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Title/Style of Cause: Johel Dominique v. Haiti
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Decided by: President: Florentin Melendez;
First Vice-President: Paolo Carozza;
Second Vice-President: Victor Abramovich;
Commissioners: Clare K. Roberts, Freddy Gutierrez, Evelio Fernandez Arevalos, Paulo Sergio Pinheiro.
Dated: 28 February 2007
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I. SUMMARY

1. On August 16, 2005, the Inter-American Commission on Human Rights (hereinafter “Commission” or “IACHR”) received a petition filed by Mr. Johel Dominique (hereinafter “the Petitioner”) against the State of Haiti (hereinafter “Haiti” or “the State”). The Petitioner is an investigating judge in the western town of Jeremie. On March 1, 2005 while the petitioner was asleep at home, armed bandits surrounded his house and opened fire on the house from the outside. The petitioner managed to survive the attack without sustaining any physical wounds. Following the shooting incident, the alleged victim alerted the departmental police authorities who reportedly initiated an investigation, but which has not produced any results. The petitioner indicated that he alerted the Minister of Justice who did not take any action to proceed with an investigation or provide necessary security for the petitioner. Subsequently the petitioner contacted another investigating judge in Jeremie who took his deposition, but since then he has not received any indication that an investigation is being pursued. On July 15, 2005 the alleged victim stated that suspicious individuals surrounded his house but fled the area when called out by neighbors. It should be noted that a request for precautionary measures was adopted by the Commission in favor of Judge Dominique on August 31, 2005 (MC185-05), requesting the government to take necessary measures to secure the life and physical integrity of the petitioner.

2. The Petitioner alleges that the State is responsible for violating articles 5 (1) and 25 of the American Convention on Human Rights (hereinafter “American Convention”).

3. The State has not presented a response to the facts alleged by the petitioners.

4. In this report the IACHR, after analyzing the information available in light of the American Convention concludes that it is competent to consider the petitioners' allegations, and as the petition meets the requirements set out in Articles 46 and 47 of the American Convention, it decides to declare the petition admissible.

II. PROCESSING BEFORE THE COMMISSION

5. On August 16, 2005, the Commission received a petition dated July 17, from the Petitioner asking for precautionary measures. By letter of August 18, 2005 the Commission acknowledged receipt of the Petitioners' petition.

6. By note of August 31, 2005, the Commission transmitted the pertinent parts of the Petitioner's request to the State and requested that precautionary measures to be taken in favor of Mr. Dominique.

7. On September 15, 2005, the State acknowledged receipt of the Commission's request of precautionary measures.

8. By letter of April 6, 2006 the Commission asked the petitioner to provide actualized information about the investigations taking place regarding the facts mentioned in his petition.

9. By letter of May 5, 2006, the Petitioner submitted additional observations, indicating no advance or results to the investigation.

10. By letter of June 27, 2006 the Commission informed the petitioner that relevant parts of his petition were transmitted to the State, which was given two months to reply.

11. By letter of August 1st, 2006, the State informed the Commission of the receipt of the letter indicating that the letter was transmitted to relevant organs for adequate follow-up.

12. By letter of September 6, 2006 the petitioner informs the Commission of the evolution of the case.

III. POSITIONS OF THE PARTIES

A. The Petitioner

13. The Petitioner, Mr. Johel Dominique, is an investigating judge at the Tribunal of 1st Instance in Jeremie located in the Grand Anse Department. He asserts that on March 1, 2005, at two o'clock in the morning he was awakened by a loud detonation that shook his house. The petitioner indicated that armed individuals opened fire on his house and that he and his family sought refuge under their beds to avoid being hit by bullets. Fearing for his life, the petitioner indicated that he and his family remained inside the house until six o'clock in the morning that same day, at which time he exited his home and with the help of his neighbors, he picked up the used cartridges on the floor to preserve them as evidence for the authorities.

14. Following the shooting incident, in the morning of the same day, the petitioner asked the justice of peace in Jeremie, Judge Finey Francois, to go to the scene of the crime and Judge Francois produced an incident report and took the petitioner's deposition. In the report by the Judge Francois, information indicates that at least one bullet hole was found in the wall of the petitioner's house and a bullet casing nearby. Other bullet casings were found on his property.

