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Title/Style of Cause: Gaybor Tapia and Colon Eloy Munoz v. Ecuador
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Decided by: President: Evelio Fernandez Arevalos;
First Vice-President: Paulo Sergio Pinheiro;
Second Vice-President: Florentin Melendez;
Commissioners: Freddy Gutierrez, Paolo Carozza, Victor Abramovich.
Dated: 21 October 2006
Citation: Tapia v. Ecuador, Petition 943-04, Inter-Am. C.H.R., Report No. 100/06,
OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
Represented by: APPLICANT: the Ecumenical Commission on Human Rights of Ecuador
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I. SUMMARY

1. On September 23, 2004, the Inter-American Commission on Human Rights (hereinafter the "Commission," the "Inter-American Commission" or the "IACHR") received a petition from the Ecumenical Commission on Human Rights of Ecuador (the "applicant") on behalf of Nilo Gaybor Tapia and Colón Eloy Muñoz, reporting that the Republic of Ecuador ("Ecuador" or "the State") had infringed the rights protected by Articles 1, 5, 8, 25 of the American Convention on Human Rights ("the American Convention"), as well as Article 7 of the Inter-American Convention to Prevent and Punish Torture (hereinafter "the Convention against Torture"). The above-mentioned persons are said to have been subjected to torture and cruel, inhuman and degrading treatment during their detention by the Ecuadorian police.

2. Concerning the admissibility of the complaint, the petitioner alleges that Mr. Tapia and Mr. Muñoz were taken to the city of Quito as part of an investigation and were tortured while in the custody of the police. Even though they reported this to the authorities, an investigation was never launched. The petitioner contends that Ecuador violated Mr. Nilo Gaybor Tapia's and Mr. Colón Eloy Muñoz's rights under Article 5 (right to personal integrity), Article 8 (due process) and 25 (judicial protection) of the American Convention.

3. The State, in turn, maintains that the final court decision that cleared the alleged victims was issued by the Second Criminal Court of Esmeraldas on November 17, 1998, and the petition was filed 72 months after that decision. Consequently, the State asserts that the petition is inadmissible under Article 47.a and b of the American Convention.

4. In this report the Inter-American Commission examines the information submitted and the arguments made by each side and concludes that the petition does not meet the admissibility requirements of Article 46 of the American Convention. Specifically, the IACHR concludes that the petition was not filed within a reasonable time, as required by Article 32.2 of its Rules of Procedure. In line with Article 47.a of the American Convention, accordingly, the IACHR decides to rule the petition inadmissible, so notify the parties and include this report in its Annual Report to the OAS General Assembly.

II. PROCEDURE BEFORE THE COMMISSION

5. The petition was registered at the Inter-American Commission with the number 934/04 and after an initial revision, was forwarded to the Ecuadorian State on November 30, 2004. The State responded the petition in a communication dated June 1, 2005, which was transmitted to the petitioner. Afterwards, on July 12, 2005 the petitioners presented their observations which were forwarded to the State on August 9, 2005. Said petition was reiterated on July 20, 2006, but to the date of adoption if this report no more information has been received from either party.

III. POSITIONS OF THE PARTIES

A. The Petitioner

6. On April 25, 1997, in the city of Santo Domingo de los Colorados, agents of the Anti-Kidnapping Unit ("UNASE") of the National Police arrested Colón Muñoz, Nilo Gaybor, Ramón Balarezo, Pedro Abril, Víctor Abril and Vinicio Veloz Abril on the charge of being involved in various abductions. These persons are said to have been taken to the city of Quito and, while in the custody of the Judicial Police, tortured and held incommunicado during the investigation, in an effort to have them confess to the aforesaid abductions.[FN1]

[FN1] The petitioner asserts that the alleged victims were tortured while in the custody of the police. However, in the additional information dated July 12, 2005, the petitioner says with regard to Colón Eloy Muñoz, who suffered from severe bilateral hearing loss and is a deaf-mute, that his statement was obtained under duress. The petitioner provides no evidence of the torture allegedly suffered by this person.

7. Nilo Gaybor Tapia and Colón Eloy Muñoz are said to have been brutally tortured as part of the investigation. To stop the torture, the alleged victims are said to have signed statements admitting they committed the crimes there were accused of. These confessions are said to have been the basis for Report No. 97-PI-1458-OID-P prepared by agents of UNASE and subsequently forwarded to judicial officials so as to bring a case in connection with a series of abduction presumably involving the alleged victims.

