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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 58/04; Petition 844/03
Session: Hundred Twenty-First Regular Session (11 – 29 October 2004)
Title/Style of Cause: Lorenzo Enrique Copello Castillo, Barbaro Leodan Sevilla Garcia and Jorge Luis Martinez v. Cuba
Doc. Type: Decision
Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioners: Evelio Fernandez Arevalos, Paulo Sergio Pinheiro, Florentin Melendez.
Dated: 14 October 2004
Citation: Copello Castillo v. Cuba, Petition 844/03, Inter-Am. C.H.R., Report No. 844/03, OEA/Ser.L/V/II.122, doc. 5 rev. 1 (2004)
Represented by: APPLICANTS: Claudio Grossman, Helen Jimenez, Courtney Nogar, Laura W. Phillips and Felipe Eduardo Sixto
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I. SUMMARY

1. On October 10, 2003, the Inter-American Commission on Human Rights (hereinafter “the Commission”, “Inter-American Commission”, or the “IACHR”) received a petition presented by Messrs. Claudio Grossman, Helen Jiménez, Courtney Nogar, Laura W. Phillips, and Felipe Eduardo Sixto (hereinafter “the petitioners”). Said petitions argue that the Republic of Cuba (hereinafter “Cuba” or the “State”) is guilty of failure to comply with its obligations under Articles I (Right to life, liberty, and personal security), XVIII (Right to a fair trial), and XXVI (Right to due process of law) of the American Declaration of the Rights and Duties of Man[FN1] (hereinafter “the Declaration” or “American Declaration”) by trying and sentencing to death without due process of law, and subsequently executing, Lorenzo Enrique Copello Castillo, Bárbaro Leodán Sevilla García, and Jorge Luis Martínez Isaac (hereinafter the “alleged victims”).

[FN1] Adopted by the Ninth International Conference of American States, Bogotá, Colombia, 1948.

2. The State has not responded to any of the Commission’s requests for information regarding the admissibility of this case since the Commission began processing it. Based on its analysis of facts and law, and pursuant to Article 39 of its current Rules of Procedure,[FN2] the

Commission considers that the petition meets the formal requirements for admissibility established in Articles 28 through 37 of its Rules of Procedure and concludes that the instant case is admissible. The Commission also resolves to publish this report in its Annual Report to the General Assembly of the OAS and to notify both parties.

[FN2] Article 39 states that “the facts alleged in the petition, the pertinent parts of which have been transmitted to the State in question, shall be presumed to be true if the State has not provided responsive information during the maximum period set by the Commission under the provisions of Article 38 of these Rules of Procedure, as long as other evidence does not lead to a different conclusion.”

II. PROCEEDINGS BEFORE THE COMMISSION

3. On February 18, 2004, the IACHR began processing petition No. 844/2003, in accordance with its Rules of Procedure in force since May 1, 2001, and transmitted the pertinent parts of the petition to the State, giving it two months to present observations and relevant information regarding the matters that had prompted said communication. To this day, the State has not presented the observations requested by the Commission.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

1. Factual allegations of the petitioners

4. The petitioners allege that, on April 2, 2003, 11 Cuban citizens, including the alleged victims, hijacked a ferry going from La Havana to Regla, with 40 people on board. The petitioners indicate that the intention of the hijackers was to take control of the ferry and take it to the United States of America. They add that when the ferry ran out of fuel 45 kilometers from the Cuban coast, Cuban coastguards proceeded to tow it back to the island. During the journey, the group maintained control of the boat.

5. The petitioners say that while they were being towed, the group of hijackers threatened to murder the passengers they were holding hostage, including two French women tourists. They added that the situation ended without violence when the security forces encouraged the passengers to throw themselves overboard and then captured the hijackers. They state that, according to an official note, the authorities reported that “all those who had been on board were rescued and saved without so much as a shot or a scratch.”[FN3]

[FN3] Petition document, page 5.

6. The petitioners point out that the hijackers, including the alleged victims, were tried by the Court for Crimes against State Security of the People's Court of Havana. The Court had applied the specially expedited summary proceeding contemplated in Articles 479 and 480 of the Criminal Procedure Act. The petitioners add that the trials took place From April 5 to 8, 2003.

