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File Number(s): Report No. 19/04; Petition 975/03
Title/Style of Cause: Ephraim Aristide v. Haiti
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Decided by: President: Jose Zalaquett;
First Vice-President: Clare Kamau Roberts;
Second Vice-President: Susana Villaran;
Commissioners: Evelio Fernandez Arevalo, Paulo Sergio Pinheiro, Freddy Gutierrez Trejo, Florentín Melendez.
Dated: 26 January 2004
Citation: Aristide v. Haiti, Petition 975/03, Inter-Am. C.H.R., Report No. 19/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 (2004)
Represented by: APPLICANTS: the Mouvement Chretien pour une Nouvelle Haiti and the Comite des Avocats pour le Respect des Libertes Individuelles
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I. SUMMARY

1. On August 18, 2003, the Mouvement Chrétien pour une Nouvelle Haïti (MOCHRENA), and on November 10, 2003, the Comité des Avocats pour le Respect des Libertés Individuelles (CARLI), referred petitions to the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission", "the Commission", or "the IACHR"), charging the Republic of Haiti (hereinafter "the State" or "Haiti") with 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"), on behalf of Mr. Ephraïm Aristide (hereinafter "the alleged victim").

2. The petitioners maintain that on April 28, 2003, Mr. Ephraïm Aristide was illegally arrested under false charges of illegal possession of weapons, by agents of the Haitian National Police at the Téléco local, in the city of Gonaïves. He was taken first to the Commissariat of Delmas, in the city of Port-au-Prince, and transferred after to the Pénitencier National, in the city of Port-au-Prince. The petitioners claim that Ephraïm Aristide was still detained there as of December 18, 2003, despite an order for his release from prison issued on May 7, 2003, by the Doyen of the Tribunal Civil of Gonaïves. The petitioners claim that Mr. Aristide is being kept in prison because he is a member of the Opposition, and because he is the brother of Belfont Artistide, a well-known independent journalist.

3. The State has not responded to the allegations of fact submitted by the petitioners, nor has it contested the admissibility of the petition analyzed here.

4. Pursuant to the provisions of Articles 46 and 47 of the American Convention, the IACHR holds that it will consider the petition received alleging violations of Articles 1(1), 7, 8 and 25 of the American Convention and will proceed to considering the merits of the case. The Commission likewise resolves to notify the parties of its decision, to publish it and include it in the Annual Report to be submitted to the General Assembly of the OAS.

II. PROCEEDINGS BEFORE THE COMMISSION

5. On August 18, 2003, the Mouvement Chrétien pour une Nouvelle Haïti (MOCHRENA) referred a petition to the Commission on behalf of Ephraïm Aristide. It was received by the IACHR on August 29, 2003, and registered as petition No. 693/03.

6. On November 10, 2003, the Comité des Avocats pour le Respect des Libertés Individuelles (CARLI) lodged as well a petition with the Commission on behalf of Ephraïm Aristide. It was received by the IACHR on November 17, 2003. The Commission acknowledged receipt on December 2, 2003, and asked the petitioners to urgently submit additional information dealing with the legal situation of Ephraïm Aristide.

7. On December 2, 2003, the IACHR transmitted the requested the State that it provide urgently information on the matter within a period of 15 days, particularly with regards to Mr. Aristide's legal situation, and to his detention, in order for the Commission to assess the possible application of Article 29 of the Commission's Rules.

8. On December 16, 2003, the Commission received additional information sent by the petitioners, in which they stated that the responsible authorities of the Gonaïves prison had been notified of the release order, and that Mr. Ephraïm was incarcerated for his political position.

9. Both the petition sent by the CARLI and the one referred by the MOCHRENA, were joined on December 18, 2003, in accordance with Article 29(1)(b) of the Rules of Procedure of the Commission, since they addressed similar facts, involved the same person and revealed the same pattern of conduct.

10. On December 18, 2003, the IACHR informed the State that petition No. 693/03 and petition No. 975/03 had been joined. Additionally, the Commission transmitted to the State the pertinent parts of the petition, and asked it to send a response to the petition within one month, in accordance with Article 30(4) of the Rules of Procedure of the Commission

11. On January 30, 2004, the Commission received a communication from the State, dated January 12, 2004, acknowledging receipt of the Commission's 18 December 2003 letter.

12. On February 13, 2004, the Commission received a letter from the petitioners, on which they informed that Mr. Ephraïm Aristide had been released on February 10, 2004. On February 20, 2004, the Commission transmitted to the State the pertinent parts of the letter sent by the petitioners.