8. The petitioner reports that the judge of the 13th Criminal District of Cantón de Pedernales, in the Province of Manabí, issued a ruling on October 23, 1998, dismissing the case against Colón Eloy Muñoz and charging Nilo Gaybor Tapia with kidnapping, unlawful

possession of weapons and conspiracy.[FN2] Later, in full proceedings before the 5th Criminal Court of Manabí, the acquittal of Nilo Gaybor Tapia was confirmed by a final judgment of August 23, 1999.

[FN2] Proceedings were opened by the Sixth Criminal Judge of Pichincha in connection with the kidnapping of two persons in Manabí. This judge withdrew for reasons of territorial jurisdiction at the request of the Office of the Prosecutor and the case later went to the 13th Criminal Judge of the Pedernales Canton in the Province of Manabí.

9. The petitioner also points out that Colón Eloy Muñoz Vera is a deaf-mute as a result of a traffic accident preceding the events complained of. According to the petitioner, he can write his name only in a rudimentary way. This circumstance was recorded when the alleged victim appeared before the judge to make a statement,[FN3] at which time it was attested to by an expert. As for Nilo Gaybor, the applicant states that the torture he suffered prompted his admission to the emergency-room of the Police Hospital on April 28, 1997,[FN4] where he remained--as certified by his doctors--without being interviewed by any official, so that he could not have been present at the police facility giving statements on April 29.

[FN3] The deponent's signature may be seen on the copy of the statement of April 28, 1997, supplied by the petitioner on July 21, 2004.

[FN4] He was discharged on May 13, 1997, according to the information provided by the petitioner in a note dated July 21, 2004.

10. The 4th Criminal Court of Esmeraldas[FN5] also opened proceedings in the case of the kidnapping that took place in that province. The court issued a preliminary ruling on the charges of abduction, conspiracy and unlawful possession of weapons. Subsequently the case went to the Second Criminal Court of Esmeraldas, which ruled for the defendants on November 17, 1998 and ordered their release.

[FN5] The proceedings connected with the kidnapping in the city of Esmeralda began in the 11th Criminal Court of Pichincha, which declined jurisdiction for territorial reasons, and were forwarded to the Fourth Criminal Court at Esmeraldas.

B. The State

11. Ecuador asks for a ruling of inadmissibility because of failure to comply with Article 46.1.b of the American Convention. It points out that the last judicial decision of November 17, 1998 from the Second Criminal Court of Esmeraldas, which acquitted the alleged victims, is the final word of the judiciary. There is no delay, it argues, that may be attributed to Ecuadoran officials, inasmuch as the time elapsed to file the petition with the IACHR was excessively long:

72 months. Consequently, the petition should be ruled inadmissible under Article 46.1.b of the American Convention.

12. The State also contends that in order to appeal to international bodies, there must be a violation of human rights attributable to the State, and this case there was no violation of the alleged victims's rights. The judicial decision clearing the defendants, the State believes, fixed any irregularity that may have taken place during detention or in the course of the criminal proceedings. Ecuador cannot be held internationally liable in this case, as this would distort the inter- American system of protection of human rights.

IV. ANALYSIS

A. Jurisdiction of the Commission *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae*

13. Under Article 44 of the American Convention, the petitioner has the right to file a complaint with the IACHR. The alleged victims mentioned in the petition are two persons whose rights under the American Convention the State undertook to respect and guarantee. In addition, the IACHR notes that Ecuador is a party to the American Convention since December 28, 1977, when it deposited its instrument of ratification. Consequently, the IACHR has jurisdiction *ratione personae*.

14. Likewise, the Inter-American Commission has jurisdiction *ratione loci* to hear this petition because it alleges violations of rights protected by the American Convention that are said to have taken place within the territory of a State party thereto. The IACHR also has jurisdiction *ratione temporis* because the obligation to respect and guarantee the rights protected by the American Convention was already in force for the State on the date the events described in the petition allegedly took place. Lastly, the Commission has jurisdiction *ratione materiae* because the complaint describes violations of human rights protected by the American Convention.

