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Title/Style of Cause: Guy Andre Francois v. Haiti
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Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioners: Robert K. Goldman, Julio Prado Vallejo.
Dated: 22 October 2003
Citation: Francois v. Haiti, Petition 139/02, Inter-Am. C.H.R., Report No. 79/03,
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I. SUMMARY

1. On March 1, 2002, a petition was referred to the Inter-American Commission on Human Rights (hereinafter « the Inter-American Commission», « the Commission», or "the IACHR ») by the wife of Guy André François, Marie Alice François (hereinafter "the Petitioner"), lodged against the Republic of Haiti (hereinafter "the State" or "Haiti") and setting forth alleged violations of the Right to Personal Liberty (Article 7), the Right to a Fair Trial (Article 8), the Right to Judicial Protection (Article 25), and the State's General Obligation to Respect Rights (Article 1(1)) guaranteed under the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention").

2. The petitioner alleges that on December 19, 2001, Guy André François--a retired colonel of the Haitian Army--was arrested by the police and jailed, first at Pétiön-Ville police headquarters and then at the National Penitentiary Administration (APENA) in the same town. On January 7, 2002, the Court of First Instance of Port-au-Prince ruled that the arrest and subsequent detention of Mr. François were both illegal and ordered his immediate release. Petitioners maintain that judicial authorities of Port-au-Prince have refused to execute the court order.

3. The State has not responded to the Petitioners' allegations, nor has it questioned the admissibility of the petition analyzed here.

4. Pursuant to Articles 46 and 47 of the American Convention, the IACHR has resolved to consider this petition and the potential violations it presents under Articles 1(1), 7, 8 and 25 of the American Convention. It decides also to initiate proceedings to weigh the merits of the case.

The Commission resolves, further, to notify the parties of this decision, and its intent to publish and include it in its Annual Report to the General Assembly of the OAS.

II. PROCEEDINGS BEFORE THE COMMISSION

5. Marie Alice François referred her petition to the Commission on March 1, 2002. On March 27, 2002, the IACHR in turn referred the petition to the State and requested that relevant information on the subject be presented within the following two months, following Article 30 of the Commission's Rules of Procedure.

6. On March 17, 2003, the Commission asked the petitioner to forward to it within a period of 30 days any additional pertinent information regarding the case. On that same date, the Commission again sent the State a copy of the petition and reiterated its request for further information. In a note dated March 24, 2003, the State acknowledged receipt of both letters (dated March 27, 2002 and March 17, 2003) but did not submit any information about the petition as the Commission had requested. On April 6, 2003, Guy André François' daughter Sabine Carre did forward additional information on behalf of her mother, Marie Alice François. This was communicated to the State on May 29, 2003 along with notice of the 30-day deadline for presentation by the State of any observations on the matter. On September 20th, 2003, the IACHR sent the State two notes--one dated March 1, 2002 (received March 4, 2002) and another dated August 19 (received August 23, 2002)--received from Rony François regarding the situation of his brother, Guy François.

III. POSITION OF THE PARTIES

A. The petitioner

7. The petitioner alleges that on December 19, 2001 Guy André François was arbitrarily arrested in Pétion-Ville by members of the police force operating without a legally issued warrant and without any motive establishing a cause of action. According to the petitioner, Guy André François was taken first to police headquarters in Pétion-Ville, then to the Pétion-Ville prison.

8. The petitioner alleges that after the victim had been held in custody for twenty days, counsel representing him (Attorneys Rigaud Duplan, Patrick Laurent and Leonel Jean Bart) submitted a writ of habeas corpus on his behalf based on Article 26-1 of the Constitution of the Republic of Haiti. On January 7, 2002, the Court of First Instance ruled that both the arrest and the detainment of Guy André François were illegal. It issued a summary order for his immediate release. The Petitioner maintains that despite this ruling--duly served on the Government Commissioner (Commissaire de gouvernement) by a court bailiff on January 8, 2002 and ordering the release of the victim, or that measures necessary for his release be taken immediately-- Guy André François has yet to be freed. Information received from the petitioner indicates that as of April 16, 2003, Guy André François remained imprisoned.

B. The State

9. The State has not responded to the facts alleged by the petitioner, nor has it questioned the admissibility of the petition presently analyzed.

