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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 106/01; Case 11.450
Session:	Hundred and Thirteenth Regular Session (9 – 17 October and 12 – 16 November 2001)
Title/Style of Cause:	Marco Vinicio Almeida Calispa v. Ecuador
Doc. Type:	Decision
Decided by:	President: Claudio Grossman; First Vice-President: Juan E. Mendez; Second Vice-President: 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 17 of the Commission's Rules of Procedure.
Dated:	11 October 2001
Citation:	Almeida Calispa v. Ecuador, Case 11.450, Inter-Am. C.H.R., Report No. 106/01, 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 the 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. Marco Vinicio Almeida Calispa, deceased, represented by the Comisión Ecuménica de Derechos Humanos (“CEDHU,” hereinafter “the petitioner”). It alleges the violation of Article 4 (right to life), Article 5 (right to humane treatment), and Article 8 (right to a fair trial), all in relation to Article 1(1) of the American Convention.

2. The petitioner reports that on May 31, 1988, Mr. Almeida was detained by the police in the city of Quito, under suspicion of robbery. The petitioner alleges that the Ecuadorian police, during the interrogations performed at the Criminal Investigations Service of Pichincha, used inhumane and illegal investigative procedures that caused the death of Mr. Almeida. The petitioner also states that the Ecuadorian judicial system was negligent when it took up the case, making procedural errors that culminated in the acquittal of the accused. The State denies that Mr. Almeida’s death was due to the action of the Police.

3. On February 22, 2001, the Commission declared this petition admissible.

4. The parties reached a friendly settlement agreement in this case on August 15, 2001. This report contains a brief statement of the facts and the text of the agreement, in keeping with Article 49 of the Convention.

## II. THE FACTS

5. On February 2, 1988, during the police interrogation sessions at the SIC-P,[FN1] Marco Almeida died of asphyxia. Lt. Juan Sosa Mosquera and detectives Víctor and Manuel Soto Betancourt were accused of being responsible for the custody of Marco Almeida when he died. The First Criminal Court of Pichincha began the respective criminal proceeding; the judge ordered that the agents be arrested. Nonetheless, that order was not carried out. On September 14, 1988, the inquiry began at the First District Court of the Police, blocking the judge from the regular criminal courts from assuming jurisdiction, because the police jurisdiction was applied to the accused. Later, the case went before the Supreme Court, where it was at a standstill for two years. It was not until February 10, 1992, that the Court resolved the jurisdictional conflict in favor of the First Judge of the First Police District. In the context of the investigative proceeding, in August 1993, an indictment was handed down, along with the reasoned order against police agents Víctor Abraham Soto Betancourt and Manuel Benigno Soto Betancourt. Nonetheless, as of 1994, six years after the proceedings were initiated, there was still no verdict.

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[FN1] SIC-P: Criminal Investigation Service of Pichincha.

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## III. PROCESSING BEFORE THE COMMISSION

6. On November 8, 1995, a complaint was lodged before the Commission. On March 27, 1996, the Government of Ecuador was sent the pertinent parts of the complaint regarding Marco Vinicio Almeida. Once again, on July 10, 1996, the Government was asked to provide information on the facts alleged in the complaint within 30 days. On August 3, 1995, the State answered that it did not have the information required to issue a response in this case. The IACHR reiterated the request for information to the State on August 11, 1995. On September 18, 1995, the State provided its first answer. The procedure continued as information and observations went back and forth between the parties.

7. On May 7, 1999, the Commission placed itself at the parties' disposal to reach a friendly settlement. On May 11, 1999, the petitioner accepted the possibility of reaching a friendly settlement, which was signed on August 15, 2001, in the presence of Commissioner Marta Altolaguirre, member of the IACHR and rapporteur for Ecuador, who had traveled to Quito to facilitate the agreement. The parties asked the Commission to ratify this friendly settlement agreement in all its terms and to supervise its implementation.

