

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 46/06; Petition 12.238
Session: Hundred Twenty-Fourth Session (27 February – 17 March 2006)
Title/Style of Cause: Myriam Larrea Pintado 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: Larrea Pintado v. Ecuador, Petition 12.238, Inter-Am. C.H.R., Report No.
46/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
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I. SUMMARY

1. This report addresses the friendly settlement reached between the parties in petition 12.238, at the initiative of the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”), pursuant to the receipt of a petition submitted on December 7, 1998 by Miriam Larrea Pintado (hereinafter “the petitioner”) against the Republic of Ecuador (hereinafter “Ecuador,” or “the State”), accusing it of impeding access to judicial remedies provided for by domestic legislation for the protection and reparation of her rights, allegedly violated.

2. On February 23, 2005, the Inter-American Committee on Human Rights adopted Report 8/05, in which it decided to admit the petition with respect to alleged violations of articles 8.1, 25 and 1.1 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”). Upon the publication of this report, conversations began between the petitioner and the Office of the Attorney General of the State with the object of reaching a friendly settlement. On September 20, 2005, in the city of San Francisco de Quito, the parties signed a friendly settlement agreement.

3. In this report on friendly settlement, pursuant to article 49 of the Convention and article 41.5 of the Commission’s Rules of Procedure, in what follows an account is provided of the facts alleged by the petitioner and the friendly settlement achieved, and the decision for its publication.

II. FACTS

4. On January 19, 1999, the Inter-American Commission on Human Rights (“the Inter-American Commission” or “the IACHR”) received a communication from the law firm Ponce Fernández de Córdoba & Simon (“the petitioners”) in which they complain that Ms. Miriam Larrea Pintado was kept in preventive detention for one year, five months, and twenty-five days, between November 11, 1992 and May 6, 1994. She was arrested pursuant to an order for preventive detention issued against her by the Fourth Criminal Judge of Pichincha on November 11, 1992. On that day, the Fourth Criminal Judge formally charged Ms. Larrea Pintado with the offense of fraudulent transfer of property. While the criminal trial was in progress, the petitioner filed a writ of habeas corpus with the Supreme Court of Justice, and on May 6, 1994, the Court’s President ordered her release. The criminal trial against Ms. Larrea Pintado for said offense began on August 16, 1993, and concluded on October 31, 1994, with an acquittal. The acquittal was confirmed by the Third Chamber of the Superior Court of Quito on March 20, 1996, and then affirmed by the Second Chamber of the Supreme Court on February 4, 1997.[FN1]

[FN1] Report No. 8/05. Petition 12.238. Admissibility. Miriam Larrea Pintado. February 23, 2005, para. 9-10.

III. PROCESSING BEFORE THE IACHR FOLLOWING ADMISSIBILITY REPORT No. 8/05

5. On March 23, 2005, the Inter-American Commission transmitted the report on admissibility to the parties, and informed them of the approval of the Report on Admissibility No. 8/05 by the IACHR at its 122nd regular session,[FN2] and granted the petitioners a two-month time period for them to add their observations on the merits. The Commission, furthermore, pursuant to the provisions of article 38.2 of its Rules of Procedure, placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter, in accordance with article 48.1.f of the American Convention.

[FN2] The 122nd regular session of the Inter-American Commission took place during February and March of 2005.

6. On June 8, 2005, the Commission received a communication from the petitioner’s representatives, informing it that with respect to the instant case, Ms. Miriam Larrea Pintado was engaged in conversations with the Office of the Attorney General of the State in order to reach a friendly settlement.

7. On October 20, 2005, the Inter-American Commission received a certified copy of the notarization of the friendly settlement agreement and other documents, issued by the Office of the Attorney General of the State and Ms. Myriam Genoveva Larrea Pintado. Below is a transcription of the agreement.

IV. FRIENDLY SETTLEMENT AGREEMENT

8. The agreement signed by the parties on September 9, 2005, is transcribed as follows:

I. BACKGROUND

The Ecuadorian State, through the Office of the Attorney General, in its efforts to promote and protect human rights, and bearing in mind the great importance that unrestricted respect for human rights, as the foundation of a just, dignified, democratic and representative society, has for the international image of our country, has decided to begin a new process within the evolution of human rights in Ecuador.