15. The Petitioner further states that on that same day, he informed the Delegate of the Grand Anse Department, Me. Mombrun Anselme, and the Grand Anse Department police chief, Mr. Michel-Ange Jean Noel about the alleged assault. At this time he provided the police with the collected cartridges from the scene of the shooting in order to assist them in their investigation of the crime. The petitioner states that the Mr. Jean Noel said to him (in the presence of fellow Judge Frantz Drice) that his evaluation of the bullet casings indicated the type of weapon used was an M16 automatic rifle and he further indicated that he had a good idea of the identities of the individuals who carry these weapons. The petitioner states that the police chief assured him that they would do their best to apprehend the perpetrators. The petitioner informed the Commission that the group known to carry heavy automatic weapons in the region is called COREGA, a regional group with political affiliations to the party of former President Aristide, and who reportedly carried out armed attacks following the departure of former president Aristide in February 2004, and subsequently, associated with members of the police in the Grand Anse department. The petitioner alleges that although the cartridges provided information to the police about the type of weapons that were used in the incident, facilitating the task of tracking the perpetrators, no follow-up investigation has been made by police authorities in Jeremie.

16. The Petitioner further states that he addressed a letter to the Minister of Justice, Bernard Gousse, on March 1st, requesting protection for him and his family, but received no response to the request. On March 8, 2005 he sent a formal request to his fellow investigating judge for the Tribunal of 1st Instance in Jeremie, Judge Frantz Drice, to take the appropriate steps to initiate an investigation of the alleged assault.

17. On the morning of July 15, 2005 at approximately 12:30am the petitioner stated that a suspicious individual was positioned outside his house, and fled the area immediately when called out by neighbors.

18. On August 20, 2005, the petitioner informed the Commission that the authorities had not pursued the criminal investigation or responded to the complaint by providing Mr. Dominique with adequate security in order to carry out his functions as an investigating judge. The petitioner further indicated that he is not even sure that an investigation has been formally opened in his case, since he has not seen a formal record ("acte d'instruction") indicating that a judicial investigation has been launched.

19. The Petitioner states that he does not know the motive for the attack, although he has strong suspicions that the attack was motivated by individuals who were being investigated for criminal acts and who intended to harm him or prevent him from pursuing his criminal investigations. In particular, he suspects that the aggressors are supported by key figures in local government in Jeremie and police officers, who at the time, were subjects of investigations for their alleged involvement in criminal activities.

20. The Petitioner argues that the State is not complying with its obligation to provide a prompt or effective legal remedy in his case, nor has the state taken any measures to provide adequate security for him or his family. The fact that investigations have failed to proceed or produce any results over a period of months, even where police authorities possess evidence in the case, the petitioner alleges that this constitutes a violation of his right to simple and prompt recourse for protection against acts that violate his fundamental rights.

21. Regarding the right to humane treatment, the Petitioner claims that the armed attack in March 2005, was a serious attempt to take his life and constituted a threat to his physical and mental integrity. Further, as Mr. Dominique is a judicial official who is expected to carry out his functions with full independence, impartiality and free from fear and intimidation, the attack on him and the failure of the state to take prompt and adequate steps to respond to his situation, constitute a failure on the part of the state to ensure protection of his physical integrity.

22. The Petitioner indicates that, since he sent the letter to the Minister of Justice, that approximately one month after the March 1st assault, he received one phone call from a lawyer, Me. Delva, at the Ministry, relaying the Minister's sympathy for what he experienced, meanwhile, Mr. Dominique has continued carrying out his function as a judicial official, exposed to the dangers of threats and acts of intimidation due to his activities as an investigating judge. On September 6, 2006, the Petitioner further informed the Commission that he received another call in July 2006 from the Director of Judicial Affairs at the Ministry of Justice, Mr. Jean Fallieres Bazelais, to inquire about the status of the investigation, at which time he indicated that no progress had been made in the investigation. Mr. Dominique concludes by stating that, as a state functionary, he expected the government to place the police and justice at his disposition so as to continue carrying out his functions free of fear and intimidation.

B. The State

23. The State has not presented any response to the facts alleged by the petitioners in his petition, nor has it questioned the admissibility of the petition under consideration.

IV. ANALYSIS OF ADMISSIBILITY

A. Preliminary Considerations

24. The IACHR notes that the State at no time has responded to the petitioners' allegations or questioned the petition's admissibility as it has done for several cases from Haiti in the past[FN1]. The IACHR recalls that Haiti is responsible for the International obligations it assumed under the terms of the American Convention of Human Rights. Article 48 (1)(a) of the Convention is of particular relevance in that it establishes procedures to be followed when a petition or communication is referred to the Commission. The IACHR shall "request information from the government of the state indicated as responsible for the alleged violations" and "(t)his information shall be submitted within a reasonable period.." The provisions of Article 48 (1)(e) stipulate that the Commission "may request that states concerned to furnish any pertinent

information.” This obliges State parties to the Convention to provide the Commission with such information as it may require analyzing individual petitions.

[FN1] IACHR, Report N°129/01, Case 12.389, Haiti, paras. 11 and foll. IACHR, Report N°79/03, Case P139/02, Haiti, paras. 10; IACHR Report N°65/06, Case 12.566, Haiti, paras 23.