7. According to the petitioners, at the end of the expedited summary trial, the alleged victims were sentenced to death for violating the "Cuban Law against Acts of Terrorism" of December 2001. They add that said law was wrongfully applied, because for the legally defined type of offenses committed by the alleged victims, the law prescribes imprisonment, not the death penalty. They add that the defense attorneys for the victims were court-appointed and that "the extremely short duration of the proceedings reveals that there was not enough time to prepare an appropriate defense"[FN4] and that "the convictions do not mention arguments adduced by the defense and are repeatedly based on juridical arguments." [FN5] According to the petitions these facts would constitute violations of Articles I, XVIII, and XXVI of the American Declaration.

[FN4] Ibid. p.4.

[FN5]. Ibid.

8. According to the petitioners, the alleged victims appealed against their death sentences to the Supreme People's Court, Cuba's highest judicial organ. This Court, according to the petitioners, ratified the sentences in a one-day trial. The petitioners add that in keeping with current laws in Cuba, these death sentences were submitted for consideration by the Council of State, which proceeded to ratify them, condemning the alleged victims to death.

9. The petitioners also say that in the early morning of April 11, 2003, following the decision handed down by the Council of State, the sentences were carried out and the alleged victims executed.

2. Legal allegations of the petitioners

10. As for the admissibility of the petition, the petitioners maintain that the IACHR has jurisdiction to examine petitions that indicate presumed violations by Cuba of human rights proclaimed in the American Declaration. They point out that said jurisdiction is based on the OAS Charter, which was duly ratified by Cuba, and by the Rules of Procedure of the Inter-American Commission.

11. The petitioners maintain that the Eighth Meeting of Consultation of Ministers of Foreign Affairs barred the Government of Cuba from participating in the inter-American system, but that said decision "did not exclude the Cuban people from the protection afforded by applicable human rights provisions, especially the American Convention [...]"[FN6], nor did it preclude monitoring by the Inter-American Commission.

[FN6] Ibid., p. 1.

12. The petitioners argue that Cuba supported the establishment of the mechanism for inter-American monitoring of human rights by signing Resolution VIII of the Fifth Meeting of Consultation of Ministers of Foreign Affairs, which instituted the IACHR as the organ “charged with furthering respect for such rights.”[FN7]

[FN7] Petition document, page 3, citing Organization of American States, Resolution VIII of the Fifth Meeting of Consultation of Ministers of Foreign Affairs, Santiago, Chile, 1959.

13. With respect to exhaustion of domestic remedies, as required by Article 31(1) of the Rules of Procedure of the Commission, the petitioners indicate that there are no remedies pending exhaustion in Cuba in the instant case. They also argue that the petition met the deadline for presentation of petitions referred to in Article 32(1) of the Rules of Procedure of the Commission. In that connection, they point out that “Judgment No. 11/2003 of the Court for Crimes against State Security of the People’s Court of Havana—which condemned the [alleged] victims of this petition to death—was handed down on April 8, 2003. The sentence was ratified by the Council of State on April 10 and the summary executions carried out on April 11 [, 2003].”[FN8]

[FN8] Ibid.

14. The petitioners state further that the petition was not submitted for settlement to any other international organization of which Cuba is a member and therefore satisfies the requirement established in Article 33(1)(a) of the Commission’s Rules of Procedure.

15. The petitioners argue that this petition describes facts that, once proved, would constitute a violation of rights contained in Articles I, XVIII, and XXVI of the American Declaration.

b. Position of the State

16. Cuba did not reply to the Inter-American Commission’s request for information, conveyed in a note of February 18, 2004, which also requested Cuba’s observations regarding the admissibility of the petition. The Commission confirms that the deadlines, established in the Rules of Procedure of the Commission, for the State to provide information regarding this petition have long since passed without Cuba querying the facts stated in the petition.

