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Institution: Inter-American Commission on Human Rights  
File Number(s): Report No. 44/06; Petition 12.205  
Session: Hundred Twenty-Fourth Session (27 February – 17 March 2006)  
Title/Style of Cause: Jose Rene Castro Galarza v. Ecuador  
Doc. Type: Decision  
Decided by: President: Evelio Fernandez Arevalos;  
First Vice-President: Paulo Sergio Pinheiro;  
Second Vice-President: Florentin Melendez;  
Commissioners: Clare K. Roberts, Freddy Gutierrez, Paolo G. Carozza,  
Victor E. Abramovich.  
Dated: 15 March 2006  
Citation: Castro Galarza v. Ecuador, Petition 12.205, Inter-Am. C.H.R., Report No.  
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## I. SUMMARY

1. In a petition lodged with the Inter-American Commission on Human Rights (hereinafter “the IACHR” or “the Commission”) on September 8, 1998, the Ecumenical Commission for Human Rights (hereinafter “CEDHU” or “the co-petitioner”) and Mr. José René Castro Galarza charged that the Republic of Ecuador (hereinafter “the State” or “the Ecuadorian State”) violated the rights of Mr. José René Castro Galarza (hereinafter “the petitioner”) to personal liberty, humane treatment, a fair trial, and judicial protection enshrined in Articles 7, 5, 8, and 25, respectively of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), in connection with Article 1.1 of the above-cited international instrument. The above-charged violations concern the alleged illegal detention suffered by the petitioner when he continued to be deprived of liberty after having served the statutory term of the prison sentence imposed on him following prosecution for drug trafficking, testaferrismo and illicit enrichment.

2. This Friendly Settlement Report is issued pursuant to Article 49 of the Convention and Article 41.5 of the Commission’s Rules of Procedure (hereinafter “the Rules”). It reviews the facts alleged by the petitioners and the State as well as the terms of the friendly settlement reached, and provides for its publication.

## II. PROCESSING BY THE COMMISSION

3. On September 8, 1998, the Inter-American Commission received the petition from the president of the CEDHU. On September 7, 1999, the Commission initiated processing of the

petition lodged by the CEDHU and registered it as Case 12.205. Also on September 7, 1999, the Commission transmitted the pertinent portions of the petition to the Ecuadorian State, and requested it to provide information in that regard within 90 days.

4. On October 27, 1999, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement of the case in accordance with Article 48.1.f of the Convention and Article 41.1 and 41.2 of its Rules of Procedure.

5. On November 3, 1999, the Commission received the reply of the State to its request for information, which was forwarded to the petitioners on December 8, 1999, with the request that they submit their comments along with any new or supplementary information within 45 days.

6. Subsequently, both the State and the petitioners furnished additional information on the instant case on several occasions. By means of a note of April 2, 2001, the State informed the Commission that direct talks had been initiated with the petitioners or relatives thereof with a view to reaching a friendly settlement. On September 23, 2003, the Commission received additional information from the petitioner, which was sent to the State on August 2, 2004.

7. On October 20, 2005, the Commission was informed by the State that a friendly settlement agreement had been reached with the petitioner.

### III. THE FACTS

8. Mr. José René Castro says that he was detained by the police on June 26, 1992, without an arrest warrant or being caught in flagrante delicto. The petitioner alleges that following his detention he was taken to the Quito Regiment where he was held incommunicado for 34 days. According to the petitioner, it was not until July 30, 1992, that he was brought before a competent judge, who informed him that he was under investigation for drug trafficking, illicit enrichment, and testaferrismo in the framework of "Operation Cyclone". Accordingly, three criminal proceedings were instituted against him in the Office of the President of the Superior Court. Mr. José René Castro alleges that a warrant for his arrest was issued after he had been in custody for 12 months and four days; in other words, on December 1, 1992.

9. In his trial for illicit enrichment, the petitioner says that he was acquitted on November 22, 1996, and that the Fourth Chamber of the Superior Court issued the definitive order of acquittal on May 7, 1998. However, for the order to become final it was necessary first to dispose of the cassation appeal filed by the State Prosecutor, as well as the de facto remedy sought by the Attorney General. In the proceeding for testaferrismo, the petitioner says that he was acquitted on March 23, 1998. However, at the time the instant petition was lodged the proceeding was under consultation in the First Chamber of the Superior Court, which, according to the petitioner, violated Article 398 et seq. of the Code of Criminal Procedure, which provides a time limit for resolution of 15 days. By the same token, the petitioner says that even though the law provides 60 days to hold the preliminary hearing, in this case it took four years. In his trial for drug trafficking, the petitioner says that he was sentenced to eight years' imprisonment. However, on appeal, the Superior Court commuted the sentence on September 15, 1997, to a prison term of six years.

