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Decided by: President: Claudio Grossman;
First Vice-President: Juan Mendez;
Second Vice-President: Marta Altolaguirre;
Commissioners: Helio Bicudo, Robert K. Goldman, Peter Laurie, Julio Prado Vallejo.
Dated: 3 December 2001
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I. SUMMARY

1. On September 21, 2000, the Inter-American Commission on Human Rights (hereinafter the “Commission” or the “IACHR”) received a petition lodged by Mr. Jean Michel Richardson (hereinafter the “petitioner”) against the Republic of Haiti (hereinafter “the State” or “Haiti”), the facts of which characterize alleged violations of his rights to personal liberty (Article 7), a fair trial (Article 8), and judicial protection (Article 25), in connection with the State’s generic duty to respect and ensure the rights (Article 1(1)) established in the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”).

2. The petitioner claims that on February 8, 1998 he was arbitrarily detained by members of the police in Jean Rabel, a municipality in the Department of Nord Ouest under the jurisdiction of Port de Paix, and taken to the Petion Ville prison, where he remains, never having been brought before judges with jurisdiction over such matters. He further alleges that as a result of several petitions lodged in the domestic jurisdiction, the competent judicial authority ordered his release on June 1, 1998; however that order has not been executed to date.

3. The State has not presented a reply to the petitioner’s allegations and has not questioned the petition’s admissibility.

4. The IACHR, pursuant to the provisions of Articles 46 and 47 of the American Convention, decides to admit the petition as regards potential violations of Articles 1(1), 7, 8, and 25 of the American Convention and to begin proceedings on the merits of the case. It further decides to notify the parties of this decision, to publish it, and to include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

5. On September 21, 2000, Mr. Richardson lodged a petition with the IACHR. On November 10, 2000, the Commission transmitted the petition to the State and requested information within 30 days, pursuant to Article 30 of the Regulations in effect at that time. On November 16, 2000, the State acknowledged receipt of the Commission's November 10 letter. On December 1, 2000, the IACHR received additional information from the petitioner, including: (1) a copy of the habeas corpus appeal for his release; (2) a copy of the order from Dean Leonard of Port de Paix indicating that he was not competent to decide on Mr. Richardson's release; (3) a copy of the Court of Appeals decision not to grant Mr. Richardson his freedom, taking into account the findings of the Court of Port de Paix; and (4) a signed copy of a document from the former Government commissioner of Port de Paix on his imprisonment. On April 11, 2001, the petitioner presented additional information on the case: a letter from Government commissioner Josue Pierre Louis, dated February 15, 2001, requesting that the chief of the National Prison Administration (APENA) release Jean Michel Richardson in virtue of the order issued on June 1, 1998 and several local communiqués on Mr. Richardson's release.

6. On June 12, 2001, the IACHR gave the State a copy of the petitioner's letter and the annexes and reiterated its request for information by transmitting a copy of the petitioner's past letters. On September 12, 2001 (received on September 24), the State reported merely that it had received the Commission's June 12 letter on August 2, 2001. On September 27, 2001, the Commission informed the State that it was still awaiting the information it had requested. On October 29, 2001, the petitioner submitted a new letter reiterating that he remained in detention, despite the orders to release him and the steps he had taken before different government agents. At the time this report was considered, the State had acknowledged receipt of the Commission's letters, but had not provided any information on this petition.

III. POSITION OF THE PARTIES

A. The petitioner

7. The petitioner alleges that on February 8, 1998 he was arbitrarily detained by members of the police in Jean Rabel, a municipality in the Department of Nord Ouest under the jurisdiction of Port de Paix, and taken to the Petion Ville prison, where he remains, never having been brought before the competent judges.

8. Mr. Richardson claims that he has taken the following recourses under domestic jurisdiction: firstly, he filed suit with the Civil Court of First Instance in Port-au-Prince; on June 1, 1998 the judge declared Mr. Richardson's arrest and prolonged detention to be illegal, ordered his immediate release, and ordered the Office of the Attorney General to execute that decision. According to the petitioner, the release order was not executed, because it requires the Government commissioner's authorization.

9. Secondly, he turned to the Civil Court of First Instance in Port de Paix, which in a July 28, 1999 judgment found that it was not the competent jurisdiction to examine his case. He appealed that decision to the Court of Appeals of Gonaïves, which in a January 24, 2000

judgment confirmed the decision of the Court of First Instance of Port de Paix. On February 15, 2001, the Government commissioner for the jurisdiction of Port-au-Prince called on the chief of the National Prison Administration (APENA) in Petion Ville to release Mr. Richardson in virtue of the order issued on June 1, 1998. The petitioner alleges that despite the domestic proceedings, in which a court of first instance ordered his immediate release, he remains in prison and has not had the right to a trial.

