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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 63/03; Petition 11.515
Session: Hundred and Eighteenth Regular Session (7 – 24 October 2003)
Title/Style of Cause: Bolivar Franco Camacho Arboleda v. Ecuador
Doc. Type: Decision
Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioners: Robert K. Goldman.
Dr Julio Prado Vallejo, an Ecuadorian citizen, abstained from the discussion of this case, in accordance with Article 17 of the Rules of Procedure.

Dated: 10 October 2003
Citation: Camacho Arboleda v. Ecuador, Petition 11.515, Inter-Am. C.H.R., Report No. 63/03, OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)
Represented by: APPLICANT: the Ecumenical Human Rights Commission

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I. SUMMARY

1. The Ecumenical Human Rights Commission (CEHDU) (hereafter “the petitioner”) submitted a petition before the Inter-American Commission on Human Rights (hereafter “the Commission” or “the IACHR”) against the Republic of Ecuador (hereafter “the State”) in which it complained of the violation of the following rights protected by the American Convention on Human Rights (hereafter “the Convention” or “the American Convention”): the right to personal liberty (Article 7), the right to a fair trial (Article 8) and the right to judicial protection (Article 25), in violations of the obligations contained in Article 1(1), to the prejudice of Mr. Bolivar Franco Camacho Arboleda.

2. The parties reached a friendly settlement of the present case on July 17, 2002. This report contains a brief statement of the facts of the case and the text of the solution reached, in accordance with Article 49 of the Convention.

II. FACTS OF THE CASE

3. According to the complaint, dated November 8, 1994, Mr. Bolivar Camacho Arboleda, 25 years of age and a citizen of Ecuador, was arrested on October 7, 1989, at about 4:00 p.m., by officers of INTERPOL[FN2] for Santo Domingo de los Colorados. Mr. Camacho Arboleda was charged with the illegal possession of cocaine (amounting to 6 grams), and was brought before the Sixth Criminal Court of Pichincha, in Santo Domingo de los Colorados.

[FN2] INTERPOL is the International Criminal Police Organization.

4. The Sixth Court formally requested the Second Criminal Court of Quito to have the seized drugs destroyed and to take the statement of the accused, but this request was not acted upon. After four years had elapsed, the judge issued a provisional dismissal of the charges, and the case was sent, under mandatory consultation, to the Second Chamber of the Superior Court of Quito, where 180 days passed without the issuance of any decision.

5. The Superior Court revoked the provisional dismissal and ordered the case to trial (the “plenary stage” of the proceedings) and the Fifth Criminal Court issued an acquittal on January 24, 1995. From that judgment it is clear that the Second Criminal Court Judge of Pichincha, Cesar Morales Naranjo, had been instructed to order chemical tests and to have the narcotics destroyed, but that he delayed in fulfilling these tasks, and as a consequence, he was fined 30% of his basic salary. Mr. Bolivar Franco Camacho Arboleda was released from detention in February 1995.

6. Mr. Camacho Arboleda is seeking damages for having been arbitrarily deprived of his liberty for more than five years (63 months). He argues that Ecuador has no law that would allow him to file a claim for compensation.

III. PROCEEDINGS BEFORE THE COMMISSION

7. On July 19, 1995, the Commission sent the respective letters to the State and to the petitioner. On October 10, 1995, the Government of Ecuador responded to the complaint. On October 26, 1995, the Commission sent to CEHDU a copy of the information provided by the Government of Ecuador. CEHDU provided the Commission with its observations on the State’s response on November 23, 1995, confirming that Mr. Bolívar Camacho had been acquitted, but arguing that it was incorrect to say that Mr. Camacho could seek a writ of review (recurso de revision) of the judgment in order to obtain damages, since under Article 385 of the Code of Criminal Procedure, this writ can only be sought for the review of convictions. The petitioner’s comments were transmitted to the State on February 28, 1996.

8. During its 95th session the Commission approved Admissibility Report Number 13/97 on the present case. That report was published in the Commission’s Annual Report for the year 1996.

9. On March 18, 1997, the Commission placed itself at the disposition of the parties with a view to reaching a friendly settlement. On October 8, 1997, during its 99th session, the Commission held a meeting to consider matters relating to a friendly settlement of the case. The parties agreed to the possibility of reaching a friendly settlement, which was signed on July 17, 2002. The parties requested the Commission to ratify the friendly settlement agreement in its entirety, and to oversee its implementation.

IV. TEXT OF THE FRIENDLY SETTLEMENT AGREEMENT

10. 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 recognizing that the unreserved respect for human rights is currently of great importance for the international image of our country, as the foundation of a just, worthy, democratic and representative society, has decided to take a new course in the evolution of human rights in Ecuador.

The Attorney General's office has initiated conversations with all the 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 human rights 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 Mr. Cliter Celso Arboleda, representing Mr. Bolivar Franco Camacho Arboleda, each of their own right, 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 45 of the Rules of Procedure of the Inter-American Commission on Human Rights.