10. The petitioner argues that on April 16, 1998, an application for a reduced sentence was submitted to the National Bureau for Social Rehabilitation {Dirección Nacional de Rehabilitación Social since, under the Código de Ejecución de Penas}, prisoners were eligible for a reduction in sentence of up to 180 days per year for good behavior. In a letter of April 21, 1998, the Bureau informed the prison director that it was granting Mr. José René Castro a reduction in sentence of 66 days and requested that the appropriate authority be notified for the release order to be issued. According to the petitioner, that request was not carried out. The petitioner says that on April 22, 1998, he had served the sentence of six years in prison with 66 days deducted for good behavior, and yet he remained in custody.

11. The petitioner says that at the time the petition was presented to the Commission he was illegally detained since the statutory period required to serve his sentence for drug trafficking had run, as had the periods provided in Article 114 of the Criminal Code for the charges of illicit enrichment and testaferrismo; that is, one-third of the sentence he would serve if convicted. The petitioner applied for a writ of habeas corpus to the Mayor of Quito on May 7, 1998, but it was refused. The petitioner says that he appealed this decision before the Constitutional Tribunal, which ordered his immediate release on July 13, 1998, on the grounds that he had spent longer in prison than his sentence warranted.

#### IV. FRIENDLY SETTLEMENT

12. The friendly settlement agreement signed by the State and the petitioners provides the following:

##### FIRST: BACKGROUND

The Ecuadorian State, through the Office of the Attorney General, with a view to promoting and protecting human rights and given the great importance of the full observance of human rights at this time for the international image of our country, as the foundation of a just, dignified, democratic, and representative society, has decided to take a new course in the evolution of human rights in Ecuador.

The Office of the Attorney General has initiated conversations with all persons who have been victims of human rights violations, aimed at reaching friendly settlement agreements to provide reparations for the damages caused.

The Ecuadorian State, in strict compliance with the obligations it assumed upon ratifying the American Convention on Human Rights and other international human rights law instruments, is aware that any violation of an international obligation that has caused damages triggers the duty to make adequate reparations--monetary reparations and criminal punishment of the perpetrators being the most just and equitable form. Accordingly, the Office of the Attorney General and Mr. José René Castro Galarza, by his own entitlement, have reached a friendly settlement, pursuant to the provisions of Articles 48(1)(f) and 49 of the American Convention on Human Rights and Article 41 of the Rules of Procedure of the Inter-American Commission on Human Rights.

## SECOND: PARTIES

The following persons were present at the signing of this friendly settlement agreement:

- b) For the first party, Dr. José María Borja Gallegos, Attorney General, as indicated in his appointment and certificate of office, which are attached as qualifying documents:
- c) For the second party, Mr. José René Castro Galarza, bearer of citizenship document No. 010104393-3, which is attached hereto as a qualifying document.

## THIRD: RESPONSIBILITY OF THE STATE

The Ecuadorian State acknowledges its international responsibility for having violated the human rights of Mr. José René Castro Galarza, recognized in Article 2 (Duty to Ensure Domestic Legal Effects), Article 5 (Right to Humane Treatment), Article 7 (Right to Personal Liberty), Article 8 (Right to a Fair Trial), Article 25 (Right to Judicial Protection), all in connection with the general obligation contained in Article 1(1) of American Convention on Human Rights, and other international instruments, considering that the violations were committed by State agents, which could not be disproved by the State, giving rise to State responsibility.

Given the above, the Ecuadorian State accepts the facts in Case 12.205 before the Inter-American Commission on Human Rights and undertakes the necessary reparative steps to compensate the victims for the damages caused by those violations.

## FOURTH: COMPENSATION

In view of the foregoing, the Ecuadorian State, through the Attorney General, as the sole judicial representative of the Ecuadorian State, pursuant to Article 215 of the Constitution of Ecuador, enacted in Official Register N° 1 and in force since August 11, 1998, is awarding to Mr. José René Castro Galarza a one-time compensatory payment in the amount of eighty thousand US dollars (US\$80,000.00) to be paid from the National Budget.

This compensation covers the consequential damages, loss of income, and moral damages suffered by Mr. José René Castro Galarza, as well as any other claims that Mr. José René Castro Galarza or his relatives may have, regarding the subject of this agreement, under domestic and international law.

## FIFTH: PUNISHMENT OF THOSE RESPONSIBLE

The Ecuadorian State pledges to bring civil and criminal proceedings and pursue administrative sanctions against those persons who are alleged to have participated in the violation in the performance of State functions or under the color of public authority.