B. The State

10. The State has not responded to the petitioner's allegations and has not questioned the admissibility of this petition.

IV. ANALYSIS OF ADMISSIBILITY

A. Preliminary questions

11. The IACHR notes that the State has merely reported that it received the Commission's letters dated November 10, 2000 and June 12, 2001. At no time has it responded to the petitioner's allegations or questioned the petition's admissibility. The IACHR would like to stress that Haiti undertook various international obligations through the American Convention on Human Rights, including those provided for in Article 48(1)(a) of the Convention, which stipulates that: "[w]hen the Commission receives a petition or communication (...) (a) it shall request information from the government of the state indicated as being responsible for the alleged violations (...) This information shall be submitted within a reasonable period (...). (e) The Commission may request the states concerned to furnish any pertinent information." The Convention, therefore, requires States to provide the information requested by the Commission in the processing of an individual case.

12. The IACHR feels it must also indicate that the information requested by the Commission is information that would enable it to reach a decision in a case submitted to it. The Inter-American Court of Human Rights has indicated that cooperation by the States is an essential obligation in international proceedings in the inter-American system:

In contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation.

The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State.[FN1][FN2]

[FN1] Inter-American Court of Human Rights, Velásquez Rodríguez case, Judgment of July 29, 1988, para. 135 and 136.

[FN2] IACHR, Report N° 28/96, Case 11.297, Guatemala, October 16, 1996, para. 43.

13. The IACHR and the Inter-American Court of Human Rights have also indicated that “the silence of the accused or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations, so long as the contrary is not indicated by the record or is not compelled as a matter of law.”[FN3] The Commission therefore reminds Haiti that it has a duty to cooperate with the organs in the inter-American human rights system, for optimal fulfillment of its functions to protect human rights.

[FN3] Velásquez Rodríguez case, Judgment of July 29, 1988, para. 138. IACHR, Report N° 28/96, Case 11.297, Guatemala, October 16, 1996, para. 45.

B. Competence *ratione personae*, *ratione loci*, *ratione temporis*, and *ratione materiae* of the Commission

14. The petitioner is authorized under Article 44 of the Convention to lodge a complaint with the IACHR. The petition names as the alleged victim one individual whose rights Haiti undertook to respect and ensure pursuant to the American Convention.[FN4] Regarding the State, the Commission notes that Haiti has been a State Party to the Convention since September 27, 1977, when it deposited the respective instrument of accession. The Commission is therefore competent *ratione personae* to examine the petition.

[FN4] The IACHR has previously defined a “victim” to be every person protected by the Convention as established generically in Article 1(1) in accordance with the regulations establishing the rights and freedoms specifically recognized therein. See: 1998 Annual Report. Report No. 39/99, Mevopal Petition, Argentina. para. 16.

15. The Commission is competent *ratione loci* to hear the petition, because it alleges the violation of rights protected by the American Convention within the territory of a State Party to the Convention. The IACHR is competent *ratione temporis*, because the obligation to respect and ensure the rights protected under the Convention was already in effect in the State on the date of the events alleged in the petition. Finally, the Commission is competent *ratione materiae*, because the petition denounces events related to human rights protected by the American Convention, such as the right to personal liberty (Article 7), a fair trial (Article 8), and judicial protection (Article 25).

C. Other admissibility requirements

a. Exhaustion of domestic remedies

16. Article 46(1)(a) of the Convention stipulates that admission of a petition shall be subject to the requirement “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.” The Convention’s preamble states that the IACHR grants “international protection in the form of a convention

reinforcing or complementing the protection provided by the domestic law of the American states.”[FN5] The rule of exhaustion of domestic remedies allows States to resolve the problem in their domestic legal system before facing international proceedings, which is legally sufficient in the international human rights jurisdiction.

[FN5] See: Second paragraph in fine of the Preamble to the American Convention.

17. In this case the State did not argue the failure to exhaust domestic remedies and so a tacit waiver of the objection of non-exhaustion of domestic remedies is presumed.[FN6]

[FN6] See Inter-American Court of Human Rights, Velásquez Rodríguez case, Preliminary Objections, Judgment of June 26, 1987, para. 88. See also: IACHR Report N° 30/96, Case 10.897, Guatemala, October 16, 1996, para. 35 and Report N° 53/96, Case 8074, Guatemala, December 6, 1996. 1996 Annual Report of the IACHR. And Report N° 25/94, Case 10.508, Guatemala, September 22, 1994, page. 52. 1994 Annual Report of the Inter-American Commission on Human Rights.