25. The IACHR stresses the importance it accords to the information it requests as it provides a basis for the Commission’s decisions on submitted petitions. Indeed, the Inter-American Court of Human Rights has affirmed that cooperation of the States represents a fundamental obligation within the international procedural framework established by the Inter-American System :

In contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the compliant has failed to present evidence when it cannot be obtained without the State’s cooperation.

The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a States jurisdiction unless it has the cooperation of that State.[FN2]

[FN2] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, Series C, N°4, §135 and 136. Inter-American Commission on Human Rights, Report n°28/96, Case n°11.297, Juan Hernández (Guatemala), October 16, 1996, §43.

26. The Commission and the Inter-American Court of Human Rights have also stated that “the silence of the defendant or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations, so long the contrary is not indicated by the record or is not compelled as a matter of law”[FN3]. Bearing this in mind, the Commission reminds the State of Haiti of its obligation to cooperate with the various agencies of the Inter-American system of human rights in order to facilitate their efforts to protect individual rights.

[FN3] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, Series C, N°4, §138. Inter-American Commission on Human Rights, Report n°28/96, Case n°11.297, Juan Hernández (Guatemala), October 16, 1996, §45.

B. Competence of the Commission *ratione personæ*, *ratione loci*, *ratione temporis* and *ratione materiæ*

27. Petitioners are entitled to lodge a complaint with the Commission pursuant to Article 44 of the American Convention. The Petition designates as alleged victim an individual whose rights Haiti committed to uphold and guarantee given the general obligation to respect rights

which it subscribed under Article 1 of the American Convention. The Republic of Haiti has been a party to the American Convention since it deposited its instrument of accession thereto on September 27, 1977. The Commission thus holds that it has the requisite competence *ratione personae* to adjudicate the petition before it.

28. The Commission considers that it is competent *ratione loci* to consider the petition as the alleged violations were committed within the territory of a state party to this treaty.

29. The Commission likewise considers that it is competent *ratione temporis* since the petition relates to acts allegedly committed in 2005 when the obligations assumed by the State following its subscription to the American Convention were in effect.

30. Finally, the Commission holds that it has the competence *ratione materiae* because the case denounces alleged violations of rights which are protected by the American Convention, namely the Right to humane treatment (Article 5), the right to a fair trial (Article 8), and the right to judicial protection (Article 25).

C. Other Admissibility Requirements

1. Exhaustion of domestic remedies

31. Article 46(1)(a) of the Convention stipulates that admission of a petition shall be subject to the requirement “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law”. The Convention’s preamble states that the IACHR grants “international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the respective states[FN4]. The rule of prior exhaustion of domestic remedies allows the state to resolve the problem in keeping with its domestic law before being faced with an international proceeding, which is especially valid in respect of the international jurisdiction over human rights matters.

[FN4] See second paragraph of the Preamble of the American Convention

32. Section 2 of Article 46 states that the provisions in point Article 46 (1) shall not be applicable when:

- a. the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated;
- b. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

33. The State did not respond to the Commission’s communication regarding the petition received, even where the State was duly notified according to Article 30 (2) of the Commission’s

Rules of Procedure and thereby not having presented an objection to the failure to exhaust domestic remedies. The Inter-American Court for Human Rights has indicated that an exception to the requirement of exhaustion of domestic remedies, if it is to be timely, must be raised in the first stages of the proceedings, failing which, a presumption of a tacit waiver by the state to avail itself of it may be made. Based on the information submitted to the Commission in the petition, the facts as presented, indicating that no legal remedy has been provided to the petitioner, can be presumed to be true. According to the jurisprudence of the Inter-American Court, “the silence of the defendant or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations so long the contrary is not indicated by the record or is not compelled as a matter of law”.[FN5]

[FN5] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, Series C, N°4, §138. Inter-American Commission on Human Rights, Report n°28/96, Case n°11.297, Juan Hernández (Guatemala), October 16, 1996, §45. See also Article 39, Commission Rules of Procedure, and Inter-American Court of Human Rights, Rules of Procedure, Art. 38(2) (providing that “In its answer, the respondent must state whether it accepts the facts and claims or whether it contradicts them, and the Court may consider accepted those facts that have not been expressly denied and the claims that have not been expressly contested”).

34. In this matter, the petitioner alleges that unidentified armed individuals opened fire on his residence with intent to harm him physically and that to date the perpetrators have not been apprehended or prosecuted for their actions, and further states that the investigation into this crime does not appear to have been officially opened, despite several complaints lodged by the petitioner with different police and judicial authorities over the course of several months.