The Office of the Attorney General has initiated conversations with all the persons who have been victims of human rights violations, with the purpose of reaching friendly settlements that seek compensation for the damaged caused.

The Ecuadorian state, in strict compliance with the obligations it assumed when it signed the American Convention on Human Rights and other instruments of the international law of human rights, and aware that any violation of an international obligation that has caused harm implies the duty of adequate reparation; pecuniary compensation and the punishment of those criminally responsible is the most just and equitable way of complying with this duty. Therefore, the Office of the Attorney General of the State and Ms. Myriam Genoveva Larrea Pintado, in her own right, have decided to reach a friendly settlement in accordance with the provisions of articles 48 (1) (f) and 49 of the American Convention on Human rights and 45 of the Rules of Procedure of the Inter-American Commission on Human Rights.

II. PERSONS APPEARING

The persons appearing for this friendly settlement:

b) [sic] On the one hand, Dr. José María Borja Gallegos, Attorney General of the State, according to the certificate of appointment and office, which is attached as the authorizing document.

c) On the other hand, Ms. Myriam Genoveva Larrea Pintado, national identity card No. 170404652-1, a copy of which is attached as the authorizing document.

III. STATE RESPONSIBILITY

The Ecuadorian state acknowledges its responsibility for having violated the human rights of Ms. Myriam Genoveva Larrea Pintado, provided for by article 8 (Right to a Fair Trial) and article 25 (Judicial Protection), both in connection with the general obligation of compliance provided for by Art. 1.1 of the American Convention on Human Rights, and by other international instruments. Said violations were committed by State agents; the State has not been able to refute these facts, which have therefore, in turn, given rise to its responsibility to society.

With this background, the Ecuadorian State does not contest the facts that constitute Case No. 12.238, currently being processed before the Inter-American Commission on Human Rights, and

undertakes the obligation to provide the necessary measures of reparation in order to compensate for the damages caused to the victim of said violations.

IV. COMPENSATION

The Ecuadorian State, acting through its Attorney General as its sole legal representative, pursuant to Art. 215 of the Constitution of the Republic of Ecuador, issued in the Official Register, No. 1, in force and effect since August 11, 1998, hereby pays Ms. Myrian [sic] Genoveva Larrea Pintado a one-time compensation in the sum of two hundred seventy-five thousand United States dollars (US 275,000.00) to be charged to the General Budget of the State.

This compensation includes consequential damages, loss of profit, and pain and suffering brought upon Ms. Myrian [sic] Genoveva Larrea Pintado or her next of kin, for the reason mentioned in this agreement, pursuant to domestic and international legislation, and charged to the General Budget of the State.

V. PUNISHMENT OF THOSE RESPONSIBLE

The Ecuadorian State will initiate the actions necessary for the institution of both civil and criminal proceedings against, and the administrative sanctions of, those persons who, in carrying out state duties, or using their public authority are assumed to have participated in the alleged violation.

The Office of the Attorney General of the State will turn over all the necessary documentation to the Office of the Public Prosecutor in order to commence the investigations for the punishment of those found responsible for said violation. Likewise, it will request both the competent organs of the Judiciary and public or private organizations to provide legally grounded information that will lead towards the establishment of said persons' responsibility, should it arise. Should these trials be warranted, they shall be carried out in observance of the constitutional and legal order of the Ecuadorian State.

VI. OTHER REPARATIONS

The Ecuadorian State undertakes the commitment to erase from the Registry of Criminal Records, and from any other type of public or reserved registry, the name of Myrian [sic] Genoveva Larrea Pintado.

In addition, the Ecuadorian State undertakes the commitment to publish the text of clause III of this Friendly Settlement Agreement in the daily newspaper of the widest circulation. In this publication Ms. Myrian [sic] Genoveva Larrea Pintado's gratitude towards doctors Germánico Maya and Alejandro Ponce Villacís, attorneys and counsellors of Ms. Myrian [sic] Genoveva Larrea Pintado.

