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Title/Style of Cause: Pierre Luckner v. Haiti
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Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioners: Evelio Fernandez Arevalo, Paulo Sergio Pinheiro, Freddy Gutierrez Trejo, Florentin Melendez.
Dated: 26 February 2004
Citation: Luckner v. Haiti, Petition 12.301, Inter-Am. C.H.R., Report No. 17/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 (2004)
Represented by: APPLICANTS: Carlos Hercule and Patrick Daniel Frantz Laurent
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I. SUMMARY

1. On June 5, 2000, Carlos Hercule and Patrick Daniel Frantz Laurent of the Toussaint Louverture Center for Human Rights (hereinafter "the petitioners") referred a petition dated January 21, 2000 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 September 29, 2003, the petitioners also alleged a violation of the Right to Equal Protection (Article 24).

2. The petitioners maintain that on October 16, 1998, Pierre Luckner--attorney and former examining magistrate of the Court of First Instance of Port-de-Paix--was arrested by policemen and taken to police headquarters in Pétion-Ville on October 18, 1998. There he remained until December 24, 2000, despite two orders mandating his release from prison dated October 17, 1998 and June 14, 1999, issued respectively by the Court of First Instance of Port-de-Paix and the Court of First Instance of Port-au-Prince.

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 January 21, 2000, Carlos Hercule and Patrick Daniel Frantz Laurent of the Toussaint Louverture Center for Human Rights referred a petition to the Commission. It was received by the IACHR on June 5, 2000. On July 6, 2000, the IACHR forwarded the petition to the State requesting that it provide information on the matter within a period of 90 days, particularly any that might assist the Commission in determining whether all remedies under domestic law had been exhausted.

6. On June 28, 2001, the Commission again sent the State a copy of the petition and reiterated its request for information to be presented within a period of 30 days.

7. On December 13, 2001, the IACHR asked both the petitioners and the State to provide updated information on Mr. Luckner's situation within one month. On March 22, and again on September 8, 2003 the request was reiterated both to the petitioners and to the State.

8. On October 2, 2003, the IACHR received from the petitioners a communication dated 29 September containing additional information dealing with the case. On October 15th 2003, the Commission transmitted to the State the pertinent parts of this communication, requesting the State's observations on the matter within a period of one month.

9. On October 14, 2003, the IACHR received from the petitioners a communication containing additional information dealing with the case. The Commission transmitted to the State the pertinent parts of this communication on January 13, 2004 requesting the State's observations on the matter within a period of one month.

10. On November 25, 2003, the State acknowledged receipt of the Commission's October 15, 2003 communication.

III. POSITION OF THE PARTIES

A. Position of the Petitioners

11. The petitioners allege that Pierre Luckner--attorney and former examining magistrate of the Court of First Instance of Port-de-Paix--was arbitrarily arrested in Port-de-Paix on October 16, 1998 by agents of the National Police acting on a warrant (mandat d'amener) dated February 6, 1998 which allegedly implicates Pierre Luckner in the January 1982 assassination of Richard Brisson. The petitioners stress that the very morning after his arrest, attorneys for Pierre Luckner lodged a petition impugning its legality. The Chief Magistrate, dean of the Court of First Instance of Port-de-Paix, held that the February 6, 1998 warrant was unenforceable and so

ordered the immediate release of Pierre Luckner from prison. A summary order dated October 17, 1998 was issued to that end. Notwithstanding the order, Pierre Luckner was transferred to police headquarters in Pétion-Ville on October 18, 1998 and there was presumably taken into custody.

12. On June 14, 1999 Messrs. Carlos Hercule and Patrick Daniel Frantz Laurent, Pierre Luckner's new counsel, lodged a writ of Habeas Corpus before the Court of First Instance of Port-au-Prince under Article 26-1 of the Constitution of the Republic of Haiti. On the same day, Judge Patrick Pierre Fils (to whom the Chief Magistrate assigned the case) ruled that the arrests and detention of Pierre Luckner were arbitrary and illegal acts, and ordered his immediate release. The petitioners declare that despite the court order issued--served on the Government Commissioner by bailiff on June 21, 1999, and later on January 25, 2000--Pierre Luckner was still not released. Information provided by the petitioners dated January 21, 2000 indicated that at that time Pierre Luckner remained imprisoned. The petitioners point out that there exist in Haiti several similar cases alleging the State's failure to execute summary orders of release from prison. They also mention that then- Government Commissioner (Commissaire de gouvernement) Jean Auguste Brutus met with Pierre Luckner's attorneys nearly a dozen times to discuss the non-execution of Mr. Luckner's release order dated June 14, 1999, to no avail.

13. According to the additional information submitted by the petitioners on September 29, 2003, the Minister of Justice of the time, Mr. Pierre Max Antoine, presented a motion before the Supreme Court (Cour de Cassation) on 12 November 1998, asking the Court to order that Pierre Luckner's case be heard by the courts of Port-au-Prince rather than those of Port-de-Paix, in accordance with Article 429 of the Code of Criminal Procedure (Code d'instruction criminelle). On May 4, 1999, the Court rendered its decision stating that the court of Port-de-Paix no longer retained jurisdiction over the matter. The petitioners state that this court order, as well as the two other previously mentioned, were never executed. According to the petitioners additional information, Pierre Luckner was taken by police officers to the Police Station of Port-de-Paix on September 22, 2000. They finally state that on the evening of December 24, 2000, the Departmental Director called in from Port-au-Prince ordering the Port-de-Paix Police Station Chief to release Mr. Pierre Luckner because he had received instructions accordingly. According to the petitioners, the Mr. Pierre Luckner was not informed of the legal reasons nor of a written order for his release.

