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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 11/02; Petition 12.394
Session: Hundred and Fourteenth Regular Session (25 February – 15 March 2002)
Title/Style of Cause: Joaquin Hernandez Alvarado, Marlon Loor Argote and Hugo Lara Pinos v. Ecuador
Doc. Type: Decision
Decided by: President: Juan Mendez;
First Vice-President: Marta Altolaguirre;
Second Vice-President: Jose Zalaquett;
Commissioners: Robert K. Goldman, Clare K. Roberts.
In keeping with Article 17 of the Commission's Rules of Procedure, Dr. Julio Prado Vallejo, an Ecuadorian national, did not participate in the discussion of this case.
Dated: 27 February 2002
Citation: Hernandez Alvarado v. Ecuador, Petition 12.394, Inter-Am. C.H.R., Report No. 11/02, OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2002)
Represented by: APPLICANT: Ronald Game Intriago
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I. SUMMARY

1. On May 7, 2001, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a petition lodged by Joaquín Hernández Alvarado, Marlon Loor Argote, and Hugo Lara Pinos, together with their attorney Ronald Game Intriago (hereinafter “the petitioners”), all Ecuadorian nationals. The petition alleges that the Republic of Ecuador (hereinafter “Ecuador”) has incurred international responsibility by virtue of the excessive and unwarranted attack that members of the National Police made upon the petitioners on May 22, 1999, and for the police courts’ delay in prosecuting and punishing those to blame for the attacks.

2. The petitioners allege that the facts denounced constitute violations of various provisions of the American Convention on Human Rights (hereinafter “the American Convention”): the right to humane treatment (Article 5); the right to a fair trial (Article 8); and the right to judicial protection (Article 25). They further allege that all the admissibility requirements set out in the Convention have been satisfied. The Ecuadorian State responded to the petition asking that it be declared inadmissible on the grounds that the remedies under domestic law had not been exhausted.

3. Without prejudging the merits of the case, in this report the IACHR concludes that the petition is admissible as it meets the requirements set forth in articles 46 and 47 of the American

Convention. The Inter-American Commission, therefore, has decided to notify the parties of its decision and will proceed with its analysis of the merits of the allegation of violation of Articles 1(1), 5, 8 and 25 of the American Convention.

II. PROCESSING BY THE COMMISSION

4. On May 7, 2001, Mr. Joaquín Hernández Alvarado, Mr. Marlon Loor Argote, and Mr. Hugo Lara Pinos sent a communication to the Inter-American Commission, the pertinent parts of which were forwarded to the State on July 3, 2001. The latter was given 60 days in which to submit its observations. The State did not reply to that communication. On September 25, 2001, the Commission again asked the State to supply information, giving it 30 days in which to do so. The State's response was received on November 28, 2001, and was sent to the petitioners on December 18. They were given 30 days to submit their comments. The petitioners' comments were received on January 5, 2002, and were forwarded to the State.

III. THE PARTIES' POSITIONS ON ADMISSIBILITY

A. The petitioners

5. The petition states that at approximately 8:00 p.m. on May 22, 1999, as they were riding in a car in Guayaquil, a group of National Police officers attacked the petitioners with guns. The attack lasted approximately ten minutes, and left two of the petitioners wounded. Joaquín Hernández was shot in the back.

6. The petitioners were then thrown to the ground and handcuffed. All the while they were subjected to more physical and verbal abuse. They were then taken to the model police station, where the mistreatment continued for almost three hours, as the police kicked and insulted them.

7. They point out that later the police made their apologies. The petitioners allege that the police said that the petitioners were attacked by mistake, in an operation led by Second Lieutenant Freddy Osorio. Among those making apologies to Mr. Hernández were the Police Chief, the Governor of Guayaquil Province, and the then President of the Republic Jamil Mahuad.

8. As for the exhaustion of the remedies under domestic law, the petitioners point out that the State did not respond, within the prescribed time period, to the petitioners' request in the matter of compensation for damages and injuries, which the petitioners describe as "positive administrative silence." They point out that there are no rules in force in Ecuador's legal system that they could invoke to require the State to act upon its tacit acknowledgment of blame.

9. As for the investigation and punishment of those responsible, the petitioners point out that although a case has been in the police courts since June 1999, police jurisdiction is not the proper forum for prosecution of the likely guilty parties. They further contend that there has been an unwarranted delay in rendering judgment in those police tribunals, as well as a number of procedural irregularities.

B. The State

10. The State answers the petition by asking the Commission to declare the present case inadmissible on the grounds that the remedies under domestic law have not been exhausted. The State contends that because the Article 46 requirement has not been satisfied, no further action can be taken on the petition.

11. The State also argues that a criminal case is now being prosecuted in the police courts, into the events that occurred on May 22, 1999. That case has progressed smoothly since it was instituted on June 17, 1999, and is presently at the intermediate phase. It adds that while the proceedings in that case have not yet ended, the courts will still have to decide it on the basis of the law and that such a court ruling is the proper way to resolve the petitioners' situation.

