

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 15/03; Petition 131/2001
Session: Hundred and Seventeenth Regular Session (17 February – 7 March 2003)
Title/Style of Cause: Norma Janet Delgado Almeida, Manuel Zabulon Delgado Galarraga, Laura Maria Almeida Mora de Delgado, Rodrigo Fidel Delgado Almeida, Ramiro Antonio Delgado Almeida, Manuel Freddy Delgado Almeida, Edith Jeaneth Delgado Almeida, Helice Cecilia Delgado Almeida, Jaime Rolando Delgado Almeida and Sandra Elizabeth Delgado Almeida v. Ecuador
Doc. Type: Decision
Decided by: President: Juan Mendez;
First Vice-President: Marta Altolaquirre;
Second Vice-President: Jose Zalaquett;
Commissioners: Robert K. Goldman, Clare K. Roberts.
Dr. Julio Prado Vallejo, of Ecuadorian nationality, did not take part in the discussion of this case in accordance with Article 17(2)(a) of the Commission's Rules of Procedure.
Dated: 20 February 2003
Citation: Delgado v. Ecuador, Petition 131/2001, Inter-Am. C.H.R., Report No. 15/03, OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)
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. The Inter-American Commission on Human Rights (hereinafter, “the Commission”) received a complaint presented on March 1st, 2001 by Norma Janet Delgado Almeida, Manuel Zabulon Delgado Galárraga, Laura María Almeida Mora de Delgado, Rodrigo Fidel Delgado Almeida, Ramiro Antonio Delgado Almeida, Manuel Freddy Delgado Almeida, Edith Jeaneth Delgado Almeida, Hélice Cecilia Delgado Almeida, Jaime Rolando Delgado Almeida and Sandra Elizabeth Delgado Almeida, (hereinafter, “the petitioners”) against the Republic of Ecuador, (hereinafter, “the State” or “Ecuador”) alleging failure by the State to respect the rights of persons and their personal integrity and liberty; the absence of judicial protection; and failure to protect personal honor and dignity, the family, and the rights to property and equal protection before the law, because of errors in the administration of justice as well as abuses by local authorities. The subject matter of the petition involves diverse administrative and judicial proceedings to determine the legitimate owners of “Finca La Paquita”, a piece of property that belonged to the State and that was sold or adjudged to be the property of the occupiers as a result of the Law on Agrarian Reform. The petitioners allege violation of Articles 5 (personal integrity), 7 (personal liberty), 8 (fair trial), 10 (compensation), 11 (honor and dignity), 14 (right of reply), 17 (protection of the family), 21 (private property), 24 (equal protection before the

law), and 25 (judicial protection) of the American Convention on Human Rights (hereinafter, "the American Convention"), all in breach of the obligations set forth in Article 1(1) thereof.

2. The State responded by requesting that the petition be declared inadmissible and immediately filed. The grounds for its position were that the Commission did not constitute a "court of appeals or fourth instance" and could not review the decisions of national courts rendered within their jurisdictions in accordance with due judicial guarantees unless an act in violation of the Convention had been committed. The State also affirmed that the petition did not fulfill the requisites for admissibility set forth in the American Convention.

3. In this report, the Commission analyzes the available information in the light of the American Convention, and concludes that the petitioners have not presented their petition within the period stipulated in Articles 46 and 47 of the American Convention, and consequently decides to declare the petition inadmissible.

II. PROCEEDINGS BEFORE THE COMMISSION

4. The Commission initiated processing of the petition on July 31, 2001, under the number P131/01, and transmitted the relevant portions thereof to the Ecuadorian state, allowing 90 days for the presentation of information.

5. The response of the Office of the Attorney General of the State to petition 131/01 was sent by Ecuador on October 15, 2001 and received by the Commission on November 19, 2001. The response was transmitted on November 26, 2001 to the petitioners, who were requested to present their observations within a period of 30 days. The Commission received the petitioners' observations on the State's response on December 13, 2001. On December 19, 2001, these observations were transmitted to the State, which was requested to send any additional information within 30 days. The State responded by note N° 23223, dated March 19, 2002, which was received by the Commission on April 12, 2002. On October 15, 2002, during its one hundred sixteenth session, the Commission conducted a hearing of the petitioners and the State on the admissibility of the petition.

III. POSITIONS OF THE PARTIES ON ADMISSIBILITY

A. The petitioners

6. The present petition originated from judicial and administrative proceedings to determine ownership of "Finca La Paquita", a property situated in Aguas Frías, Quevedo Canton, in the province of Los Ríos.