IV. ANALYSIS OF ADMISSIBILITY

A. Preliminary Considerations

10. As it stated previously[FN1], the IACHR notes that the State informed the Commission only that it had received the letters dated March 27, 2002 and March 17, 2003. At no point did the State respond to the facts alleged by the petitioner, nor has it contested the admissibility of the petition considered here. The IACHR stresses that under the terms and provisions of the American Convention on Human Rights, Haiti is bound by various international obligations. Specifically, Article 48(1)(a) of the Convention establishes that when a petition is referred to the Commission for its consideration « it shall request information from the government of the state indicated as being responsible for the alleged violations » and that «(t)his information shall be submitted within a reasonable period... » Article 48(1)(e) stipulates that the Commission « may request the states concerned to furnish any pertinent information. » These provisions establish the obligation of states parties to the Convention to provide the Commission such information as it may request within the scope of its analysis of an individual petition.

[FN1] Inter-American Commission on Human Rights, 2001 Annual Report, Report N°129/01, Case N° 12.389, Jean Michel Richardson (Haiti), paragraphs 11 et seq.

11. The IACHR stresses the importance it ascribes to information requested since it provides the basis for the Commission's decisions on submitted petitions. Indeed, the Inter-American Court of Human Rights has affirmed that cooperation among the states represents a fundamental obligation within the international procedural framework established by 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.[FN2]

[FN2] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, Series C, N°4, paragraphs 135 and 136. Inter-American Commission on Human Rights, Report n° 28/96, Case N° 11.297, Juan Hernández (Guatemala), October 16, 1996, paragraph 43.

12. The Commission and the Inter-American Court of Human Rights have also stated that "the silence of the defendant or elusive or ambiguous answers on its part may be interpreted as an acknowledgement of the truth of the allegations, so long as the contrary is to indicated in the record or is not compelled as a matter of law." [FN3] Bearing this in mind, the Commission reminds the State of Haiti of its obligation to cooperate with the various agencies of the inter-American human rights system in order to facilitate their respective work to promote individual rights.

[FN3] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, Series C, N°4, paragraph 138. Inter-American Commission on Human Rights, Report n° 28/96, Case 11.297, Juan Hernández (Guatemala), October 16, 1996, paragraph 45.

B. The Commission's Competence *ratione personae*, *ratione loci*, *ratione temporis*, and *ratione materiae*

13. The petitioner is entitled to lodge a complaint with the Commission pursuant to Article 44 of the American Convention. The petition designates as alleged victim an individual whose rights Haiti is committed to uphold and guarantee given its General Obligation to Respect Rights under Article 1 of the American Convention. The Republic of Haiti has been a signatory of the American Convention since it deposited the requisite instrument of accession thereto on September 27, 1977. On this basis, the Commission holds that it is competent *ratione personae* to consider the submitted petition.

14. The Commission further holds itself competent *ratione loci* to consider the petition as it concerns alleged violations committed within the territory of a state party to this treaty.

15. The IACHR likewise finds that it is competent *ratione temporis* to examine this petition since it relates to acts allegedly committed in 2001, a time during which treaty obligations were in effect following the State's accession to the American Convention.

16. Finally, the Commission is competent *ratione materiae* because the petition denounces alleged violations of rights which are protected by the American Convention, namely the Right to Personal Liberty (Article 7), the Right to a Fair Trial (Article 8), and the Right to Judicial Protection (Article 25).

C. Other Admissibility Requirements

a. Exhaustion of Domestic Remedies

17. Article 46.1(a) of the Convention establishes that admission by the Commission of a petition lodged before it is subject to show « that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law ». The Preamble of the Convention states that it accords »international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the

American states». Within the framework of international instruments designed to protect human rights, the requirement that domestic remedies be exhausted affords states the opportunity to correct a given situation internally before being subject to an international cause of action.

18. In the present case, the State has never alleged that domestic remedies were not exhausted. This position suggests that the State has in effect tacitly waived its right to use non-exhaustion of domestic law as an objection. On that point, the Inter-American Court has ruled that to be timely, consideration of non-exhaustion of local remedies as an objection must be invoked from the early stages of the procedural process. Failure to do so will raise the presumption that the state in question has implicitly renounced such recourse.[FN4] The IACHR thus considers that the requirement for exhaustion of domestic remedies has been met.