## IV. FRIENDLY SETTLEMENT AGREEMENT

8. 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. Sonia del Rosario Arauz Olmedo and Mr. Jaime Andrés Almeida Arauz, widow and son of Mr. Marco Vinicio Almeida Calispa (deceased), 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 41 of the Rules of Procedure 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. For the first party, 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. For the second party Mr. Segundo José Arauz Maldonado, with citizen identification number 170034937-4, father and grandfather of Mrs. Sonia del Rosario Arauz Olmedo and Mr. Jaime Andrés Almeida Arauz, respectively, and father-in-law of Mr. Marco Vinicio Almeida Calispa, deceased, as appears from the record.

## III. STATE RESPONSIBILITY AND ACCEPTANCE

The Ecuadorian State acknowledges its international responsibility for having violated the human rights of Mr. Marco Vinicio Almeida Calispa, recognized in Article 4 (right to life), Article 8 (right to a fair trial), Article 5 (right to humane treatment), Article 7 (right to personal liberty), and Article 25 (right to judicial protection), in relation to the general obligation contained in Article 1(1) of the American Convention on Human Rights and other international instruments, considering that 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° 11.450 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 No. 1 and in force since August 11, 1998, is awarding Mr. Segundo José Arauz Maldonado, with citizen identification number 170034937-4, father-in-law of Mr. Marco Vinicio Almeida Calispa, deceased, in representation of Mrs. Sonia del Rosario Arauz Olmedo and Mr. Jaime Andrés Almeida Arauz, widow and son of Mr. Marco Vinicio Almeida Calispa, deceased, a one-time compensatory payment in the amount of thirty thousand US dollars (US\$ 30,000), to be paid from the National Budget.

This compensation covers the consequential damages, loss of income, and moral damages suffered by Mr. Marco Vinicio Almeida Calispa, as well as any other claims that Mr. Segundo José Arauz Maldonado, Mrs. Sonia del Rosario Arauz Olmedo, or Mr. Jaime Andrés Almeida Arauz, father-in-law, widow, and son of Mr. Marco Vinicio Almeida Calispa, or their family members 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 Economy and Finance, for it to carry out this obligation.

#### V. PUNISHMENT OF THE PERSONS RESPONSIBLE

The Ecuadorian State pledges to bring civil and criminal proceedings and pursue administrative sanctions against 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.

#### 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. Marco Vinicio Almeida Calispa 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. Segundo José Arauz Maldonado, Mrs. Sonia del Rosario Arauz Olmedo, and Mr. Jaime Andrés Almeida Arauz, father-in-law, widow, and son of Mr. Marco Vinicio Almeida Calispa (deceased), specifically authorize 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. Marco Vinicio Almeida Calispa.

#### V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

9. The Commission determined that the foregoing friendly settlement agreement is compatible with the provisions of Article 48(1)(f) of the American Convention.

#### VI. CONCLUSIONS

10. The Commission values the signing of a friendly settlement agreement in the terms of the American Convention, on which the State and petitioner reached agreement.

11. The IACHR will continue to monitor compliance with the commitment assumed by Ecuador regarding the proceedings to be brought against the persons implicated in the events alleged.

12. The IACHR ratifies that the option of friendly settlement provided for in the American Convention makes it possible to terminate individual cases in a non-contentious manner, and has proven, in cases regarding several countries, to be an important procedure for resolving alleged violations that can be used by both parties (petitioner and State).

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To certify compliance by the State with the payment of US\$ 30,000 to the petitioner in this case as compensation.
2. To remind the State that it must fully implement the friendly settlement agreement, bringing judicial proceedings against the persons implicated in the violations alleged.
3. To continue to monitor and supervise compliance with each and every one of the points of the friendly settlement agreement, and, in this context, to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months on 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., October 11, 2001. (Signed): Claudio Grossman, President; Juan E. Méndez, First Vice-President; Marta Altolaguirre, Second Vice-President; Commissioners Hélio Bicudo, Robert K. Goldman, and Peter Laurie.