7. The petitioners were declared owners of the property, by authority of the National Institute of Agrarian Reform and Settlement (Instituto Nacional de Reforma Agraria y Colonización -IERAC) pursuant to its purchase by Matilde Paredes Villacís de Ortiz and Francisca Matilde Ortiz Paredes under registered deed dated March 25, 1982. At the time of the purchase, the property had been declared "non-attachable" by IERAC ruling on March 13, 1980. The negotiations were conducted with Mr. Francisco Ortiz Rosero. Upon his death, the sale was

executed by his heirs. Upon final appeal, this determination confers full rights of ownership to the property's legitimate titleholders, which may be disputed only by a person holding registered title to the same property.

8. According to the petitioners, Mr. Rafael Valverde Delgado encroached on and began to cultivate a portion of the La Paquita property. This led IERAC, on November 9, 1982, to order an appraisal of the crops and improvements made in the area. On December 10, 1982, the Regional Manager of IERAC ordered the payment of fifty two thousand four hundred sucres on account of the crops introduced by the squatters. This amount was collected and consigned by IERAC by act R2-G-0536 of January 26, 1983, and the squatters Rafael Valverde Delgado and the widow Beatriz Vargas, formerly Tandazo, were ordered evicted from the property.

9. On May 19, 1986, the Regional Agrarian Reform Appeals Committee rendered a decision upholding the ruling of non-attachability (of March 13, 1980) in favor of Mrs. Laura Almeida, ordering demarcation of the property, which was never executed. On October 19, 1987, one year and five months after this decision, a group of nine armed individuals, identified as police officers, entered the house. According to the petitioners, the men planted a bag of three grams of cocaine as evidence, accused the Delgado Almeida family of drug trafficking, arrested them and placed them in the custody of the Quevedo Provisional Detention Center. The Delgado Almeida family was held incommunicado for four days and was released upon the filing of a petition of habeas corpus. Immediately following their release, warrants were issued for their arrest on grounds of drug trafficking, whereupon they abandoned the province of Los Ríos. They were subsequently tried for alleged drug trafficking, and the case was dismissed by the criminal law judge.

10. They were also prosecuted for illicit possession of firearms, attempted murder and robbery in a case brought by Mr. Valverde. This case was also dismissed. While these proceedings were underway, they were obliged to abandon their house, which was occupied by Mr. Valverde and other persons. After they left the house, the squatters took possession of the property's land, farm machinery, animals, and other physical assets. The Delgado Almeida family continued to live at "La Paquita" from 1983, when the squatters were evicted, until October 19, 1987, when the assault, break-in, robbery and encroachment of the property were alleged to occur.

11. Mr. Valverde, in a further effort to gain access to Mrs. Almeida's property, requested that IERAC award him a strip of the property's land which he considered to be his. It should be noted that the portion of the property claimed by Valverde had been included in the definitive ruling of non-attachability issued by IERAC, which supposedly was not subject to modification. By a decision on February 24, 1988, IERAC awarded the aforementioned strip of land within the La Paquita property to Mr. Rafael Valverde. As a result of this decision, Mrs. Almeida's property was divided by half.

12. Subsequently, the widow Beatriz Vargas, formerly Tandazo, lodged a request for revocation of the judgment issued by the IERAC Regional Committee declaring the non-attachability of the property owned by the Almeida family. This request was denied and filed, on the grounds that Mrs. Almeida held title to the property. Mrs. Vargas lodged another request for

revocation, this time with success: the ruling (supposedly definitive and not subject to appeal) was revoked by the Regional Manager of IERAC by a decision on October 30, 1990. Mrs. Almeida appealed that decision, which on June 11, 1993 was in turn revoked, upholding the initial ruling of non-attachability (of May 19, 1986) in favor of Laura Almeida. At this point, the petitioner requested that IERAC execute the ruling of non-attachability and evict the persons occupying the property "La Paquita". Eviction of the squatters (Patricio Pazmiño and all other persons without business on the property) was ordered by IERAC on July 30, 1995. On October 4, 1995, before the eviction order was executed, the Executive Director of the Agrarian Development Institute (Instituto de Desarrollo Agrario -INDA) (formerly IERAC) ordered a new visual inspection and suspension of the eviction order.

13. On June 30, 1995, when the Executive Director of INDA ordered the eviction of the squatters, one-third of the property had been occupied by Patricio Pazmiño Álvarez, who claimed to have acquired the property from Mrs. Vargas and presented the deed.[FN2] On the basis of these documents, the Executive Director of INDA suspended the eviction order by a decision on October 4, 1995. The petitioners requested that the decision suspending the eviction order be declared null and void by the Contentious-Administrative Tribunal. This request was denied on grounds that suspension was considered a merely procedural act and not an obstacle to the imperative mandate of a ruling of non-attachability, as affirmed by the petitioners.