[FN4] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, Series C, N° 1, para. 88; Inter-American Court of Human Rights, Fairén Garbí and Solís Corrales Case, Preliminary Objections, Judgment of June 26, 1987, Series C, N° 2, para. 87; Inter-American Court of Human Rights, Godínez Cruz Case, Preliminary Objections, Judgment of June 26, 1987, Series C, N° 3, paragraph 90; Inter-American Court of Human Rights, Gangaram Panday Case, Preliminary Objections, Judgment of December 4, 1991, Series C, N° 12, para. 38; Inter-American Court of Human Rights, Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996, Series C, N° 25, para. 40. See also Inter-American Commission on Human Rights, 1996 Annual Report, Report n° 30/96, Case n° 10.897, Arnoldo Juventino Cruz (Guatemala), October 16, 1996, para. 35.

b. Deadline for the Lodging of a Petition

19. Article 46.1(b) of the Convention establishes that a petition must be lodged within a period of six months from the date on which the party alleging a violation of rights received notification of the final judgment rendered in his case. With respect to the petition currently under consideration, the IACHR has ruled that the State implicitly waived its right to resort to non-exhaustion of domestic remedies as an objection and thereby that the requirement enunciated under Article 46(1)(b) of the American Convention was met. The Convention nonetheless presents these requirements--exhaustion of all remedies under domestic law, and lodging of the petition within six months of final domestic judgment--as two distinct and independent criteria. The Inter-American Commission must consider whether the petition was submitted within a reasonable period. In that regard, the IACHR notes that Guy André François was arrested on December 19, 2001 and that, as of April 16, 2003, the authorities continued to hold him. The Commission notes further that the original petition was lodged on March 1, 2002. It therefore rules that the petition was indeed submitted within a reasonable period.

c. Duplication of Procedural Issues and Res Judicata

20. Neither of the parties has argued that substantive matters alleged in the petition were under consideration by another international body, nor that this petition duplicated the scope of a petition or communication previously examined by the Commission or any other international

forum. The IACHR is thus satisfied that the elements provided in Articles 46(1)(c) and 47(d) of the Convention are met.

d. Characterization of the Facts

21. In this instance, the petitioner has not explicitly invoked a specific provision of the American Convention, the American Declaration, or any other international instrument of relevance to the IACHR. Neither the Convention nor its Rules of Procedure stipulates that the petitioner(s) must specify precisely which articles they deem to have been violated. In establishing conditions for petitions to be granted admissibility, Articles 46 and 47 of the American Convention nowhere require such precision. Neither does Article 28 of the Rules of Procedure require the petitioner to identify specific articles under which rights have allegedly been infringed before petitions may be considered by the IACHR.

22. The Commission is of the opinion that--were they to be proved--the petitioner's contentions regarding the alleged illegal detention and the failure to duly execute a court-ordered release of the detainee might well constitute violations of the Rights to Personal Liberty (Article 7), to a Fair Trial (Article 8), and to Judicial Protection (Article 25) in conjunction with Article 1(1). All three rights are enshrined in the American Convention, as is the General Obligation to Respect Rights and guarantee their free and full exercise (Article 1(1)). For this reason, and pursuant to the provisions of Articles 47(b) and (c) of the American Convention, the Commission holds that it cannot reject the submitted petition.

V. CONCLUSIONS

23. Having examined the present petition, the Commission concludes that it has standing to consider it, and that the petitioner's allegations with respect to Articles 7, 8 and 25 of the Convention are admissible in accordance with the provisions of Articles 46 and 47 of the American Convention. The Commission concludes likewise to notify the parties of its decision, and to proceed with its publication and inclusion in the Annual Report to be submitted to the General Assembly of the OAS.

24. Based on the factual and legal arguments set forth above, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present petition admissible in light of the alleged violations it presents with respect to rights guaranteed by Articles 1(1), 7, 8 and 25 of the American Convention, pursuant to the provisions of Articles 46 and 47 of the same Convention.
2. To notify the Petitioner and the State of this decision.
3. To proceed with an examination of the merits of the case.
4. To publish this decision and include it in the Annual Report to be submitted 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 22nd day of the month of October, 2003. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Robert K. Goldman and Julio Prado Vallejo, Commissioners.