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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 49/09; Petition 11.692
Session: Hundred Thirty-Fourth Regular Session (16 – 27 March 2009)
Title/Style of Cause: Adriana Claudia Marti Estevez v. Cuba
Doc. Type: Decision to Archive
Decided by: President: Luz Patricia Mejia Guerrero;
First Vice President: Victor Abramovich;
Second Vice President: Felipe Gonzalez;
Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Paolo Carozza.
Dated: 27 March 2009
Citation: Marti Estevez v. Cuba, Petition 11.692, Inter-Am. C.H.R., Report No. 49/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
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ALLEGED VICTIM: Adriana Claudia Marti Estévez

PETITIONER: Miriam Estévez Touzard

ALLEGED VIOLATIONS: Articles 17, 19, and 22 of the American Convention on Human Rights.

DATE PROCESSING BEGAN: November 19, 1996.

I. POSITION OF THE PETITIONER:

1. On October 28, 1996, the Inter-American Commission on Human Rights received a petition from Miriam Estévez Touzard, for the alleged violation of the rights of freedom of movement and humane treatment of her daughter Adriana Claudia Marti Estévez by the State of Cuba.

2. In the petition, the petitioner said she had been living in the United States under political asylum, and that in February 1996 her minor daughter had been authorized to join her under her political asylum status, but the State of Cuba prohibited her departure. As aggravating factors in the case, she said the girl suffers from grade III chronic asthma, severe allergies, and psychological problems, for which she has not received timely and necessary medical care owing the great distance and lack of care by her mother.

II. POSITION OF THE STATE:

3. The State of Cuba did not reply to the Commission's request for information.

III. PROCESSING BY THE IACHR:

4. The Commission received the petition on October 28, 1996. In a note of November 19, 1996, the IACHR told the petitioner that processing of her petition had begun and she would be notified of any additional information presented on it. On the same date, the petition was transmitted to the State of Cuba, so that it could provide information within 90 days on the facts therein and the exhaustion of domestic remedies.

5. On December 2, 1996, the petitioner sent the Commission a copy of the power of attorney she had granted to a third party to process the exit of her daughter Adriana Marti from Cuba.

6. On June 4, 1997, the petitioner notified the IACHR that the State of Cuba had authorized the departure of Adriana Marti from Cuba, so the grounds for the petition no longer existed.

IV. BASIS FOR THE DECISION TO ARCHIVE:

7. Both Article 48.b of the American Convention on Human Rights and Article 30.6 of the Rules of Procedure of the Inter-American Commission on Human Rights provide that in the processing of a petition once the observations have been received or the period set has elapsed with no observations received, the IACHR shall verify whether the grounds for the petition exist or subsist, and if they do not it shall order the case archived.

8. According to information provided by the petitioner, the State of Cuba authorized the departure of Adriana Claudia Marti Estévez to the United States, to be covered by her mother's political asylum, so the facts that gave rise to the petition have been resolved. Pursuant to Article 48.b of the Convention and Article 30.6 of the IACHR Rules of Procedure, the Commission decides to archive this petition because the grounds for it no longer exist.

Done and signed in the city of Washington, D.C., on the 27th day of the month of March, 2009.
(Signed): Luz Patricia Mejía Guerrero, President; Víctor E. Abramovich, First Vice-president; Felipe González, Second Vice-president; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Paolo Carozza, members of the Commission.

REASONED VOTE FOR THE REPORT 49-09

In line with the position that I have kept in regards to the Republic of Cuba, I have expressed that by virtue of the exclusion of the Republic of Cuba from the Organization of American States, the Commission lacks material and territorial competence. Hence, I do not share the decision of most of my colleagues on the admission and processing of cases and the issuing of reports and other activities derived from the application of the American Declaration of the Rights and Duties of Man. Nevertheless, I coincide with the need to archive the case, but for the aforementioned reasons. Luz Patricia Mejía, IACHR President.