

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 68/05; Petition 12.271
Session: Hundred Twenty-Third Regular Session (11 – 28 October 2005)
Title/Style of Cause: Benito Tide Mendez, Antonio Sension, Andrea Alezi, Janty Fils-Aime, William Medina Ferreras, Rafaelito Perez Charles and Berson Gelim v. Dominican Republic
Doc. Type: Decision
Decided by: President: Clare K. Roberts;
First Vice-President: Susana Villaran;
Second Vice-President: Paulo Sergio Pinheiro;
Commissioners: Evelio Fernandez Arevalos, Jose Zalaquett, Freddy Gutierrez, Florentin Melendez.
Dated: 13 October 2005
Citation: Tide Mendez v. Dominican Republic, Petition 12.271, Inter-Am. C.H.R., Report No. 68/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by: APPLICANTS: the Human Rights Clinic of the Berkeley University of California School of Law (Boat Hall), the Center for Justice and International Law, and the National Coalition for Haitian Rights
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I. SUMMARY

1. On November 12, 1999, the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "IACHR") received a petition lodged by the Human Rights Clinic of the Berkeley University of California School of Law (Boat Hall), the Center for Justice and International Law (CEJIL), and the National Coalition for Haitian Rights (NCHR) (all hereinafter "the petitioners"[FN1]), against the Dominican Republic (hereinafter, the State). Initially the complaint did not specify the names of alleged individual victims; subsequently however, the petitioners identified the following individuals as possible victims: Benito Tide Méndez, Antonio Sensión, Andrea Alezi, Janty Fils-Aime, William Medina Ferreras, Rafaelito Pérez Charles, and Berson Gelim, all Haitians and Dominicans of Haitian origin and residents of the Dominican Republic (hereinafter, the alleged victims). In their complaint, the petitioners claim that the State has a policy of deportation[FN2] and expulsion of Haitians and Dominicans of Haitian origin that has given rise to human rights violations against Haitian workers, documented and undocumented alike, as well as against documented and undocumented Dominicans of Haitian origin. The petitioners contend that this policy has impinged on the rights of the alleged victims and that the rights violated are set forth in Articles 3 (Juridical Personality), 5 (humane treatment), 7 (personal liberty), 8 (due process guarantees), 17 (right of the family), 19 (rights of the child), 20 (nationality), 22 (movement and residence), 24 (equal

protection) y 25 (juridical protection), all of them in connection with Article 1.1 (obligation to take measures) of the American Convention on Human Rights (hereinafter, the Convention).

[FN1] See infra para. 5, in which the Human Rights Clinic of the Columbia University School of Law are added as petitioners in the case.

[FN2] The term deportation is used to refer to the removal of foreigners and the term expulsion for the removal of nationals from their own territory. Original written complaint submitted by the petitioners in the file before the IACHR, pp. 1-10.

2. The State claims that the repatriation process is grounded in domestic law and incorporates due process guarantees including the individual processing of cases and the right to a defense and legal counsel. It further states that the process is carried out through a joint decision-making process with the Haitian government, especially through a bilateral commission established in 1996, and that these measures have been improved upon through domestic legal reforms and inter-country cooperation. The State also asserts that the Dominican State has the irrenunciabile right, as an attribute of sovereignty, to repatriate foreigners residing in the country illegally, and that this does not contravene any treaty or convention signed by the Dominican State.

3. After analyzing the positions of the parties, the Commission concludes that it is competent to take up the complaint lodged by the petitioners and that the case is admissible under Articles 46 y 47 of the American Convention. The Commission also resolves to publish the instant report in its Annual Report to the General Assembly of the OAS and to notify both parties.

II. PROCESSING BEFORE THE COMMISSION

4. On November 17, 1999, the Commission received a petition with a request for precautionary measures and registered it as case 12.271, in accordance with its rules of procedure in force at that time. On November 22, 1999, during its 105^o regular session, the Commission asked the State to adopt precautionary measures. On November 24 and 29, 1999, the Dominican State submitted additional information, without prejudice to a subsequent response. On November 30, 1999, the State requested a fifteen day extension. This extension was granted on December 7, 1999. On December 6, 1999, the petitioners submitted additional information. On December 15, 1999, the Dominican State submitted its first report on the precautionary measures requested by the Commission. On December 23, the IACHR received the report from the State and duly forwarded it to the petitioners, with a request that they submit their observations within thirty days. On December 22, 1999, the Inter-American Commission requested that the petitioners submit more detailed information regarding their request for precautionary measures.