18. In this regard, the Inter-American Court has stated that, “the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed.”[FN7] The IACHR concludes that this requirement was met.

[FN7] Inter-American Court of Human Rights, Velásquez Rodríguez case, Preliminary Objections, Judgment of June 26, 1987, Series C, N° 1, para. 8; Fairén Garbi and Solís Corrales case, Preliminary Objections, Judgment of June 26, 1987, Series C, No. 2, para. 87; Gangaram Panday case, Preliminary Objections, Judgment of December 4, 1991, Series C, N° 12, para. 38; and Loayza Tamayo case, Preliminary Objections, Judgment of January 31, 1996, Series C, N° 25, para. 40.

b. Filing deadline

19. Article 46(1)(b) of the Convention stipulates that the petition must be lodged within a period of six months from the date on which the victim was notified of the final judgment exhausting domestic remedies. In the petition in question, the IACHR has established the State’s tacit waiver of its right to invoke the failure to exhaust domestic remedies; therefore, the requirement set forth in Article 46(1)(b) of the Convention does not apply. However, the requirement in the Convention to exhaust domestic remedies is separate from the requirement to present the petition within six months of the ruling that exhausts those remedies. The Commission must therefore determine whether or not the petition was presented within a reasonable time frame. In that regard, the IACHR observes that the petitioner indicated that he

was detained on February 8, 1998 and that on two occasions authorities issued orders to release him that have not been executed. Specifically, there was the February 15, 2001 letter from the Government commissioner that referred to the order issued on June 1, 1998. The IACHR notes that the original petition was lodged on September 21, 2000. In light of the particular circumstances of this petition, the IACHR feels that it was presented within a reasonable time frame.

c. Duplication of proceedings and res judicata

20. Neither party has claimed that the subject of this petition is pending in another international proceeding for settlement or that it is substantially the same as one previously studied by the Commission or by another international organization. The Commission therefore feels that the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention have been met.

d. Characterization of the events

21. In this case, the petitioner did not invoke any specific standards in the American Convention, the American Declaration on the Rights and Duties of Man, or any other applicable international instrument. Neither the Convention nor the Rules of Procedure require petitioners to specify which Articles they feel were violated. In this regard, Articles 46 and 47 of the American Convention lay out the requirements for the admission of petitions; those requirements do not include specifying which Articles the petitioner alleges were violated. Moreover, Article 32 of the Commission's Regulations that were in effect at the time the initial petition was lodged lists the elements that a petition must contain when it is presented. Article 32(c) of those Regulations provides for the possibility that "no specific reference is made to the article(s) alleged to have been violated." Article 28 of the Rules of Procedure that took effect May 1, 2001 indicates that one requirement for petitions to be considered is that they must contain, inter alia: "(d) an account of the act or situation that is denounced, specifying the place and date of the alleged violations." It does not however require petitioners to specify which Articles allegedly were violated through the denounced events.

22. The Commission feels that the original petition and the additional information provided contain all the facts that could be relevant to arrive at a legal decision.[FN8] The petitioner's claims regarding his alleged illegal detention, as well as the failure to have him appear before a competent judge and to execute the order to release him, if proven, could characterize violations of the rights to personal liberty (Article 7), a fair trial (Article 8), and judicial protection (Article 25) enshrined in the American Convention. The Commission therefore finds that the petition cannot be rejected, pursuant to the provisions of Articles 47(b) and (c) of the Convention.

[FN8] Inter-American Court of Human Rights. Hilaire case, Judgment of September 1, 2001, para 40.

V. CONCLUSIONS

23. Upon examining this case, the Commission concludes that it is competent to hear the case and that the petitioner's allegations regarding violations of his rights enshrined in Articles 7, 8, and 25 of the American Convention are admissible pursuant to Articles 46 and 47 of the Convention. The Commission further decides to notify the parties of this decision and to publish it and include it in its Annual Report to the OAS General Assembly.

24. Based on the foregoing de facto and de jure arguments,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this petition admissible in relation to the alleged violation of the rights enshrined in Articles 7, 8, and 25 of the American Convention, pursuant to Articles 46 and 47 of the Convention.
2. To notify the parties of this decision.
3. To continue to examine the merits of the case.
4. To publish this decision 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 Washington, D.C., on the third of December, 2001. (Signed:) Claudio Grossman, President; Juan Méndez, First Vice-President; Marta Altolaguirre, Second Vice-President; Commissioners Hélio Bicudo, Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.