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Institution: Inter-American Commission on Human Rights  
File Number(s): Report No. 10/02; Petition 12.393  
Session: Hundred and Fourteenth Regular Session (25 February – 15 March 2002)  
Title/Style of Cause: James Judge 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.  
Dr. Julio Prado Vallejo, an Ecuadorian national, did not participate in the consideration of this case, pursuant to Article 17 of the Commission's Rules of Procedure.

Dated: 27 February 2002  
Citation: Judge v. Ecuador, Petition 12.393, Inter-Am. C.H.R., Report No. 10/02, OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2002)

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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 complaint lodged by James Judge, a citizen of the United States of America, in which he alleged that the Republic of Ecuador (“the State”) had incurred international responsibility for failure to pay him compensation for an unjustified delay in the judicial proceedings on the part of the national courts of that State.

2. The petitioner alleged that the facts reported constituted a violation of various provisions of the American Convention on Human Rights (hereinafter referred to as the “American Convention”) including the following: right to a fair trial (Article 8); right to property (Article 21); and, judicial protection (Article 25) in contravention of the obligations set forth in Article 1(1). He further stated that all the admissibility requirements stipulated in the Convention had been fulfilled. The State never answered the communications of the Commission, thereby tacitly renouncing its right to file objections to the admission of this petition.

3. Without prejudging the merits, the IACHR concludes in this report that the petition is admissible, since it fulfills the requirements stipulated in Articles 46 and 47 of the American Convention. Consequently, the Inter-American Commission decides to notify the parties of the decision and to continue with a merits examination of the alleged violation of Articles 1(1), 8, 21, and 25 of the American Convention.

## II. PROCESSING BY THE COMMISSION

4. On October 11, 1994, the petitioner submitted a petition to the Commission regarding the discovery of certain archeological treasures, claiming recognition of his rights thereto as established under Ecuadorian law.

5. On March 20 and June 13, 1996, James Judge sent communications to the Inter-American Commission in which he denounced violations of the right to property and the right to judicial guarantees. On August 16, 1996, the Commission sent a letter to the petitioner informing him that it had decided not to admit the petition because of failure to exhaust domestic remedies, since his case was still pending before the Court of Constitutional Guarantees.

6. James Judge sent a communication to the Commission on March 27, 2001, in which he referred to the domestic remedies he had availed himself of. On May 25, 2001, the Commission transmitted the pertinent parts of the petitioner's letter to the State, giving it a period of 30 days to send the pertinent information. The State never responded. On September 19, 2001, the Commission addressed another request for a response to the State, giving it a period of thirty days to submit the information. The State never responded to that communication either.

### III. POSITIONS OF THE PARTIES ON ADMISSIBILITY

#### A. The Petitioner

7. According to the petitioner, on May 23, 1967, the Casa de la Cultura Ecuatoriana [House of Ecuadorian Culture] authorized Engineer Virgilio Vélez to perform excavations on the Island of Toilita, Canton of Eloy Alfaro, Esmeraldas Province.

8. On June 20, 1969, the referenced Mr. Vélez assigned all excavation rights to the petitioner, who, on the basis of that assignment, continued with the work and found various archeological objects, including a gold mask with movable platinum eyes. These archeological objects were deposited by the petitioner with the Central Bank of Ecuador.

9. The petitioner maintains that the ownership of said mask and the benefits of its discovery were supported by abundant documentation, which was formally registered with the fifth notary's office in Quito.

10. He alleges that by Supreme Decree 320, promulgated in Official Registry No. 796 of May 6, 1975 and issued by the Government of General Guillermo Rodríguez Lara, the aforesaid gold mask was declared to be property of the National Heritage, without providing for appropriate compensation to the petitioner. For that reason, petitioner takes the position that this expropriation constitutes an illegal and arbitrary act of confiscation.

11. Petitioner alleges that said Decree was applied retroactively, without any grounds based on fact or law, that the mask had been extracted illegally. It established that the mask was the property of the Casa de la Cultura Ecuatoriana, according to the petition, but that said institution was not obligated to pay any compensation to the discoverer or the owner, thus overlooking the

fact that, as of the assignment of rights in favor of the petitioner, all the benefits of the archeological discovery were his.

12. Given the arbitrary nature of this action, Mr. Judge filed various legal proceedings before the national courts, including an action to declare Supreme Decree 320 unconstitutional, brought in 1993 before the Court of Constitutional Guarantees, which ruled against the petitioner in its Decision of December 27, 1995.

13. The petitioner appealed the Court of Constitutional Guarantees' ruling on the constitutionality of the decree by filing a writ of cassation before the Constitutional Chamber of the Supreme Court, which at the time had jurisdiction to hear such matters. On March 18, 1997, the Constitutional Chamber requested "autos para sentencia".[FN2] The Constitutional Chamber, however, was abolished in 1997 as the consequence of a constitutional reform before it had issued a judgment. The Administrative Law Chamber of the Supreme Court assumed jurisdiction over the matter, but also failed to issue a decision.