III. POSITION OF THE PARTIES

A. The Petitioners

13. The petitioners claim that Ephraïm Aristide was arrested in Gonaïves on April 28, 2003, pursuant to a warrant forcing him to appear before the competent authorities (“mandat de comparution”) for illegal possession of firearm, and not pursuant to an arrest warrant.

14. It is alleged that after his apprehension, instead of being taken to the State Prosecutor of Gonaïves for questioning, as provided in the warrant, he was taken by the police to Port-au-Prince where he is detained since.

15. The petitioners further explain that on May 2, 2003, Mr. Aristide’s lawyers presented a Habeas Corpus action before the Court of First Instance of Gonaïves, which on May 6, 2003 ordered Mr. Aristide to be released. The petitioners claim that as of December 18, 2003, Mr. Aristide was still detained, notwithstanding the order.

16. The petitioners allege that these facts constitute violations of Article 7 of the Convention.

B. The State

17. The State has not answered the allegations of fact presented by the petitioners, nor has it contested the admissibility of the petitions submitted. It only provided the Commission on January 30, 2004 with an acknowledgement of receipt of the latter’s 18 December 2003 communication.

IV. ANALYSIS OF ADMISSIBILITY

A. Preliminary Considerations

18. As it has observed in other cases from Haiti[FN1], the IACHR notes that the State has at no point responded to the allegations of fact made by the petitioners, nor has it contested the admissibility of the present petition. The IACHR recalls that Haiti is responsible for the international obligations it assumed under the terms of the American Convention of Human Rights. Article 48(1)(a) of the Convention is of particular relevance in that it establishes procedures to be followed when a petition or communication is referred to the Commission. The IACHR shall "request information from the government of the state indicated as responsible for the alleged violations" and "(t)his information shall be submitted within a reasonable period..." The provisions of Article 48(1)(e) stipulate that the Commission "may request the states concerned to furnish any pertinent information." This language obliges States Parties to the Convention to provide the Commission with such information as it may require to analyze individual petitions.

[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. IACHR, Report N° 79/03, Case P139/02, Guy A. François (Haiti), paras. 10 et seq.

19. The IACHR stresses the importance it accords to the information it requests as it provides a basis for the Commission's decisions on submitted petitions. Indeed, the Inter-American Court of Human Rights has affirmed that cooperation of 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.

20. 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 acknowledgment of the truth of the allegations, so long as the contrary is not indicated by 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 system of human rights order to facilitate their efforts to protect 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*

21. Petitioners are 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 the general obligation to respect rights which it subscribed under Article 1 of the American Convention. The Republic of Haiti has been a party to the American Convention since it deposited its instrument of accession thereto on

September 27, 1977. The Commission thus holds that it has the requisite competence *ratione personae* to adjudicate the petition before it.

22. The Commission considers that it is competent *ratione loci* to consider the petition, as the alleged violations were committed within the territory of a state party to this treaty.

23. The Commission likewise considers that it is competent *ratione temporis* since the petition relates to acts allegedly committed in 2003 when the obligations assumed by the State following its subscription to the American Convention were in effect.

24. Finally, the Commission holds that it has competence *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), in conjunction with State's general obligation to respect rights (Article 1(1)) guaranteed under the American Convention on Human Rights.

C. Other Admissibility Requirements

1. Exhaustion of Domestic Remedies

25. Article 46.1(a) of the Convention establishes admissibility of a petition referred to the Commission as subject to the condition "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 promote human rights, the standard that requires the prior exhaustion of domestic legal remedies affords the states an opportunity to redress the situation locally before being subject to an international cause of action.

26. In the present petition, the petitioners invoke Article 46(2)(b) of the Convention and explained that the victim was unable to avail himself of remedies under domestic law since--according to them--the warrant dated May 6, 2003 was never executed in accordance with the law. They further alleged that habeas corpus is the only remedy that Ephraïm Aristide was in a position to exhaust. On this matter, the petitioners explained that Ephraïm Aristide's legal counsel presented a Habeas Corpus action on May 2, 2003, that the competent court ordered Ephraïm Aristide's release on May 6, 2003 and that this order was never executed effectively. The petitioners state that as of December 18, 2003, Ephraïm Aristide is still detained.

27. In this matter, the State did not argue the failure to exhaust domestic remedies. It can thus be presumed that the State has tacitly waived a possible objection of non-exhaustion of domestic remedies.[FN4] In this regard, the Inter-American Court has stated that, "the objection asserting the non-exhaustion of domestic remedies, to be timely, must be made at an early stage of the proceedings by the State entitled to make it, lest a waiver of the requirement be presumed." [FN5] The IACHR concludes that this requirement was met. In conclusion, the IACHR finds that the condition of exhaustion of domestic remedies has been fulfilled.

