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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 110/01; Case 12.007
Session:	Hundred and Thirteenth Regular Session (9 – 17 October and 12 – 16 November 2001)
Title/Style of Cause:	Pompeyo Carlos Andrade Benitez 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. 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:	Andrade Benitez v. Ecuador, Case 12.007, Inter-Am. C.H.R., Report No. 110/01, OEA/Ser./L/V/II.114, doc. 5, rev. (2001)
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## I. SUMMARY

1. The Comisión Ecuánica de Derechos Humanos (“CEDHU”) (hereinafter “the petitioner”) submitted 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 the violation of the following rights protected by the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”): the right to humane treatment (Article 5), the right to personal liberty (Article 7), the right to a fair trial (Article 8), and the right to judicial protection (Article 25), in violation of the obligations set forth in Article 1(1), to the detriment of Mr. Pompeyo Carlos Andrade Benítez.

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

## II. THE FACTS

3. According to the complaint, on September 18, 1996, Mr. Pompeyo Carlos Andrade Benítez was illegally deprived of his liberty, when detained without the constitutionally-required arrest warrant and held incommunicado for one week. The detention was under the pretext of investigations by INTERPOL[FN1] in Guayas, at the request of judicial assistance provided by

the Public Ministry, Office of the Special Prosecutor for Drug-related Crimes of Panama, Republic of Panama; the request was made under Article 7 of the 1988 Vienna Convention.

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[FN1] INTERPOL is the International Criminal Police Organization.

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4. The petitioner argues that during his detention, Mr. Andrade was not allowed to have the counsel of his attorney or the presence of his family members, as he was confined to a small room with music playing full blast day and night. After five days in this situation of psychological torture and incommunicado detention, a statement was taken from him, in disregard outside of the proper procedure and without the presence of an attorney. The petitioner adds that the request for judicial assistance did not mention Mr. Andrade or the company APOLINAR PESCA SECA, S.A., which he had established 15 years earlier; during that entire time he worked exporting dried seafood products. In addition, the petitioner indicated that Judge Grace Campoverde did not specify the indicia that provided the grounds for the preventive arrest warrant, as required by Article 177 of the Code of Criminal Procedure, a judicial act that violated Mr. Andrade's legitimate right to defense, which is enshrined in the Constitution of Ecuador.[FN2]

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[FN2] Article 22, section 19, letter E, Constitution of Ecuador, which guarantees the right to defense.

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5. In addition to the foregoing, the petitioner argues that the representative of the Public Ministry, Justo Loo Ch3ez, issued an opinion in which he refrained from indicting Mr. Andrade, precisely because prior to the indictment there was no evidence whatsoever linking him directly or indirectly to the object of the criminal proceedings..

6. The petitioner recounts that after 10 months of detention, the 3rd Criminal Law Judge of Guayas, by resolution of July 22, 1997, revoked the preventive arrest warrant issued for Mr. Andrade. On September 5, 1997, the Office of the Prosecutor issued a ruling in which it ratified the decision not to indict Mr. Andrade, and later, the same Judge Grace Campoverde, who handed down the ruling that he had been unlawfully and arbitrarily detained, dismissed the charges against him, without prejudice. Nonetheless, despite that resolution, Mr. Andrade was not released; accordingly, he recurred to the President of the Superior Court of Justice of Guayaquil, Mr. Milton Moreno Aguirre, seeking his release pursuant to Article 458 of the Code of Criminal Procedure. Nonetheless, the Court denied the motion, maintaining that these types of proceedings have procedures spelled out in the law and that according to those procedures, there was no violation of the law. For his part, however, the petitioner argues, the terms and time limits established by the law have been violated. Furthermore, the petitioner indicates that his brief containing the amparo motion is not to be found in the Supreme Court and that all judicial remedies in the Republic of Ecuador to seek his release have been exhausted.

### III. PROCESSING BEFORE THE COMMISSION

7. On May 14, 1998, the Commission sent the respective notes to the State and to the petitioner. On May 22, 1998, the petitioner addressed the Commission once again expressing that it had not yet secured Mr. Andrade's release, even though charges against him were dismissed by the court. On June 24, 1998, the petitioner notified the Commission that Mr. Andrade was released on June 16, 1998, as a result of the request for information by the Commission to the Government of Ecuador as to his situation. The petition followed the course set out in the Rules of Procedure.

8. On March 5, 1999, the Commission placed itself at the parties' disposal to pursue a friendly settlement. On July 7, 1999, CEDHU informed the Commission that an agreement had been reached to sign a friendly settlement agreement in relation to Pompeyo Carlos Andrade Benítez. On May 21, 2001, the petitioner informed the Commission, inter alia, that the Office of the Attorney General had resolved to postpone any agreement indefinitely. The Commission received a communication from the Government of Ecuador containing a list of cases in which friendly settlement was to be pursued, including this one. The friendly settlement agreement 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 its entirety and to supervise its implementation.

#### IV. FRIENDLY SETTLEMENT AGREEMENT

9. 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 Mr. Pompeyo Carlos Andrade Benítez 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. Pompeyo Carlos Andrade Benítez, with citizen identification number 180007056-5, which is attached hereto as a qualifying document.

## III. STATE RESPONSIBILITY AND ACCEPTANCE

The Ecuadorian State acknowledges its international responsibility for having violated the human rights of Mr. Pompeyo Carlos Andrade Benítez recognized in Article 8 (right to a fair trial), 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° 12.007 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. Pompeyo Carlos Andrade Benítez a one-time compensatory payment in the amount of twenty thousand US dollars (US\$ 20,000), to be paid from the National Budget.

This compensation covers the consequential damages, loss of income, and moral damages suffered by Mr. Pompeyo Carlos Andrade Benítez, as well as any other claims that Mr. Pompeyo Carlos Andrade Benítez or his 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. Pompeyo Carlos Andrade Benítez 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. Pompeyo Carlos Andrade Benítez specifically 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. Pompeyo Carlos Andrade Benítez.

#### V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

10. 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

11. 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.

12. 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.

13. 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\$ 20,000 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.