B. Position of the State

14. The State has not answered the allegations of fact presented by the petitioners, nor has it contested the admissibility of the petition here analyzed. It only provided the Commission on November 25, 2003 with an acknowledgement of receipt of the latter's 15 October 2003 communication.

IV. ADMISSIBILITY

A. Preliminary Considerations

15. 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, Haiti, paras. 10 et seq.

16. 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.

17. 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. Competence of the Commission *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae*

18. 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.

19. 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.

20. The Commission likewise considers that it is competent *ratione temporis* since the petition relates to acts allegedly committed in 2001 when the obligations assumed by the State following its subscription to the American Convention were in effect.

21. Finally, the Commission holds that it has competence *ratione materiae* because the case 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), the Right to Equal Protection (Article 24), and the Right to Judicial Protection (Article 25).

C. Other Admissibility Requirements

1. Exhaustion of Domestic Remedies

22. 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.

23. In the present case, petitioners invoke Article 46(2)(b) of the Convention to explain, first, that the victim was unable to avail himself of remedies under domestic law since--according to them--the warrant dated February 6, 1998 was never followed by suit, thus no judgment could be rendered. They observe, second, that habeas corpus is the single remedy Pierre Luckner was in a

position to exhaust. In that sense, they recall the first habeas writ lodged by counsel on October 17, 1998, responding to which the Court of First Instance of Port-de-Paix ordered the victim's immediate release. The order went unexecuted. Rather than freed, Pierre Luckner was instead transferred to the Port-de-Paix police headquarters. Petitioners state that a second writ of habeas corpus was subsequently filed with the Court of First Instance of Port-au-Prince. Again an order issued mandating Mr. Luckner's immediate release. A court bailiff served the order on the Government Commissioner on June 21, 1999 and later on January 25, 2000. Neither time was the order executed. According to the additional information submitted by the petitioners on September 29, 2003, the Minister of Justice of the time, Mr. Pierre Max Antoine, presented a motion before the Supreme Court (Cour de Cassation) on November 12, 1998, asking the Court to order that Pierre Luckner's case be heard by the courts of Port-au-Prince rather than those of Port-de-Paix, in accordance with article 429 of the Code of Criminal Procedure (Code d'instruction criminelle). On May 4, 1999, the Court rendered its decision stating that the court of Port-de-Paix no longer retained jurisdiction over the matter. The petitioners state that this court order, as well as the two other previously mentioned, were never executed and Pierre Luckner remained in detention until December 24, 2000.

24. In this case the State did not argue the failure to exhaust domestic remedies and so a tacit waiver of the objection of non-exhaustion of domestic remedies is presumed.[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. Timeliness of the Petition

25. 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 Pierre Luckner was arrested on October 16, 1998, and released on December 24, 2000. The Commission notes additionally that the original petition was lodged on January 21, 2000. It therefore rules that the petition was indeed referred within a reasonable period.

3. Duplication

26. 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

27. 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.

28. The petitioners in this case expressly invoke the violation of Articles 7, 8, 24 and 25 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 Petitioner.

29. Based upon the information provided by the Petitioner, and without prejudging the merits of the matter, the Commission finds that the Petitioners' petition contains factual allegations, that, if proved, tend to establish violations of the rights guaranteed by Articles 7, 8 and 25 of the American Convention, and 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. Nevertheless, the original petition submitted also contained allegations of violations of Article 24 of the Convention. The petitioners did not provide any factual or legal argumentation to the effect that this violation occurred. Consequently, after having analyzed the facts described in the petition, the Commission concludes that the latter does not state facts that tend to establish a violation of the right guaranteed by Articles 24 of the Convention.

V. CONCLUSIONS

30. Having examined the present petition, the Commission concludes that it is competent to consider it. It finds that the petition is admissible with respect to petitioners' allegations of violations of Articles 7, 8 and 25 of the Convention in conjunction with Article 1(1) are admissible, and that the petition is inadmissible with respect to petitioners' allegations of violations of Article 24 of the Convention, in accordance with the provisions of Articles 46 and 47 of the American Convention. The Commission concludes likewise to advise 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.

31. 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. Declare the present case inadmissible in respect of Article 24 of the American Convention, in accordance with the provisions of Articles 46 and 47 of the Convention.
3. Notify the petitioners and the State of the present decision.
4. Proceed with the examination of the merits of the case.
5. 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 February, 2004. (Signed): José Zalaquett, President; Clare Kamau Roberts, First Vice-President; Susana Villarán, Second Vice-President; Commissioners Evelio Fernández Arévalo, Paulo Sergio Pinheiro, Freddy Gutiérrez Trejo, and Florentín Meléndez.