35. The Commission observes that the petitioner was prevented from exhausting domestic remedies in this case, however the facts suggest that the petition is admissible pursuant to an exception to the requirement of exhaustion of domestic remedies in the American Convention. The Commission notes that the alleged violation took place on March 1, 2005, and following this, the petitioner reported the alleged violation to police and judicial authorities on several occasions and made numerous attempts to ensure that an investigation was pursued and concluded. Despite the numerous attempts to exhaust domestic remedies on the part of the petitioner, as of the date on which the petition was presented to the Commission, August 16, 2005, no measures were taken to investigate, apprehend or prosecute the perpetrators of this crime. Additional information from the petitioner indicated that as of September 6, 2006, there was no indication that an investigation had been officially opened in this case, and therefore, no results were reported. The state has not provided an effective legal remedy to the petitioner in 18 months, the investigation phase which should last no longer than two months.[FN6] In this respect, the Commission concludes that even though the petitioner was prevented from exhausting domestic remedies in this case, the facts suggest that an exception to the exhaustion of domestic remedies, applies here, as contained in article 46 (2)(c) of the American Convention. Thus, the Commission concludes that in this case, the petition is admissible pursuant to an exception to the requirement of domestic remedies as contained in Article 46 (2)(c).

[FN6] See Code d'Instruction Criminelle, Loi du 29 juillet 1979, Titre II, Article 7.

D. Time period for submission of the petition

36. Pursuant to Article 46(1)(b) of the American Convention, the general rule is that a petition must be submitted within six months, counted “from the date on which the party alleging violation of his rights was notified of the final judgment”. In the petition under consideration, the Commission has established a tacit waiver by the State of its right to invoke non-exhaustion of domestic remedies, thus the requirement of Article 46 (1)(b) of the Convention is not applicable.

37. In this regard, the Commission observes that the petitioners state that the victim started the internal procedures on March 1, 2005 and that the petition was lodged only on July 17, 2005. The IACHR considers that it was presented within a reasonable time frame.

E. Duplication of procedures and res judicata

38. The Commission understands that the subject matter of the instant petition is not pending settlement before any other international organization nor does it reproduce a petition already examined by this other international organization. Accordingly, the requirements established in Article 46 (1)(c) and 47 (d) are satisfied.

F. Characterization of the facts alleged

39. Article 47(b) and (c) of the Convention, as well as Article 34(a) and (b) of the Commission’s Rules of Procedure consider a petition inadmissible if it does not state facts that tend to establish violations of the rights guaranteed by the Convention or other applicable instruments, or if the petitioners’ or state’s arguments indicate that the petition is manifestly groundless or out of order.

40. The petitioner alleges that the State is responsible for violations of his rights under Articles 5 and 25 of the American Convention as summarized in part III above. The State did not present observations or information on the violations alleged by the petitioners.

41. Based on the information submitted by the petitioners and without prejudice to the merits, the Commission concludes that the petition contains allegations that tend to establish violations of the rights protected by Article 5.1 and 25 of the Convention, while, in keeping with the principle of *iura curia novit*, the Commission tends to find a violation of Article 1(1) and 8(1). Noting the petitioner’s allegation of a suspected connection between the perpetrators of this act and state actors, the Commission notes that this connection, where substantiated during the analysis of the merits of the case, could constitute the basis for the violation of Article 5 (1) of the Convention. In addition, the IACHR considers that based on the information submitted, the petitioners’ allegations are not manifestly groundless or out of order. Accordingly, the IACHR concludes that the petition should not be considered inadmissible under Article 47(b) and (c) of the Convention, or Article (a) and (b) of the Commission’s Rules of Procedure.

V. CONCLUSIONS

42. Having examined the present petition, the Commission concludes that it is competent to consider it. It finds that the petition is admissible with respect to petitioners' allegations of violations of Articles 5 (1), 8 (1) and 25 in connection with Article 1 (1) of the Convention. The Commission concludes likewise to inform the parties of this decision, and to proceed with its publication and inclusion in the Annual Report it will submit to the General Assembly of the OAS.

43. Based on the foregoing arguments of fact and of law set forth above, and without prejudging the merits of the matter

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible in respect of Articles 5 (1), 8 (1) and 25 in connection with Article 1 (1) of the American Convention.
2. To notify the petitioners and the State of the present decision
3. To proceed with the examination of the merits of the case
4. To publish this decision and include it in the Annual Report to be submitted to the General Assembly of the OAS.

Approved by the Inter-American Commission on Human Rights in Washington, D.C., on the 28th day of the month of February 2007. (Signed) Florentín Meléndez President; Paolo Carozza, First Vice President; Victor Abramovich Second Vice President; Commissioners: Clare K. Roberts, Freddy Gutiérrez, Evelio Fernández Arévalos and Paulo Sérgio Pinheiro.