IV. ANALYSIS OF JURISDICTION AND ADMISSIBILITY

A. Jurisdiction

17. Cuba has been a state party to the Organization of American States (hereinafter the "OAS") since July 16, 1952, the date on which it deposited its instrument of ratification of the OAS Charter. The Commission has maintained that the Cuban State "is juridically responsible to the Inter-American Commission in matters that concern human rights" since "it is party to the first international instruments established in the American hemisphere to protect human rights" and because under Resolution VI of the Eighth Meeting of Consultation[FN9] it was "the present Government of Cuba that was excluded from the inter-American system, and not the Cuban State." [FN10] On that matter, the IACHR's position has been that:

[...] when it excluded the Cuban Government from the inter-American system, it was not the intention of the Organization of American States to leave the Cuban people without protection. That Government's exclusion from the regional system in no way means that it is no longer bound by its international human rights obligations.

[FN9] The complete text of Resolution VI can be found in the "Eighth Meeting of Consultation of Ministers of Foreign Affairs, Serving as Organ of Consultation in Application of the Inter-American Treaty of Reciprocal Assistance," Punta del Este, Uruguay, January 22 – 31, 1962, Documents of the Meeting," Organization of American States, OEA/Ser.F/II.8, doc. 68, pp. 17-19.

[FN10] IACHR, Annual Report 2002, Chapter IV, Cuba, paragraphs 3-7. See also IACHR, Annual Report, Chapter IV, Cuba, paragraphs 3-7. IACHR, The Situation of Human Rights in Cuba, Seventh Report, 1983, paragraphs 16-46.

18. The Commission's jurisdiction derives from the OAS Charter, the Commission's Statute, and its Rules of Procedure. According to the Charter, all member states undertake to respect the fundamental rights of individuals, which in the case of states that are not party to the Convention are those established in the American Declaration, which is for these States a source of international obligations.[FN11] The Commission's Statute requires it to pay particular attention to the observance of the human rights referred to in Articles I (right to life, liberty, and personal security), XVIII (right to a fair trial), and XXVI (right to due process of law) of the American Declaration in exercising its powers in relation to countries that are not parties.[FN12] Finally, Article 49 of its Rules of Procedure states that the Commission shall receive and examine any petition that contains a denunciation of alleged violations of the human rights set forth in the American Declaration in relation to states that are not parties to the American Convention on Human Rights (hereinafter the "American Convention"). Consequently, the IACHR has competence *ratione materiae*, because the petition contains a denunciation of violations of human rights set forth in the American Declaration of March 2, 1948.[FN13]

[FN11] 11. I/A Court H.R., Advisory Opinion OC-10/89, of July 14, 1989, Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights, Ser. A No. 10, paragraphs 43-46.

[FN12] Statute of the IACHR, Article 20.a.

[FN13] See, e.g., IACHR, Gary T. Graham, now known as Shaka Sankofa, Report N° 97/03, Case 11.193, United States, December 29, 2003. IACHR, Statehood Solidarity Committee, Report N° 98/03, Case 11.204, United States, December 29, 2003. IACHR, Armando Alejandre Jr., Carlos Costa, Mario De La Peña and Pablo Morales, Report N° 86/99, Case 11.589, Cuba, September 29, 1999. IACHR, Victims of the Tugboat “13 de Marzo” Report N° 47/96, Case 11.436, Cuba, October 16, 1996.

19. For the above reasons, the Commission considers that it has competence *ratione loci* to admit the petition since it alleges violations on Cuban territory of rights protected by the American Declaration.

20. Furthermore, the Commission has competence *ratione temporis* to examine the petition, since it is based on facts that allegedly occurred as of 1997, when the obligations assumed by the State were binding according to the OAS Charter and the American Declaration.

21. Accordingly, the Commission has competence *ratione personae* to examine the petition. The petitioners are empowered by Article 23 of the Rules of Procedure of the Commission to lodge petitions with the IACHR. The alleged victims named in the petition are individuals, whose human rights are protected under the American Declaration.

B. Requirements for Admissibility

1. Exhaustion of domestic remedies

22. The Rules of Procedure of the Inter-American Commission stipulate that “in order to decide on the admissibility of a matter, the Commission shall verify whether the remedies of the domestic legal system have been pursued and exhausted in accordance with the generally recognized principles of international law.”[FN14]

[FN14] Rules of Procedure of the Inter-American Commission on Human Rights, Article 31.1.