B. Exhaustion of domestic remedies and filing deadline

15. Article 46.1.a of the American Convention provides that petitions are admissible if remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. Article 46.2 refers to three situations in which the rule requiring exhaustion of domestic remedies will not be applied: (a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights allegedly violated; (b) the party alleging violation of his rights has been denied access to domestic-law remedies or has been prevented from exhausting them; or (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

16. The petitioner in this case seeks an exception to the exhaustion of domestic remedies. It contends that the State did not open the proper investigation into the alleged victims' claims of torture even though it had an obligation to investigate, as this is a crime subject to public prosecution and fulfillment of that obligation did not require the subsequent filing of a legal complaint. The information supplied by the petitioner shows that the events were reported to the

proper officials of the judiciary in the course of the proceedings.[FN6] Indeed, it is incumbent upon the State to prove that the remedies were not exhausted or, barring that, to point out which remedies remain to be exhausted or why they have been ineffective.

[FN6] Nilo Gaybor Tapia appeared before the Fourth Criminal Judge of Pichincha on July 8, 1997, for a preliminary deposition; the case was later sent to the 13th Criminal Court of the Pedernales canton. The transcript of Mr. Gaybor's statements reads: "(...) I was walking in the street when we were manhandled; they beat us until I blacked out and they ruptured my bladder; then they took me to the Police Hospital where my bladder was operated on (...)

17. The State, in turn, contends that domestic remedies were exhausted in a definitive matter with each judicial decision acquitting the defendants. Consequently, there was no additional complaint to file in Ecuador and still less in the inter-American system. The Second Criminal Court of Esmeraldas issued its final decision on November 17, 1998, acquitting the alleged victims. The petition was filed 72 months after that decision. Accordingly, the State asks for a ruling of inadmissibility because of failure to meet the deadline established in Article 46(1)(b) of the American Convention.

18. Although it is certainly not proper in the admissibility phase to analyze the merits of arguments on the facts and the law, the IACHR must address the State's assertion that an acquittal of both persons would erase the effects of a violation even if the grave allegations of torture and use of false confessions to bring criminal charges against them were true. That assertion is clearly and openly at odds with Ecuador's freely assumed international commitments to respect human rights, and certainly at variance with investigative standards when such serious events are reported.

19. Ecuador was indeed under an obligation to open an investigation of the events, especially because they were made known to the judiciary, which considered them and assigned them a particular weight in acquitting the alleged victims. In the circumstances of this case, the petitioner cannot be asked to shoulder the burden of opening or conducting an investigation of such serious offenses, which leads the Inter-American Commission to agree with the petitioner as regards the applicability of the exception on exhaustion of domestic remedies under Article 46.2.a of the American Convention.

20. According to Article 46.2 of the American Convention and Article 32.2 of the IACHR Rules of Procedure, the rule does not apply when domestic remedies cannot be exhausted because of absence of due process, denial of access to remedies, or unwarranted delay in rendering a final judgment. In the present case the authorities were duty-bound to open an investigation, which paves the way for application of the exception to the exhaustion of domestic remedies. However, there is no denying that seven years went by from the day the events were reported to a judge until the petitioner decided to file an application with the IACHR. The principles underlying the inter-American system of human rights certainly include legal certainty, which is the basis for the six-month rule and a reasonable time frame when applying exceptions to the exhaustion of domestic remedies.

21. It is true that the victims were under no obligation to file an additional complaint beyond what they had reported in the proceedings, but there is no explanation why they took so long to come to the IACHR. In the circumstances of this case it is the view of the Commission that the time elapsed between the events and the date on which the petitioner decided to file a complaint is not a reasonable time frame. Consequently, the requirement of Article 32.2 of the Rules of Procedure has not been met.

22. In light of this conclusion concerning failure to exhaust domestic remedies and failure to file within a reasonable time, the IACHR believes that there is no need to deal with the remaining arguments of the parties on admissibility.

V. CONCLUSIONS

23. Based on the above factual and legal considerations, the Commission concludes that this petition is inadmissible under Article 47.a of the American Convention and Article 32.2 of its Rules of Procedure because it was not filed within a reasonable time of the date of the alleged violation.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To find this petition inadmissible.
2. To notify this decision to the petitioners and the State.
3. 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 21st day of the month of October, 2006. (Signed): Evelio Fernández Arévalo, President, Paulo Sérgio Pinheiro, First Vice-president; Florentín Meléndez, Second Vice-president, Freddy Gutiérrez, Paolo Carozza and Víctor Abramovich, Commissioners.