5. On March 10, 2000, the Human Rights Clinic of Columbia University School of Law submitted information about the case and requested the adoption of provisional measures by the Inter-American Court. In a written communication dated March 16, the petitioners requested that the Human Rights Clinic of Columbia University School of Law join the case as a petitioner. On

May 30, 2000, the Commission sent the request for provisional measures to the Inter-American Court of Human Rights; the latter issued a Resolution on June 16 of that year scheduling a hearing to hear from both parties. On July 21, of that year, the Commission sent information on the need for experts and on August 1, 2000, the State sent a communication objecting to the appointment of experts. The Commission forwarded its observations on August 4, 2000.

6. On August 18, 2000, at the request of the IACHR, the Inter-American Court of Human Rights issued a resolution ordering provisional measures on behalf of Benito Tide Méndez, Antonio Sension, Andrea Alezi, Janty Fils-Aime, Berson Gelim, Solange Pierre, Padre Pedro Ruquoy, and William Medina Ferreras.[FN3] This was followed by a continuous exchange of information from the petitioners, the Commission, and the State regarding the provisional measures issued by the Inter-American Court.

[FN3] Resolution on the provisional measures requested by the Inter-American Commission on Human Rights with respect to the Dominican Republic, Inter-American Court of Human Rights, Order of the Court, August 18, 2000, paras. 12 and 13.

III. POSITIONS OF THE PARTIES

A. The petitioners

7. Berson Gelim, Janty Fils-Aime, Andrea Alezi and William Medina Ferreras were expelled from the Dominican Republic and separated from their families to be taken to Haiti; Benito Tide Méndez, Rafaelito Pérez Charles, and Antonio Sension, who have yet to be reunited with their families, suffered mistreatment at the hands of the Dominican authorities. Some family members of the alleged victims also were deported to Haiti.

17. Even though Rafaelito Pérez Charles was born in the Dominican Republic, he was forcibly deported without being allowed the chance to prove his Dominican nationality. Berson Gelim was arbitrarily expelled, along with his wife and daughters; in the process he was separated from his son, who remained behind in the Dominican Republic. Benito Tide Méndez, also a Dominican citizen of Haitian descent, was expelled without being given the opportunity to prove his Dominican citizenship.

18. Andrea Alezi, a Haitian who had resided in the Dominican Republic since she was 13 years old, was separated from her two children—with whom she has not been reunited—and was not allowed to contact her family during her detention or present any argument to contest her deportation. Janty Fils-Aime, a Dominican by birth, was deported along with his whole family, and William Medina Ferreras, a Dominican expelled with his wife and children, has been living in Haiti since his deportation and has been unable to return.

19. The petitioners add that the Dominican authorities do not adequately keep track of their deportations, since they do not follow any procedures

20. The petitioners claim that since November 1999, the Dominican State has implemented a national policy of deportation and expulsion of Haitian citizens, both documented and undocumented, living in Dominican territory as well as of Dominicans of Haitian descent, documented and undocumented. They assert that more than 20,000 people were repatriated in November 1999, and that the practice continued up until December 14, 2000, with an average of 2000 people deported monthly. They assert that this practice has continued despite the provisional measures adopted by the Inter-American Court.

21. They contend that these actions take place with no prior warning and involve the use of excessive force, including different types of physical intimidation a people are taken from their homes, their families and jobs and in some cases, their children. The acts of violence also have included sexual abuse of women.

22. The petitioners also report that these people are detained by immigration officers and Dominican soldiers and are transported to the Haitian border with no opportunity to prove their legal status or make arrangements prior to being expelled. This practice, they say, has also been used against Dominican citizens who have the means to prove their legal status in Dominican territory. These individuals are deprived of their ability to contest the deportation, contact family members, or obtain legal assistance. The petitioners claim that the alleged victims, as members of these groups, have been targeted by different facets of this State policy.

23. The petitioners add that in several cases, fathers and mothers have been sent to Haiti and forced to leave their small children behind in the Dominican Republic.

24. The petitioners further claim that the information about these practices is consistent with that of several Dominican and international organizations who confirm the existence of this generalized policy since the mid 1990s. Moreover, the Dominican State has failed to comply with its bilateral treaties with Haiti by failing to notify the latter about thousands of people who were simply left at the border.