23. Concerning this admissibility requirement, the Inter-American Court has already ruled that it is a mechanism that “allows the State to resolve the problem under its internal law before being confronted with an international proceeding. This is particularly true in the international jurisdiction of human rights [...]”[FN15]. Likewise,

“[t]he generally accepted principles of international law, to which the rule of exhaustion of domestic remedies refers, indicate, first, that this is a rule that may be waived, either expressly or by implication, by the State having the right to invoke it, as this Court has already recognized [see Viviana Gallardo et al. (Judgment of November 13, 1981), No. G 101/81. Series A, para. 26]. Second, the objection asserting 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.[FN16]

[FN15] I/A Court H.R., Velásquez Rodríguez case, Judgment of July 29, 1988, Series C No. 4, paragraph 61.

[FN16] I/A Court H.R., Case of Herrera Ulloa. Judgment of July 2, 2004. Series C No. 107, par. 81; I/A Court H.R., Case of the Mayagna (Sumo) Awas Tigni Community. Preliminary Objections. Judgment of February 1, 2000. Series C No. 66, par. 53; I/A Court H.R., Case of Loayza-Tamayo. Preliminary Objections. Judgment of January 31, 1996. Series C No. 25, par. 40; and Case of Castillo Páez. Preliminary Objections. Judgment of January 30, 1996. Series C No. 24, par. 40; I/A Court H.R., Case of Velásquez Rodríguez, Judgment on Preliminary Objections, June 26, 1987, Series C No. 1, par. 88.

24. Similarly, referring to the early stages of the procedure, the Inter-American Court has ruled that they comprise “the stage for examining the admissibility of processing by the Commission, that is to say, prior to any consideration of the merits [...]”[FN17]

[FN17] I/A Court H.R., Case of Herrera Ulloa, Judgment of July 2, 2004, Series C No. 107, paragraph 81.

25. In the instant case, the petitioners argue that domestic remedies were all exhausted. For its part, the State has not replied to the arguments of the petitioners with respect to prior exhaustion of domestic remedies. For this reason, the Commission considers that in this case the State has tacitly refrained from raising the exhaustion of domestic remedies objection. The Commission takes note of the fact that, according to information provided by the petitioners, the Council of State of Cuba issued a definitive decision on the subject addressed in this petition.

26. For the above reasons, the Commission decides that the instant case complies with the requirement of Article 31.1 of its current Rules of Procedure.

2. Deadline for presentation

27. The Rules of Procedure of the Commission establish that “the Commission shall consider those petitions that are lodged within a period of six months following the date on which the alleged victim has been notified of the decision that exhausted the domestic remedies.[FN18] In the present petition, the Commission has established the tacit waiver by the Cuban State of its right to object to failure to exhaust domestic remedies, which means that the requirement under Article 32.1 of the American Convention is not applicable. In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.[FN19]

[FN18] Rules of Procedure of the Inter-American Commission on Human Rights, Article 32.1
[FN19] Ibid. Article 32.2.

28. In the instant case, the petition was presented on October 10, 2003, six months after the decision of Cuba's Council of State of April 10, 2003. Consequently, the Commission considers that the requirement in Article 32.2 of its Rules of Procedure was met in the instant case, as the petition was submitted within a reasonable period of time.

3. Duplication of procedures and res judicata abroad

29. It is not apparent from the file that the subject of the petition is pending in another international proceeding for settlement or is substantially the same as one previously studied by this or another international organization. Therefore, the requirements established by Article 33 of the Rules of Procedure of the Commission must be met.

4. Characterization of the facts alleged

30. The Commission considers that the allegations of the petitioners concerning the alleged violation of the rights to a fair trial and due process of law could constitute a violation of rights protected under Articles 1, XVIII, and XXVI of the American Declaration.

V. CONCLUSIONS

31. The Commission concludes that the case is admissible and that the Commission is competent to examine the petitioners' claim of an alleged violation of Articles I, XVIII and XXVI of the American Declaration, in accordance with Articles 28-37 and 39 of the Rules of Procedure of the Commission.