12. As for the unwarranted delay that the petitioners allege, the State contends that there is no such delay, as only two years have passed. The State argues that the case is a complicated one. It further contends that the interested parties have failed to cooperate and have even deliberately obstructed the proceedings, causing delays for which the State cannot be blamed. The State points out that the case has taken this much time because there are so many defendants, the case file is so large and the evidence and testimony being offered is so extensive.

13. Finally, the State points out that the petitioners had full access to the courts and at no time were prevented from exercising their right to be heard by the competent bodies. Based on these arguments, the State requests that the petition be filed immediately.

IV. ANALYSIS

A. The Inter-American Commission's competence *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci*

14. Under Article 44 of the American Convention, the petitioner is entitled to lodge petitions with the IACHR. The alleged victim named in the petition is an individual whose rights, under the American Convention, Ecuador pledged to respect and ensure. As for the State, Ecuador has been a State party to the American Convention since December 28, 1977, the date on which the respective instrument of ratification was deposited. The Commission, therefore, is competent *ratione personae* to examine the petition.

15. The Commission is competent *ratione loci* to hear this petition, since it alleges violations of rights protected in the American Convention, said to have occurred within the territory of a State party to the Convention. The Commission is also competent *ratione temporis* because the obligation to respect and ensure the rights protected in the American Convention was already binding upon the State at the time the events alleged in the petition occurred. Finally, the Commission is competent *ratione materiae*, because the petition denounces violations of human rights protected by the American Convention.

B. Other admissibility requirements

a. Exhaustion of the remedies under domestic law

16. The petitioners point out that the police courts are not the proper jurisdiction in which to seek redress of the allegedly violated rights. They also argue that, separate from the forum question, is the issue of the national courts' unwarranted delay in rendering a judgment on the case: two years have passed since the proceedings got underway, and no final judgment has been delivered.

17. The Ecuadorian State points out that the remedies under domestic law have not been exhausted and that the proceedings in the police tribunals continue on course. It also argues that there is no unwarranted delay, considering the complexity of the case, the lack of cooperation from the petitioners and the workload that the case represents for the courts.

18. Without entering into an analysis as to whether there was an un warranted delay in the present matter, the Inter-American Commission is of the opinion that the special jurisdictions, like those of the military or the police, are not adequate to determine reparations when there have been human rights violations at the national level. In this regard both the Court and the Inter-American Commission have pointed out at different times, that these special jurisdictions do not constitute an appropriate forum to investigate, judge and punish human rights violations presumably committed by members of the public security forces. [FN2]

[FN2] See, for example, IACHR Report N° 64/01 case 11.712, Leonel de Jesús Isaza Echeverry et.al. (Colombia) April 6, 2001 p. 22. See also Inter-American Court of Human Rights, Durand and Ugarte case, Judgment of August 16, 2000, p. 117. Inter-American Court of Human Rights, Cesti Hurtado case judgment of September 29, 1999, p. 151. See also IACHR, REPORT ON THE SITUATION OF HUMAN RIGHTS IN CHILE (September 27, 1985), pp. 183-185; IACHR, ANNUAL REPORT 1996, pp. 657-658; IACHR, REPORT ON THE SITUATION OF HUMAN RIGHTS IN ECUADOR (1997) pp.33-34; IACHR, REPORT ON THE SITUATION OF HUMAN RIGHTS IN BRAZIL, pp. 46-47.

19. Based on the foregoing, the conclusion is that because the forum being used is not only inadequate but also contrary to the Convention itself, the petitioners need not exhaust the remedies under domestic law, since the remedies indicated by the State in its response are not effective to protect the rights whose violation is alleged.

b. Period for submission of the petition

20. In the case of the petition under consideration, the Commission has concluded that the petitioners are exempt from the rule requiring exhaustion of the remedies under domestic law; the Commission must determine whether the petition under study was submitted within a reasonable time. The Commission notes that the events occurred in May 1999 and the criminal case was instituted on June 17, and is now in its intermediate phase. In other words, the petitioner submitted the petition to the Commission on May 7, 2001, almost two years after the

criminal case was instituted. The Commission concludes that the petition was presented within a reasonable period, in keeping with Article 32 of its Rules of Procedure.

c. Duplication and res judicata

21. There is nothing in the case file to indicate that this matter is pending with another international arrangement for settlement or that it was previously decided by the Inter-American Commission. The IACHR therefore concludes that the exceptions allowed under Article 46(1)(d) and in Article 47(d) of the American Convention do not apply.

d. Characterization of the facts alleged

22. The Commission considers that if true, the facts alleged would tend to establish facts that constitute violations of the rights guaranteed in articles 5, 8 and 25 of the American Convention.

V. CONCLUSIONS

23. The Inter-American Commission concludes that it is competent to take up the merits of this case and that the petition is admissible under articles 46 and 47 of the American Convention. Based on these arguments of fact and of law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present case admissible inasmuch as it concerns alleged violations of the rights protected under articles 5, 8 and 25 of the American Convention.
2. To notify the parties of this decision.
3. To proceed with the analysis of the merits of the case, and
4. To publish this decision and include it in the Commission's 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 27 day of the month of February in the year 2002. (Signed) Juan Mendez, President; Marta Altolaguirre, First Vice-President; José Zalaquett, Second Vice-President; Commissioners: Robert K. Goldman and Clare K. Roberts.