The Office of the Attorney General pledges to encourage the State Attorney General, the competent judicial organs, and public agencies or private institutions to contribute legal evidence to determine the liability of those persons. If admissible, the prosecution will be subject to the constitution and laws of the Ecuadorian State

The Office of the Attorney General shall deliver to the State Attorney General all necessary documents to open investigations to punish those responsible for the aforesaid violations. By the same token, it shall encourage the competent judicial organs, and public agencies or private institutions to contribute legal evidence to determine the liability of such persons. If admissible, the prosecution will be subject to the Constitution and laws of the Ecuadorian State.

#### SIXTH: RIGHT TO SEEK INDEMNITY OF REPETITION

The Ecuadorian State reserves the right to seek indemnity, pursuant to Article 22 of the Constitution of the Republic of Ecuador, from those persons found responsible for human rights violations through a final and firm judgment handed down by the country's courts or when administrative liability is found, in keeping with Article 8 of the American Convention on Human Rights.

#### SEVENTH: TAX EXEMPTION

The payment made by the Ecuadorian State to the other party to this agreement is not subject to any current or future taxes.

#### EIGHTH: INFORMATION

The Ecuadorian State, through the Office of the Attorney General, agrees to report to the Inter-American Commission on Human Rights on compliance with the obligations assumed by the State in this friendly settlement agreement.

In keeping with its consistent practice and obligations under the American Convention, the Inter-American Commission on Human Rights will oversee compliance with this agreement.

#### NINTH: LEGAL BASIS

The compensatory damages that the Ecuadorian State is awarding to Mr. José René Castro Galarza are provided for in Articles 22 and 24 of the Constitution of the Republic of Ecuador, for violation of the constitution, other national laws, and the standards in the American Convention on Human Rights and other international human rights instruments.

This friendly settlement is entered into based on respect for the human rights enshrined in the American Convention on Human Rights and other international human rights instruments and on the policy of the Government of Ecuador to respect and protect human rights, in accordance with Articles 16 and 17 of the Constitution.

#### TENTH: NOTIFICATION AND CONFIRMATION

Mr. José René Galarza specifically authorizes the Attorney General to notify the Inter-American Commission on Human Rights of this friendly settlement agreement, so that the Commission may confirm and ratify it in its entirety.

## ELEVENTH: ACEPTACION

The parties to this agreement freely and voluntarily express their conformity with and their acceptance of the content of the preceding clauses and state for the record that they hereby end the dispute before the Inter-American Commission on Human Rights on the international responsibility of the State for violating the rights of Mr. José René Castro Galarza.

## TWELFTH: QUALIFYING DOCUMENTS

The following are attached to the present friendly settlement agreement as qualifying documents:

- a) A copy of the citizenship document of Dr. José María Borja Gallegos, Attorney General.
- b) Certified copies of the Appointment and Certificate of Office of the Attorney General.
- c) A copy of citizenship document No. 010104393-3, belonging to Mr. José René Castro Galarza.

Signed by the parties in the city of San Francisco de Quito, on the twentieth day of the month of September two thousand five.

## V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

13. The Commission finds that the terms of the above-transcribed agreement are compatible with the obligations under the American Convention and, therefore, decides to ratify said agreement.

14. The Commission values highly the efforts of both parties to arrive at this solution, which is compatible with the object and purpose of the Convention. The friendly settlement procedure provided in the American Convention permits cases to be settled in a non-contentious manner and has proven an effective mechanism for the parties.

## VI. CONCLUSIONS

15. The Inter-American Commission has closely monitored the progress of the friendly settlement reached in the instant case. The information in the record shows that the State has discharged its undertaking to pay compensatory damages to Mr. José René Castro Galarza. Based on the foregoing considerations and in accordance with the procedure set forth in Articles 48.1.f and 49 of the American Convention, the Commission wishes to reiterate its profound thanks to the parties for their efforts as well as its satisfaction with the friendly settlement agreement reached in this case, in accordance with the purposes and provisions of the American Convention.

16. Based on the considerations and conclusions contained in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the friendly settlement agreement that the parties signed on October 10, 2005.
2. To continue to monitor and supervise each and every point of the friendly settlement agreement and, accordingly, to remind the parties of their obligation to report to the IACHR on the performance of this friendly settlement.
3. To make this report public and include it in its Annual Report 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 16th day of the month of March 2006. (Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice President; Florentín Meléndez, Second Vice President; Clare K. Roberts, Freddy Gutiérrez, Paolo G. Carozza and Víctor E. Abramovich, Commissioners.