[FN4] See Inter-American Court of Human Rights, Velásquez Rodríguez case, Preliminary Objections, Judgment of June 26, 1987, para. 88. See also: IACHR Report N° 30/96, Case 10.897, Guatemala, October 16, 1996, para. 35 and Report N° 53/96, Case 8074, Guatemala, December 6, 1996. 1996 Annual Report of the IACHR. And Report N° 25/94, Case 10.508, Guatemala, September 22, 1994, page. 52. 1994 Annual Report of the Inter-American Commission on Human Rights.

[FN5] Inter-American Court of Human Rights, Velásquez Rodríguez case, Preliminary Objections, Judgment of June 26, 1987, Series C, N° 1, para. 8; Fairén Garbi and Solís Corrales case, Preliminary Objections, Judgment of June 26, 1987, Series C, No. 2, para. 87; Gangaram Panday case, Preliminary Objections, Judgment of December 4, 1991, Series C, N° 12, para. 38; and Loayza Tamayo case, Preliminary Objections, Judgment of January 31, 1996, Series C, N° 25, para. 40.

2. Deadlines for Lodging a Petition

28. 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. As to the petition currently under examination, the IACHR ruled that the State implicitly waived its right to resort to non-exhaustion of domestic remedies as an objection. The requirement enunciated under Article 46(1)(b) of the American Convention is thereby satisfied. But it is worth noting that the Convention nonetheless presents the two requirements--exhaustion of all remedies under domestic law, and submission of a petition within six months of final domestic judgment--as two distinct and independent criteria. The IACHR must determine whether the petition was lodged within a reasonable period. It notes that Ephraïm Aristide was arrested on April 28, 2003, and had not been released as of 18 December 2003. The Commission notes additionally that the original petition was lodged on August 29, 2003. Taking the particular facts of this petition into consideration, the Commission therefore rules that the petition was indeed referred within a reasonable period.

3. Duplication of Proceedings and Res Judicata

29. The petitioners indicated that events alleged in the present petition have been referred to the IACHR alone. The State did not allege that the petition was under consideration by another international body, nor that it duplicated a petition or communication previously submitted to the Commission or any other international forum. The IACHR is thus satisfied that the conditions set forth in Articles 46.1(c) and 47(d) of the Convention are met.

4. Characterization of the alleged facts

30. Articles 47(b) and (c) of the Convention and Articles 34(a) and (b) of the Commission's Rules of Procedure require the Commission to consider a petition to be inadmissible if the petition does not state facts that tend to establish a violation of the rights guaranteed by the

Convention or other applicable instruments, or if the statements of the petitioner or of the state indicate that the petition is manifestly groundless or obviously out of order.

31. The petitioners in this case expressly invoke the violation of Article 7 of the American Convention, the particulars of which are summarized in Part III.A above. The State has failed to provide any observations or information on the violations alleged by the petitioners.

32. Based upon the information provided by the petitioners, and without prejudging the merits of the matter, the Commission finds that the petitioners' petition contains factual allegations that, if proved to be true, tend to establish violations of the rights guaranteed by the Article 7 Convention. The Commission, by virtue of the principle of *iura curia novit*, also considers that the facts alleged, if proved to be true, tend to establish violations of the right to judicial protection and to a hearing with due guarantees, protected by Article 8 and 25 in conjunction with Article 1(1) of the Convention. It also finds that the statements of the petitioners are not on the information provided manifestly groundless or obviously out of order. Consequently, the claims in the petition are not barred as inadmissible under Article 47(b) and 47(c) of the Convention and Article 34(a) and (b) of the Commission's Rules of Procedure.

V. CONCLUSIONS

33. Having examined the present petition, the Commission concludes that it is competent to consider it. It finds that petitioners' allegations of violations under Articles 7, 8, and 25 of the Convention in conjunction with Article 1(1) 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 this decision, and to proceed with its publication and inclusion in the Annual Report it will submit to the General Assembly of the OAS.

34. Based on the foregoing arguments of fact and of law set forth above, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES TO:

1. Declare the present case admissible in respect of Articles 7, 8, and 25 of the American Convention, in conjunction with Article 1(1) and in accordance with the provisions of Articles 46 and 47 of the Convention.
2. Notify the petitioners and the State of the present decision.
3. Proceed with the examination of the merits of the case.
4. 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 Washington, D.C., on the 26th of January, 2004. (Signed): José Zalaquett, President; Clare Kamau Roberts, First Vice-President; Susana Villarán, Second Vice-President; Commissioners

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