

REPORT Nº 25/10
PETITION 461-01
DECISION TO ARCHIVE
HAITI
March 16, 2010

ALLEGED VICTIM: Lucien Gervais

PETITIONER : Michèle Gervais

BEGINNING OF PROCESSING: July 13, 2001

ALLEGED VIOLATIONS: Articles 7, 8 and 25 of the American Convention on Human Rights ("the American Convention")

I. POSITIONS OF THE PARTIES

A. The Petitioner

1. On June 29, 2001 the Inter-American Commission on Human Rights (the "Inter-American Commission" or the "IACHR") received a petition from Michèle Gervais (the "petitioner") against the Republic of Haiti (the "State") on behalf of her husband Lucien Gervais ("Mr. Gervais" or the "alleged victim") for the alleged violation of his right to personal liberty, to a fair trial and to judicial protection, guaranteed respectively by Articles 7, 8, and 25 of the American Convention.

2. The petitioner alleges that Mr. Gervais was arrested in June 2001, under false charges of terrorism and treason. She claims that the arrest of the alleged victim was part of a policy implemented by then President Jean Bertrand Aristide to eliminate political opponents; and that the President even offered a reward in writing for Mr. Gervais death. She also alleges that there had already been an attempt to assassinate Mr. Gervais while imprisoned; that "they" (without defining whom) were paying for his protection, food and water; and that Mr. Gervais suffered from high fever and did not receive appropriate medical attention. Moreover, the petitioner submits that the case of Mr. Gervais was never heard by a judge.

3. In a communication dated July 7, 2009, the petitioner informed the Inter-American Commission that she heard her husband was released, but could not confirm when or where he currently was because she had lost contact with him.¹

B. The State

4. As a response, the State provided the Inter-American Commission with the report of an interview conducted between the Citizen Protection Officer (the "OPC") and Mr. Gervais on August 24, 2001. According to the OPC, Mr. Gervais confirmed many of the factual allegations contained in the petition, such as the way his arrest took place and that at the moment of the interview he still was not aware of the charges against him. However, contrary to the allegations of the petition, the OPC maintains that Mr. Gervais stated that since the beginning of his detention he has been treated well, that he was not beaten, could circulate freely within the facility and even had access to television. According to the OPC, Mr. Gervais stated that he received food from his family on a daily basis until July 28, 2001, when he started eating at the prison cafeteria, which he did not complain about; and he also allegedly said that he received his medicine and that he declined the offer of the OPC to contact any members of his family.

¹ The petitioner is currently located outside of Haiti and stated that she had no intention to go back to that country.

5. In a communication received on November 26, 2001, the State claimed that legal proceedings were initiated against Mr. Gervais for fabricating bombs.

II. PROCESSING BEFORE THE INTER-AMERICAN COMMISSION

6. Following receipt of the petition, the IACHR transmitted the pertinent parts thereof to the State on July 13, 2001, the response to which was submitted on August 28, 2001. Both parties exchanged observations until January 2004.² On April 21, 2009, contemporaneously to its communication reiterating its request for information to the State, the IACHR notified the petitioner thereof and requested updated information within a month. On July 7, 2009, the petitioner informed the IACHR by e-mail communication through its Secretariat that she heard Mr. Gervais was released from the National Penitentiary, but she did not have means to reach him and was not aware of his whereabouts.

III. GROUNDS FOR THE DECISION TO ARCHIVE

7. Article 48.1.b of the American Convention, as well as Article 42 of the Rules of Procedure of the IACHR, both set forth that prior to determining admissibility, the Inter-American Commission shall ascertain whether the grounds for the petition still exist or subsist and if it considers that they do not, it shall order the case to be archived. In addition, Article 42.1.a of the Rules establishes that the IACHR may also decide to archive a case when the information necessary for the adoption of a decision is unavailable.

8. In the present case, the petitioner --the alleged victim's wife-- informed the IACHR that she heard her husband was released, but did not know in which circumstances or where he was. Moreover, the information available to the Inter-American Commission indicates that the alleged victim was informed by the OPC that a petition had been presented on his behalf to the IACHR, but he has sent no communications to the IACHR. Furthermore, the IACHR has no way of communicating with him.

9. Under these circumstances, the IACHR considers that it lacks the necessary elements to make a determination as to whether the grounds underlying the initial petition subsist; to pronounce on admissibility; or to reach a decision on the alleged human rights violations. Therefore, in accordance with Article 48.b of the American Convention and Article 42 of the IACHR Rules of Procedure, the IACHR decides to archive this petition.

Done and signed in the city of Washington, D.C., on the 16th day of the month of March, 2010. (Signed: Felipe González, President; Paulo Sérgio Pinheiro, First Vice-President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, members of the Commission).

² The State submitted observations on September 7, 2001, November 26, 2001 and February 12, 2002; the petitioner did so on September 15 and October 15, 2001; January 6, 2004., the IACHR received a communication from the petitioner and transmitted the pertinent parts thereof to the State on January 13, 2004.