

WorldCourts™

| | |
|-----------------------|--|
| Institution: | Inter-American Commission on Human Rights |
| File Number(s): | Report No. 105/01; Case 11.443 |
| Session: | Hundred and Thirteenth Regular Session (9 – 17 October and 12 – 16 November 2001) |
| Title/Style of Cause: | Washington Ayora Rodriguez 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: | Ayora Rodriguez v. Ecuador, Case 11.443, Inter-Am. C.H.R., Report No. 105/01, OEA/Ser./L/V/II.114, doc. 5, rev. (2001) |
| Terms of Use: | Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm |

I. SUMMARY

1. On November 8, 1994, the Comisión Ecuánica de Derechos Humanos (“CEDHU”) (hereinafter “the petitioner”) presented 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 life (Article 4), 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 imposed by Article 1(1), to the detriment of Mr. Washington Ayora Rodríguez.

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

II. THE FACTS

3. Washington Ayora was convicted in 1989, by court judgment, for the crime of robbery (hurto). Since then, Washington Ayora had felt besieged by the National Police, who on several occasions had detained him under the pretext that he was “under investigation,” which led him to experience a constant state of insecurity and fear. On February 14, 1994, at 4:30 p.m.,

Washington Ayora was at the Ciudadela del Maestro in the city of Loja when he was detained by police agents, who told him that they had an arrest warrant [which they never showed him] and they took him to the police jail, where he was held incommunicado until February 18, when he was transferred to the Loja Social Rehabilitation Center to be investigated. He was tortured while held in the police jail; this was shown by the medical certificate and the report of the medical exam performed.[FN1] On February 21, 1994, the First National Commissar for the District of Loja issued the order instructing that Washington Ayora be released, considering that there were insufficient grounds to keep him in detention.

[FN1] The medical report indicated: "... on February 21, 1994, by physicians appointed by the Fourth Criminal Court of Loja: Washington Ayora presented a left parietal hematoma 8 cm in diameter painful to the touch; left posterior hemithoracic ecchymosis 6 cm in diameter, purple; ventral ecchymosis 10 cm painful to the touch; four excoriations on the left shoulder, from 2 cm to 9 cm in diameter; right gluteal violet ecchymosis 7 cm in diameter; hematoma in the middle third ventral face of the right thigh, 12 cm in diameter painful to the touch; five excoriations on the knee and upper third of the left leg from 3 cm to 7 cm in diameter. The physicians' conclusions: given the appearance, form, and color of the lesions, one gets the impression that hematomas and ecchymosis were been inflicted one to three days earlier, by the traumatic action of a hard and blunt instrument; and the excoriations by rubbing the skin against a hard and coarse surface. Presumably, before being inflicted, the person was in good overall health..."

4. The criminal proceeding conducted by the Fourth Criminal Court of Loja into the detention and injuries caused when he was investigated by the agent from the Office of Criminal Investigation (OID) came to naught, as the police are subject to special police jurisdiction, in keeping with Article 55 of the Criminal Code. In addition, there was a report from the National Bureau of Investigations (Dirección Nacional de Investigaciones) of the National Police that stated that the agents who detained Washington Ayora were Second Corporal Medardo Vargas and Jesús Riofrío, and that the agents responsible for the torture were, according to the complaint, Telmo Robles and José Rivera.

III. PROCESSING BEFORE THE COMMISSION

5. On March 13, 1995, the Commission sent the respective notes to the State and the petitioner. On August 3, 1995, the Government of Ecuador submitted its answer to the complaint. The steps set out in the Rules of Procedure were followed.

6. On February 9, 1999, the Commission made itself available to the parties to reach a friendly settlement. On October 19, 1999, the petitioner accepted the possibility of reaching a friendly settlement agreement, which was signed on August 15, 2001, with the presence of Commissioner Marta Altolaquirre, a 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

7. 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. Merci Rosalía Vásquez Trujillo, widow of Mr. Washington Ayora Rodríguez, and Eusebia Imelda Rodríguez Bosa, mother of Mr. Washington Ayora Rodríguez (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 Mrs. Eusebia Imelda Rodríguez Bosa, with citizen identification number 1100133923, mother of Mr. Washington Ayora Rodríguez, and in representation of Mrs. Merci Rosalía Vásquez Trujillo, widow of Mr. Washington Ayora Rodríguez, by special power-of-attorney executed in the Consulate of Ecuador in Spain, which are attached hereto as qualifying documents.

III. STATE RESPONSIBILITY AND ACCEPTANCE

The Ecuadorian State acknowledges its international responsibility for having violated the human rights of Mr. Washington Ayora Rodríguez, 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° 11.443 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 Mrs. Eusebia Imelda Rodríguez Bosa, with citizen identification number 1100133923, mother of Mr. Washington Ayora Rodríguez, deceased, and representative of Mrs. Mercé Rosalía Vásquez Trujillo, widow of Mr. Washington Ayora Rodríguez, 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. Washington Ayora Rodríguez, as well as any other claims that Mrs. Mercé Rosalía Vásquez Trujillo and Mrs. Eusebia Imelda Rodríguez Bosa, widow and mother of Mr. Washington Ayora Rodríguez, 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. Washington Ayora Rodríguez 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

Mrs. Eusebia Imelda Rodríguez and Mrs. Mercí Rosalía Vásquez Trujillo, mother and widow of Mr. Washington Ayora Rodríguez (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. Washington Ayora Rodríguez.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

8. The Commission determined that the settlement agreement transcribed is compatible with the terms of Article 48(1)(f) of the American Convention.

VI. CONCLUSIONS

9. The Commission values the signing of a friendly settlement agreement pursuant to both the State and petitioner in the terms of the American Convention.

10. The IACHR will continue to monitor the commitment assumed by Ecuador regarding the proceedings to be brought against the persons implicated in the facts alleged.

11. The IACHR ratifies that the option of friendly settlement offered in the American Convention allows for the termination of individual cases in a non-contentious manner, and that it has proven, in several countries, to be an important procedure for resolving alleged human rights 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 should fully implement the friendly settlement by beginning judicial proceedings against the persons implicated in the violations alleged.
3. To continue to monitor and supervise the implementation of each and every point 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 the implementation of the obligations assumed by the State under this friendly settlement agreement.
4. To make public this report 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.