25. The petitioners also point out that Haitians living in the Dominican Republic are not granted the opportunity to obtain legal residency; they are frequently arrested, put in omnibuses, and sent to Haiti. They assert that this practice has included Haitians who have lived in Dominican territory for more than twenty years.

26. They further claim that those who have had legal access to work and residency are not given the opportunity to prove their status and ultimately are treated as if they were undocumented.

27. The petitioners contend that these policies also affect Dominicans of Haitian descent whom the immigration authorities have mistakenly deported in the same circumstances. Reports from the State itself have alluded to this situation, which has affected third generation Dominicans.

28. The petitioners also contend that many children have been left behind, abandoned on Dominican soil as a result of such practices by the State. Deportees are frequently prevented

from taking their minor children with them and parents who have been deported have been prevented from contacting their children or other family members.

29. The petitioners argue that such policies violate the domestic law of the Dominican Republic, whose immigration regulations establish deportation procedures including prior notice, specific grounds, and an opportunity to contest the charges. Moreover, these actions violate a 1997 agreement between the Dominican State and Haiti that was signed in the context of a similar crisis.

30. The petitioners consider that these mass practices at the national level discriminate based on race and origin, and infringe upon the domestic and international rights of these people.

B. The State

31. The Dominican State claims that the repatriation of foreigners living illegally in Dominican territory is its irrenunciabile and nonnegotiable right as a cornerstone of sovereignty. It also contends that this right is protected under the domestic legal order and contravenes no treaty or convention to which the Dominican State is party.

32. The State affirms that the petitioners' figures on repatriated people have not been confirmed by independent sources. It asserts that statistics from the General Directorate for Migration [Dirección General de Migración] indicate an average repatriation rate of 717 people a month and that the figure has never exceeded 1,000 people. The State adds that this figure correlates directly to the mass immigration of Haitians into Dominican territory.

33. The State contends that there is a lawful procedure in place in the Dominican Republic and that it is implemented by the General Directorate for Migration. The law ensures due process for people subject to repatriation, and their cases are handled individually. The process, according to the State, includes three stages: i) detention and identification, ii) investigation, screening and verification, and iii) confirmation. The competent authorities accurately establish the identity and legal status of the detainees and a final verification is conducted prior to turning the individuals over to the border posts; the Haitian consuls of Barahona and Dajabón participate in this process so as to avoid receiving any citizens who are not Haitian nationals.

34. The State points out that this procedure is directed by "migration personnel trained by the United Nations High Commissioner for Refugees (UNHCR)."[FN4] It adds that the process includes an opportunity to submit documentation and contact family members. In addition, the repatriates are transported in buses rented for the process, and are provided food and lodging until the process has been finalized.

[FN4] Observations submitted by the Dominican State, December 7, 1999, p. 2.

35. The State likewise asserts that this repatriation process has been strengthened by joint decisions adopted with Haiti and that "the neighboring countries are the ones who should discuss

it, without outside interference, any differences that may arise concerning the way in which to carry out the repatriations.”[FN5] The work in both countries is carried out through the Dominican - Bilateral Commission.

[FN5] Idem.

36. The State adds that the General Directorate for Migration has, on numerous occasions, publicly invited nongovernmental organizations (NGOs) to participate as observers in the repatriation process. It contends that this process is carried out transparently and with respect for human rights.

37. It further indicates that in view of the Haitian immigration problem, the State took on the responsibility of organizing a conference to air the problem objectively. A meeting was held with the presidents of both countries on the issue of migration flows, and legal measures were taken in the form of a draft migration law to replace the existing law that dates back to 1939.

38. The State observes that the two countries have signed the Protocol of Understanding between the Dominican Republic and the Republic of Haiti on Repatriation Mechanisms containing agreements on the procedures used and their improvement. That document includes a provision to avoid separating “nuclear” families and to contact the Haitian authorities in advance with a list of people in the repatriation process.

39. Finally, the Dominican State affirms its firm commitment to continue to improve these mechanisms and to rectify any isolated case of excesses by bringing the migration authorities involved to justice.