[FN2] The widow Beatriz Vargas, formerly Tandazo, died on 7 June 1993. Patricio Pazmiño Álvarez grounds his claim in the subrogation of Beatriz Vargas's alleged rights of possession.

14. Once again, on April 30, 1997, the Executive Director of INDA issued an administrative ruling guaranteeing the integrity of the property and thus ratifying the eviction order issued on June 30, 1995. On July 24, 1997, Mrs. Laura Almeida Delgado, joined by several family members and about 20 employees, citing the letter of April 30, 1997 from the Executive Director of INDA to the Governor of Los Rios, and with the assistance of the police, proceeded to forcibly take possession of the property and evict the squatters.

15. On July 29, 1997, after the eviction order had been issued and executed, the Executive Director of INDA suspended it. On August 26, 1997, since the eviction orders were not being executed, Mrs. Laura Almeida lodged a request for the protection of her rights (amparo) in respect of the decision of the Director of the Instituto de Desarrollo Agrario, seeking guarantees for the legitimate right of ownership, and protection of the property and integrity of the property's owners. The case was assigned to the Second Civil Chamber Judge, who denied the request on December 2, 1997 as contrary to law. This decision was appealed before the Constitutional Court.

16. On August 28, 1997, the squatters Rafael Valverde and Patricio Pazmiño lodged a request for forcible eviction before the Civil Chamber Judge of los Ríos. On October 22, 1997 they obtained a ruling ordering the eviction of Laura Almeida Delgado and family, on the grounds that she and a group of workers had dispossessed Rafael Valverde and Patricio Pazmiño of their property. The eviction order was executed on October 28, 1997.

17. The squatters took the opportunity offered by the suspension of the eviction order to forcibly reoccupy the property on October 28, 1997, and have remained there to the present day.

18. On January 6, 1998, the Third Chamber of the Constitutional Court granted the constitutional protection (amparo) requested by Laura Almeida de Delgado for the petitioner's right to property and ordered the execution of the ruling of non-attachability. On June 2, 1998, the Executive Director of INDA requested that the Governor of Los Ríos take the appropriate legal steps to evict the squatters pursuant to the decision of the Third Chamber of the Constitutional Court.

19. On June 16, 1998, to avoid enforcement of the decision rendered by the Third Chamber of the Constitutional Court, Mr. Patricio Pazmiño filed a suit before the Tenth Court for Civil Matters in and for Los Ríos for constitutional protection against the measures of June 2, 1998 issued by the Executive Director of INDA. On December 3, 1998, the Third Chamber of the Constitutional Court granted this request for constitutional protection and suspended its own previous ruling. This is the decision which the petitioners are challenging and which was adopted on January 28, 1999, which is also the date on which the petitioners were notified.

20. The main objective pursued by Laura Almeida Mora de Delgado and family is execution of the judgment of the Regional Agrarian Reform Appeals Committee N° 2, upheld by the January 6, 1998 decision of the Third Chamber of the Constitutional Court.

B. The State

21. On November 15, 2001, by note N° 4-2-268/01, containing the official communication N° 20248 from the Office of the Attorney General of the State, the Government of Ecuador responded to the Commission by requesting that the petition of Janet Delgado be declared inadmissible and filed.

22. The Ecuadorian state argues that the Commission is not a court of appeals, and, therefore, cannot review the decisions of national courts acting within their spheres of competence, subject to the appropriate judicial guarantees, unless an act violating the Convention has been committed. Nor, the State affirms, can the Commission examine alleged errors of law or fact that may have been committed by national courts operating within the limits of their jurisdiction.

23. The State also affirms that Mrs. Delgado has presented her petition to the Commission extemporaneously, since the final, definitive decision in the matter was rendered on December 3, 1998, whereas the petition was presented on July 31, 2001 -31 months later. This delay, the State argues, should not be tolerated, because doing so would be contrary to justice, juridical security, and the inter-American system.

24. The judgment issued by the Third Chamber of the Constitutional Court on December 3, 1998 presents a different view of the facts from those presented by the petitioners. Specifically, the Constitutional Court notes that:

Shortly after the new Law of Agricultural Development was enacted and INDA was created, Almeida deceived the Director of INDA, who at that time was the attorney Angel Sereni, by again alleging an encroachment that never took place. Sereni issued an eviction order dated June 30, 1995. This order was fortunately not executed, because the occupants of the property learned about it by chance and contacted the Director. Realizing the deception, Sereni suspended the order by a decision on October 4, 1995, a copy of which we attach and which also is part of the case file, ordering an inspection which led to the conclusion that the property is in the hands of a proprietor, Dr. Rafael Valverde, and five occupants, and that no encroachment ever took place.[FN3]

[FN3] Judgment of 3 December 1998 of the Constitutional Court, Third Chamber.

