannot admit this petition.

15. With respect to the compensation sought for his alleged illegal arrest, the State notes that the petitioner, without passing through other judicial instances, filed an administrative claim directly with the attorney general of the State, whose office is not a court of law. As regards the administrative silence to which the petitioner refers, the State maintains that the attorney general did reply to the petitioner's communication within the time stipulated by law; for the purpose, it enclosed a copy of its letter to the petitioner, which appears in the Commission's files. In that letter of January 17, 2000, the attorney general's office stated that its purpose was to intervene on behalf of public interests, as either plaintiff or defendant, in defense of the State and its institutions. The office of the attorney general is not a court of law, and its powers and functions do not include judging actions carried out by either state agents or private citizens. The State holds that the attorney general is neither competent nor responsible for the alleged violations, and neither is it the right body for making compensation payments.

16. The State also maintains that it has civil responsibility for the judicial errors arising from the inappropriate administration of justice, as set forth in Article 22 of the Ecuadorian Constitution, and that it also has right to recovery with respect to the judge or official involved; thus, suing the judge or magistrate responsible for the mistake for damages is a possibility. The State quotes Articles 1031 and 1036 of the Ecuadorian Civil Code, which allow civil action against a judge or magistrate who, in the performance of his duties, causes economic harm to the parties in a trial, or to third parties, through an inappropriate administration of justice. If the suit is admitted, the State notes, the judgment would specifically require the payment of both damages and costs. If applicable, the corresponding criminal proceedings would be ordered. The State believes that the petitioner should file suit against the judges and magistrates he believes responsible for the delay in or denial of justice, and that he should hear the result of that action in the domestic courts before involving the Commission. Consequently, the State holds that the petitioner did not exhaust the domestic remedies applicable to his compensation claim.

17. In addition, the State maintains that the petition exceeds the six-month deadline set by Article 46(1)(b) of the American Convention. The State notes that the Inter-American Court has ruled that the final decision in domestic proceedings must be taken as meaning when the State's courts hand down a final and firm judgment.[FN8] The State maintains that the decision referred to in Article 46(1)(b) is judicial in nature, not administrative. The State notes that eleven months passed by between the final judicial ruling in these proceedings—July 22, 1999, when the fifth chamber of the Superior Court of Justice of Guayaquil acquitted the petitioner and ordered his immediate release — and the date when the petitioner lodged his petition with the Commission, which was June 22, 2000. The State consequently believes that the Commission must refrain from hearing this petition, since it does not comply with the provisions of Article 46(1)(b).

[FN8] Inter-Am.Ct.H.R., Suárez Rosero Case, Series C: Decisions and Judgments, No. 35, Judgment of November 12, 1997, paragraph 71.

IV. ANALYSIS

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

18. The petitioner is entitled, under Article 44 of the American Convention, to lodge complaints with the IACHR. The petition names, as its victim, an individual person with respect to whom Ecuador had assumed the commitment of respecting and ensuring the rights enshrined in the American Convention. With respect to the State, the Commission notes that Ecuador has been a party to the American Convention since depositing the corresponding instrument of ratification on December 28, 1977. The Commission therefore has competence *ratione personae* to examine the complaint.

19. The Commission has competence *ratione loci* to deal with the petition, since it alleges violations of rights protected by the American Convention occurring within the territory of a state party thereto.

20. The Commission has competence *ratione temporis*, since the obligation of respecting and ensuring the rights protected by the American Convention was already in force for the State on the date on which the incidents described in the petition allegedly occurred.

21. Finally, the Commission has competence *ratione materiae*, since the petition denounces violations of human rights that are protected by the American Convention.

B. Other Requirements for admissibility

22. The Commission finds that the petition at hand alleges, first, the violation of the petitioner's right to personal liberty, with the consequences that that implies, and, second, the State's failure to provide compensation for the alleged violation of the right to personal liberty. The Commission shall proceed to analyze these two aspects separately.

1. Admissibility: Deadline for the presentation of petitions

23. In this petition, the petitioner claims that the State violated the rights enshrined in Articles 1(1), 7(5), 8, 11, and 17 of the Convention in the terms set forth above. The State claims that the petitioner lodged his complaint after the end of the six-month deadline.

24. Article 46(1)(b) of the American Convention provides as follows:

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

b. that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.

25. The Inter-American Court of Human Rights has ruled, in the Suárez Rosero case, that judicial proceedings shall be understood as concluded when the final ruling has been handed down. Thus, the Court believes

the proceeding to be at an end when a final and firm judgment is delivered and the jurisdiction thereby ceases and that, particularly in criminal matters, that time must cover the entire proceeding, including any appeals that may be filed.[FN9]

[FN9] Ibid.

26. In the case at hand, the petitioner received a firm acquittal from the fifth chamber of the Superior Court of Guayaquil on July 22, 1999, whereby he was immediately released and the judicial proceedings against him were brought to a conclusion. The matter as regards the petitioner's freedom was thereby resolved. On June 22, 2000, the petitioner lodged a complaint with the Commission, holding that his arrest had violated his right to personal liberty as set forth in the American Convention. Between the final judgment issued by the Ecuadorian courts and the petitioner's lodging of this complaint with the IACHR, eleven months went by—more than the time allowed for the submission of petitions.

27. The petitioner claims that following his release, on December 21, 1999, he lodged a claim with the office of the attorney general, to which he never received a reply. The petitioner holds that the period of six months provided for by Article 46(b) of the American Convention should be calculated from the date of that unanswered claim and that "this silence should be taken as meaning acceptance of the petition."

28. The State, in its reply, and in accordance with Commission practice, disputes the petitioner's claim and maintains that the petitioner should have lodged his complaint within a period of six months following the judgment handed down on July 22, 1999, by the fifth chamber of the Superior Court of Justice of Guayaquil.

29. Consequently, its analysis of this case in accordance with Article 46(1)(b) leads the Commission to conclude that this petition does not meet the requirements set forth in that article and that, as result, it is inadmissible under the terms of Article 47(a).

2. Admissibility: Compensation for alleged illegal arrest

30. Since the petition is inadmissible on account of its failure to meet the requirements set forth in Article 46(1)(b), the Commission concludes that it is not necessary for it to examine this second matter.

V. CONCLUSIONS

31. Based on the foregoing considerations of fact and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition inadmissible.
2. To give notice of this decision to the petitioner and to the State.
3. To publish this decision and to include it in its 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 tenth day of October, 2001. (Signed): Claudio Grossman, President; Juan Méndez, First Vice President; Marta Altolaguirre, Second Vice-President; Commissioners Hélio Bicudo, Robert K. Goldman, and Peter Laurie.