In addition, the Ecuadorian State undertakes the commitment, through the Office of the Attorney General of the State, to fashion a plaque with the name of Myrian [sic] Genoveva Larrea Pintado, which will record the responsibility of the Ecuadorian State, in accordance with number III of

this agreement. The plaque shall be unveiled in an auditorium or another similar room of the Superintendencia de Bancos [Office of Banking Supervision].

VII. RIGHT OF ACTION

The Ecuadorian State shall exercise its right of action, pursuant to Art. 22 of the Constitution of Ecuador, against those persons who are found responsible for the violation of human rights in a final judgment of the courts of the country, or should their administrative responsibility be established, in accordance with the provisions of article 8 of the American Convention on Human Rights.

VIII. TAX EXEMPTION OF PAYMENTS

The payment that the Ecuadorian State shall provide to the person object of this friendly settlement agreement shall not be subject to currently applicable taxes or to any taxes that may be imposed in future.

IX. INFORMATION

The Ecuadorian State, through the Office of the Attorney General of the State, undertakes the commitment to report to the Inter-American Commission on Human Rights regarding its compliance with the obligations assumed by the State under this friendly settlement.

In keeping with its consistent practice and the duties imposed upon it by the American Convention, the Inter-American Commission on Human Rights shall supervise compliance with this agreement.

X. LEGAL BASIS

The indemnity granted by the Ecuadorian State to Ms. Myrian [sic] Genoveva Larrea Pintado, is provided for by articles 22 and 24 of the Constitution of the Republic of Ecuador, for violations of constitutional and other norms of the national legal system, as well as the norms of the American Convention on Human Rights and other international human rights instruments.

This friendly settlement is signed based on respect for human rights recognized by the American Convention on Human Rights and other international human rights instruments, and on the policy of the Ecuadorian State of respecting and protecting human rights, pursuant to articles 16 and 17 of the Constitution of the Republic.

XI. NOTIFICATION AND APPROVAL

Ms. Myrian (sic) Genoveva Larrea Pintado expressly authorizes the Attorney General of the State to inform the Inter-American Commission on Human Rights of this Friendly Settlement Agreement, so that the Commission will confirm and ratify it in its entirety.

XII. ACCEPTANCE

The undersigned parties to this agreement freely and voluntarily express their consent and acceptance of the preceding clauses, and place on record that in this way they end the controversy currently being heard by the Inter-American Commission on Human Rights over the responsibility of the Ecuadorian State with respect to the rights of Myrian (sic) Genoveva Larrea Pintado which have been affected.

XIII. AUTHORIZING DOCUMENTS

To this friendly settlement, the following authorizing documents are attached:

- a) A copy of the citizen identification card of Dr. José María Borja Gallegos, Attorney General of the State.
- b) Certified copies of the Appointment and Certificate of Office of the Attorney General of the State.
- c) A copy of the citizen identification card number 170404652 1, belonging to Ms. Myrian (sic) Genoveva Larrea Pintado.

By signing below, the parties record their acceptance and consent, in the city of San Francisco Quito, on the twentieth day of the month of September of the year 2005.

V. "HOMOLOGACION" AND RATIFICATION

9. The Commission found that the transcribed settlement agreement is compatible with the provisions of article 48.1.f of the American Convention.

10. The Commission ratifies and appreciates the achievement of a friendly settlement agreement in accordance with the terms of the Convention. The option of a friendly settlement provided for by the American Convention allows the termination of individual cases in a non-adjudicatory manner, and has proven to be an effective procedure for the parties.

VI. CONCLUSIONS

11. The Inter-American Commission has followed developments towards the friendly settlement achieved in this case closely. From the information in the record it can be inferred that the State has complied with the payment of compensation to Ms. Miriam Larrea Pintado.

12. The Commission shall continue to follow compliance with the commitments undertaken by Ecuador with respect to the punishment of those responsible, and to those adopted under the title of other reparations.

13. Based on the foregoing considerations in fact and in law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the friendly settlement agreement signed by the parties on September 20, 2005.
2. To continue to monitor and oversee compliance with each of the points in the friendly settlement agreement and, in that context, to remind the parties of their commitment to inform the IACHR of their compliance with the provisions of the present friendly settlement agreement.
3. To make this report public and include it in its annual report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 15th 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.