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[FN2] "Autos para sentencia" is a term of art, whereby a judge announces that a case is closed and that he is considering his judgment.  
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14. The Administrative Law Chamber referred the case back to the Constitutional Court, without notifying the petitioner. That Court has not ruled in this matter to date.

B. The State

15. The State failed to respond to any of the communications sent by the Inter-American Commission or to give its views on the alleged facts.

#### IV. EXAMINATION

A. Competence of the Inter-American Commission, with regard to *ratione personae*, *ratione materiae*, *ratione temporis* y *ratione loci*

16. Under Article 44 of the American Convention, the petitioner is authorized to lodge complaints with the IACHR. The petition indicates that the presumed victim is an individual person, in respect of whom Ecuador undertook a commitment to observe and guarantee the rights enshrined in the American Convention. As far as the State is concerned, the Commission points out that Ecuador has been a party to the American Convention since December 28, 1977, the date on which it deposited its instrument of ratification. Consequently, the Commission is competent, *ratione personae*, to examine the petition with regard to facts which took place subsequent to December 28, 1977.

17. The Commission is competent, *ratione loci*, to consider the petition, because it alleges violations of rights protected under the American Convention which took place within the territory of a state party to that Convention. In addition, the IACHR is competent, *ratione*

temporis, because the obligation to respect and guarantee the rights protected by the American Convention was already in force in the State on the date on which the events alleged in the petition occurred. Finally, the Commission is competent, *ratione materiae*, because the petition alleges violations of human rights set forth in the American Convention.

B. Other requirements for admissibility of the petition

a. Exhaustion of domestic remedies

18. The petitioner contends that there was an unjustified delay in the judicial proceedings of the national courts in this case, since nine years have lapsed from the time the appeal (on the grounds of unconstitutionality) was filed, without a judgment in the case.

19. The State did not respond throughout the proceedings before the Inter-American Commission. Hence it never alleged the existence of any domestic remedies available in Ecuador, nor did it deny the unjustified delay alleged by petitioner.

20. The Inter-American Commission observes that, in the case in point, the State never argued failure to exhaust domestic remedies in the six months that lapsed since it received the first communication sent by the IACHR.

21. The Inter-American Court of Human Rights has repeatedly held that when a State fails to present an objection based on lack of exhaustion of domestic remedies, that State is presumed to have tacitly renounced its right to this defense.[FN3] Therefore, the Inter-American Commission finds that the State has renounced its right of objection based on lack of exhaustion of domestic remedies, since it did not present said plea either within the legally established period of time, or at the opportunities available to it during the proceedings.

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[FN3] See, for instance, the Inter-American Court of Human Rights, Case of the Community of Mayagna (Sumo) Awas Tingni, Nicaragua, Decision on preliminary objections of February 1, 2000, para. 53. In that same decision, the Inter-American Court found that “to present a valid opposition to the admissibility of a petition ... the State must specifically and opportunely invoke the rule of lack of exhaustion of domestic remedies” (emphasis in the original.) *Idem*, para. 54.  
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b. Deadline for presentation

22. In the petition under consideration, the IACHR found that the State had tacitly renounced its right to present an objection based on lack of exhaustion of domestic remedies, hence, the requirement established in Article 46(1)(b) of the American Convention does not apply. The requirements, however, under the Convention, regarding the exhaustion of domestic remedies and lodging of the petition within a period of six months from the decision that exhausts domestic remedies are independent of each other. As a result, the Inter-American Commission must determine whether the petition was presented within a reasonable period of time. On this point, the IACHR notes that the petitioners argued that there was an unjustified delay in the

judicial proceedings. In this context, the Commission notes that in order to apply the exception of unwarranted delay there must be a final decision issued by the national courts and takes into consideration the date of the last appeal filed. On these grounds, the IACHR finds that the petition was presented within a reasonable time period.

c. Duplication of procedures and res judicata

23. The case record contains no information that could lead to a determination that this matter is pending settlement in another international procedure or that it has been previously studied by the Inter-American Commission. Therefore, the IACHR concludes that the circumstances stipulated in Article 46(1)(d) and in Article 47(d) of the American Convention are not applicable.

d. Nature of the alleged events

24. The Commission is of the opinion that if the alleged facts are proven to be true, they constitute violations of the rights guaranteed in Articles 1(1), 8, 21, and 25 of the American Convention.

## V. CONCLUSIONS

25. The Inter-American Commission concludes that it is competent to examine this case and that the petition is admissible pursuant to Articles 46 and 47 of the American Convention. On the basis of the de facto and de jure arguments set forth in this document, and without prejudice to the merits of the petition,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible insofar as it refers to the alleged violations of the rights set forth in Articles 1(1), 8, 21, and 25 of the American Convention.
2. To notify the parties of this decision.
3. To continue to examine the merits of the case; and
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 the city of Washington, D.C., on the 27 day of the month of February in the year 2002. (Signed) Juan Méndez, President; Marta Altolaguirre, First Vice-President; José Zalaquett, Second Vice-President; Commissioners: Robert K. Goldman and Clare K. Roberts.