32. Based on the foregoing arguments of fact and of law, and without prejudice to the merits of this case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the petition in this case admissible, with respect to Articles I, XVIII, and XXVI of the American Declaration.
2. To notify the State and the petitioners of this decision.
3. To begin looking into the merits of the question.
4. To publish this decision and to include it in its Annual Report, which will be presented to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 14th. day of the month of October 2004. Signed: José Zalaquett,

President; Clare K. Roberts, First Vice-president; Susana Villarán, Second Vice-president; Evelio Fernández Arévalos, Paulo Sérgio Pinheiro and Florentín Meléndez, Commissioners.

Washington, D.C., October 19, 2004

Dissenting and reasoned vote

Petition 844/03

Admissibility

Freddy Gutiérrez

I hereby declare and explain my dissenting vote regarding the decision by the Inter-American Commission on Human Rights to admit petition 844/03, which refers to occurrences that apparently took place in the Republic of Cuba.

It is unconceivable that deeds expounded in an abstract, general, and vague manner, recounted by one side only and expressing a single, exclusive point of view, with no possibility, past or present, of being contested, for which the sources are dubious, and which are, one should add, taken from media that systematically oppose the right of the Republic of Cuba freely to determine its own destiny as well as its right not to accept outside interference, should induce the Commission to declare a case admissible without it meeting the requirements stipulated in the American Convention.

The legal basis on which the description of the deeds rests is flimsy and insubstantial, particularly since it invokes the American Declaration of 1948 and the Rules of Procedure of the IACHR. There is no universally accepted doctrine nor peaceful jurisprudence regarding the Declaration, given that, by definition, it involves adherence to certain values and general principles, which are important but contained in imperfect norms that establish no punishments, which therefore relativizes the greater or lesser commitment of states in accepting the enunciation of the rights enshrined therein. The Declaration has played an enormously valuable part in the history of civilization, and its contents have to concur with the American Convention, but it is not licit to use it circumstantially against a state that has even been denied the possibility of accounting for its departure from or approximation to the values it once ratified.

Moreover, as I have consistently stated, the operating Rules of Procedure of the Commission constitute by their nature a sub-legal act, which is binding upon the Commissioners in the performance of their tasks and functions, but which may never be construed as an international norm based on *pacta sunt servanda* and therefore to be applied obligatorily by the states parties to the American Convention. Indeed, it is inexplicable and incomprehensible in the interpretation of law that rules of procedure, resolutions, or instructions of a sub-legal nature could create duties, rights, and even punishments for states that have not agreed to their contents. It is necessary to emphasize that the states are parties to the American Convention and to the Commission's Statute, and are therefore bound by what they agreed to, but they cannot be bound by what they legitimately did not agree to. This is the case of the Rules of Procedure, the contents of which

were not examined, discussed, or ratified by the member states of the hemispheric Organization. This applies with even greater force to the Republic of Cuba, which was not allowed to be a state party to the Convention, or to discuss the Statute, and has no inkling of the existence of Rules of Procedure that might, apparently, be the basis for some sanction against it.

Perhaps the most serious misapprehension is the failure to refer to the expulsion of the Republic of Cuba agreed upon by the Organization of American States in 1962. Since then, Cuba cannot validly nominate anyone to a position of responsibility within the hemispheric Organization, have either voice or vote, elect or be elected, or exercise any right at all. It is therefore an aberration in fact and in law to seek to scrutinize and even condemn the acts of one who has been denied the exercise of his basic powers, of the rights that are intrinsic to a people, and the rights that are also intrinsic to the man and women who constitute that people.

It is also contrary to any sound interpretation of the law to seek to initiate, pursue, and issue a condemnation of someone who cannot defend himself. It is contrary to the rules of due process contained in the American Convention, the pillar upon which the Commission stands, that the Republic of Cuba, which is not cognizant of the contents of any notification, cannot make itself heard, cannot argue in its defense, cannot contradict the statements of someone calling himself a party, and which has even been denied the right to be a counterparty, should be condemned. I should not omit the fact that this act of the Commission concerns admissibility or inadmissibility of a complaint. The necessary condition for admitting it or not is that the complaint exists or may exist, and in this case the Republic of Cuba cannot even be a complainant; ergo, there cannot strictly be a complaint in the instant case, nor any admission or rejection of admission.

The foregoing arguments explain my dissenting vote in the matter at hand.