25. In its brief of October 15, 2002, the State affirms that “According to the information initially presented by the plaintiff, the State’s international responsibility should be declared, given its failure to comply with the judgments of domestic courts, allegedly in violation of Article 21 of the Convention. The plaintiff affirms that these judgments contain ‘legal flaws that infringe on our rights’, in that the decision of the Constitutional Court on January 28, 1999 was ‘clearly unjust, improperly applied, and based on erroneous interpretations of the law, procedural provisions, and applicable legal principles ... which irreversibly render the aforementioned decision null and void’. The aim is for the Commission to review the decision and determine a posteriori whether there is another decision more favorable to the plaintiff, assuring her of her rights to the property concerned. The Ecuadorian state considers that by virtue of the ‘fourth instance’ argument, the Commission cannot review the decisions of national courts acting within their spheres of competence, subject to the appropriate judicial guarantees, unless an act violating the Convention has been committed.”

IV. ANALYSIS

A. The Commission’s jurisdiction *ratione personae*, *ratione loci*, and *ratione temporis*

26. The petitioners have the right, under Article 44 of the American Convention, to present petitions to the Commission. The petition identifies as alleged victims Mrs. Janet Delgado and other persons in a sense consistent with Article 1(2) of the American Convention. The State implicated in the petition, the Republic of Ecuador, ratified the American Convention on December 28, 1977. The Commission therefore has jurisdiction *ratione personae* to examine the petition.

27. In terms of jurisdiction *ratione loci*, all of the alleged violations were committed within the jurisdiction of the Republic of Ecuador.

28. In terms of jurisdiction *ratione temporis*, the alleged violations were committed subsequent the country’s ratification of the American Convention, which occurred on December 28, 1977.

29. In terms of jurisdiction *ratione materiae*, the violations described, if true, could constitute violations of Articles 8 and 21 of the American Convention. In light of the fact that the petitioners reiterate in their presentations to the Commission that the central issue in this case is the violation of their right to private property, and the alleged violations of due process that have deprived them of their property since 1987, the Commission considers these two alleged violations as the subject matter of this case.

ADMISSIBILITY

B. Other requisites for admissibility

a. Exhaustion of domestic remedies

30. Article 46 of the American Convention provides that the admission of a case is subject to the requirement “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law”. This requirement guarantees the opportunity of the State to resolve differences within its own legal system.

31. According to the petitioners, the State first argued that all domestic remedies had been exhausted and legally resolved, and then later, that there are domestic remedies that have not been exhausted. It is clear to the Commission that the State was arguing that domestic remedies had not been exhausted in respect of violations of rights to personal liberty and physical integrity. But as for the exhaustion of domestic remedies in respect of the petitioners’ right to property, we believe that domestic means of redress have been exhausted, the final judgment of the Third Chamber of the Constitutional Court having been rendered on December 3, 1998.

b. Period for presentation of the petition

32. Article 46(1)(b) of the American Convention provides that:

Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

b. that the petition or communication is lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment;

33. We consider that the petitioners failed to comply with the 6 month period established in the Convention, having presented their petition in March 2001. The final decision, bringing the proceedings to an end, was Decision N° 06 3-III-SALA, of December 3, 1998, which was rendered by the Third Chamber of the Constitutional Court. The petitioners were notified of the decision on January 28, 1999. From the time of the definitive ruling of Ecuadorian justice to the time that the petition was presented to the IACHR, 27 months elapsed, which represents a failure to comply with the formal requirements contained in Article 46 of the Convention.

V. CONCLUSIONS

34. Based on the arguments of fact and law set forth above, the Commission considers that the petition is inadmissible pursuant to the requisites established in Article 47(a) of the American Convention on Human Rights, inasmuch as it does not comply with the time period established in Article 46(1)(b).

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present petition inadmissible on the grounds that it does not refer to the violation of human rights protected by the Convention.
2. To notify the parties of this decision.
3. To publish this decision and include it in its 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 20th day of the month of February in the year 2003. Signed: Juan Méndez, President; Marta Altolaguirre, First Vice-President; José Zalaquett, Second Vice-President; and Robert K. Goldman and Clare K. Roberts, Commissioners.