IV. ANALYSIS

A. Competence *ratione personae*, *ratione materiae*, *ratione temporis*, *ratione loci*

40. Pursuant to Article 44 of the American Convention and Article 23 of the IACHR’s Rules of Procedure, the petitioners are entitled to lodge petitions before the Commission relating to alleged violations of the rights set forth in the American Convention. With respect to the State, the Dominican Republic is party to the Convention and, therefore, is accountable in the international sphere for violations of that instrument. The alleged victims are natural persons with respect to whom the State has undertaken to ensure the rights enshrined in the Convention. Therefore, the Commission is competent *ratione personae* to examine the complaint concerning the alleged victims.

41. The Commission is competent *ratione materiae* insofar as the petition describes violations of human rights protected by the American Convention.

42. The IACHR is competent *ratione temporis* inasmuch as the obligation to respect and ensure the rights protected in the American Convention were in effect for the State on the date on which the events described in the petition allegedly occurred; the Dominican Republic ratified the American Convention on April 19, 1978.

43. The Commission is competent *ratione loci* to take up the petition insofar as it claims violations of rights protected in the American Convention on Human Rights that allegedly occurred within the territory of a State party to those instruments.

A. Other admissibility requirements of the petition

1. Exhaustion of domestic remedies

44. Article 46(1)(a) of the American Convention provides that in order for a petition brought before the Commission to be considered admissible, it is subject to the requirement “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.”

45. In the instant case, the State did not raise the exception of exhaustion of domestic remedies. Based on that, and in light of the jurisprudence of the Inter-American Court of Human Rights on the subject,[FN6] the Commission concludes that the State has tacitly waived its right to invoke the non-exhaustion of domestic remedies.

[FN6] Inter-Am. Ct HR, Castillo Páez Case, Preliminary Exceptions, Judgment of January 30, 1996, paras. 41-43; and Loayza Tamayo Case, Preliminary Exceptions, Judgment of January 31, 1996, paras. 41-43.

2. Time frame for lodging the petition

46. The Commission’s Rules of Procedure stipulate, in Article 32(1), that the Commission shall consider “those petitions that are lodged within a period of six months following the date on which the alleged victims has been notified of the decision that exhausted the domestic remedies.” The Commission is of the opinion that, in this case, based on the information considered concerning the exception to the exhaustion of domestic remedies and in light of the lack of a pronouncement from the State with respect to the time frame for lodging the complaint, the State has tacitly waived its opportunity to invoke this exception and, therefore, the aforementioned article of the Rules of Procedure is not applicable.[FN7]

[FN7] Report N°57/04, petitions 771/03 y 841/03, admissibility, Oscar Elías Biscet et al, Cuba, October 14, 2004, para. 28.

3. Duplication of proceedings and international *res judicata*

47. There is nothing in the file to indicate that the subject matter of the petition is pending before any other procedure for international settlement or that it duplicates a petition that has already been examined by this or any other international body. Therefore, the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention have been met.

4. Characterization of the facts alleged

48. The Commission considers that the petitioners' allegations, should they be proved, could establish a violation of the rights to juridical personality, humane treatment, personal liberty, due process guarantees, right of the family, rights of the child, nationality, movement and resident, equal protection, juridical protection, enshrined in Articles 3, 5, 7, 8, 17, 19, 20, 22, 24, and 25, in relation to Article 1(1), of the American Convention. The allegations may establish also a violation of the Article 7, about the obligations of the states in front of violence against women, from the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, (Hereinafter, Belem do Para Convention).

V. CONCLUSION

41. The Commission concludes that the case is admissible and that it is competent to examine the complaint lodged by the petitioners with respect to the alleged violation of Articles 3, 5, 7, 8, 17, 20, 22, 24, and 25, in relation to Article 1(1) of the American Convention, in accordance with the provisions of Articles 46(1)(c) and (d), 46(2)(c) and 47(b) of that international instrument; also, in with respect of Article 7 from the Belen do Para Convention

42. Based on the foregoing factual and legal arguments, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant petition admissible in relation to Articles 1(1), 3, 5, 7, 8, 17, 20, 22, 24 y 25 of the American Convention, and in relation to Article 7 of the Belem do Para Convention.
2. To notify the State and the petitioners of this decision.
3. To initiate the process on the merits of the matter.
4. To publish this decision and include 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 Washington, D.C., on the 13th day of the month of October of 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice President; Paulo Sérgio Pinheiro, Second Vice President; Evelio Fernández Arévalos, José Zalaquett, Freddy Gutiérrez, and Florentín Meléndez, Commissioners.