II. PARTIES TO THE AGREEMENT

The following persons were present at the signing of this Friendly Settlement Agreement:

- a) Dr. Ramon Jimenez, Attorney General of the State, as indicated in his appointment and certificate of office, which are attached as qualifying documents;
- b) Mr. Cliter Celso Arboleda, Ecuadorian citizen, citizenship document number 110207616-1, representing Mr. Bolivar Franco Camacho Arboleda, by special powers granted before the fifth Notary Public of Canton Loja, a copy of which is attached to this document.

III. STATE RESPONSIBILITY AND ACCEPTANCE

The Ecuadorian State recognizes its international responsibility for having violated the human rights of Mr. Bolivar Franco Camacho Arboleda enshrined in Article 8 (right to a fair trial), Article 7 (right to personal liberty) and Article 25 (right to judicial protection), and the general obligation set forth in Article 1(1) of the American Convention on Human Rights and other international instruments, since the violations were committed by State agents and could not be disproved by the State, thus giving rise to State responsibility.

Given the above, the Ecuadorian State accepts the facts in case No. 11.515 now before the Inter-American Commission on Human Rights, and undertakes the necessary reparatory 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, according to Article 215 of the Constitution of Ecuador, promulgated in Official Register No. 1, and in force since August 11, 1998, is awarding Mr. Cliter Celso Arboleda, holder of citizenship number 110207616-1, representing Mr. Bolivar Franco Camacho Arboleda, through special powers granted before the fifth Notary Public of Canton Loja, lump sum compensatory damages of thirty thousand United States dollars (US \$30,000), to be paid from the National Budget.

This compensation is in settlement of all material damages, loss of income, and moral damages suffered by Mr. Bolivar Franco Camacho Arboleda, as well as any other claims that Mr. Bolivar Franco Camacho Arboleda or his relatives may have regarding the subject of this agreement, under domestic and international law, and represents a charge to the National Budget, for which purpose the Attorney General will notify the Minister of Economy and Finance so that the obligation may be fulfilled.

V. PUNISHMENT OF THOSE RESPONSIBLE

The Ecuadorian State undertakes, to the extent possible, to bring both civil and criminal proceedings and to pursue administrative sanctions against those persons who, in the course of their official duties, are presumed to have participated in the alleged violation.

The Office of the Attorney General undertakes to encourage the Public Prosecutor, the competent judicial organs, and public or private agencies to provide legal evidence to determine the responsibility of those persons. If appropriate, prosecution will be pursued in accordance with the constitutional and legal framework 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 Ecuador, from those person found responsible for human rights violations through a final judgment handed down by an Ecuadorian court, or when administrative liability has been determined, in accordance with Article 8 of the American Convention on Human Rights.

VII. TAX-EXEMPT PAYMENTS

Monies paid by the Ecuadorian State to the beneficiary of this Friendly Settlement agreement shall not be subject to any existing or future taxation.

VIII. INFORMATION

The Ecuadorian State, through the Office of the Attorney General, undertakes to report every three months to the Inter-American Commission on Human Rights on its fulfillment of the obligations assumed by virtue of 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. Bolívar Franco Camacho Arboleda 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 norms in the American Convention on Human Rights and other international human rights instruments.

This Friendly Settlement Agreement is entered into on the basis of respect for the human rights enshrined in the American Convention on Human Rights and other international human rights instruments, and in accordance with the policy of the National Government of the Republic of Ecuador to respect and protect human rights.

X. NOTIFICATION AND APPROVAL

Mr. Cliter Celso Arboleda, representing Mr. Bolivar Franco Camacho Arboleda, expressly authorizes the Attorney General to bring this friendly settlement to the attention of the Inter-American Commission on Human Rights, so that the Commission may confirm and ratify it in its entirety.

XI. ACCEPTANCE

The parties signing this agreement freely and voluntarily express their conformity with and acceptance of the contents of the preceding clauses, and state for the record that they hereby bring to a close the dispute before the Inter-American Commission on Human Rights over the

international responsibility of the Ecuadorian State for violating the rights of Mr. Bolivar Franco Camacho Arboleda.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

11. The Commission finds that the friendly settlement agreement is compatible with Article 48(1)(f) of the American Convention.

12. The Commission welcomes the signing of a friendly settlement between the State and the petitioner, under the terms of the American Convention.

13. The IACHR will continue to monitor compliance of the commitment assumed by the Ecuadorian State with respect to the prosecution of the persons involved in the alleged acts.

14. The IACHR confirms that the friendly settlement procedure contained in the American Convention provides the possibility for terminating individual cases without resort to litigation, and that it has been demonstrated, in cases in various countries, to be an important procedure for resolving alleged violations, one that can be used by both parties (petitioner and State).

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To certify the State's compliance with its commitment to pay US \$30,000 dollars to the victim by way of compensation.
2. To remind the State that it must comply fully with the friendly settlement agreement by initiating judicial proceedings against the persons involved in the alleged violations.
3. To continue with its monitoring and supervision of compliance with each and every point in the friendly settlement, and in this context to remind the State, through the Attorney General, of its commitment to report every three months to the IACHR on compliance with the obligations assumed by the State under this friendly settlement.
4. To make this report public and to publish 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 DC, on October 10th, 2003. (Signed) José Zalaquett President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Commissioner Robert K. Goldman.