

REPORT No. 59/11¹
DECISION TO ARCHIVE
PETITION 10.442
VENEZUELA
March 23, 2011

ALLEGED VICTIM: José Luis Palomares

PETITIONER: Venezuela Justice and Peace Support Network (Red de Apoyo por la Justicia y la Paz de Venezuela) and Center for Justice and International Law (CEJIL)

ALLEGED VIOLATIONS: Articles 1, 8 and 25 of the American Convention on Human Rights

START OF PROCEEDINGS: August 28, 1989

I. POSITION OF THE PETITIONERS

1. In April 1989, the Inter-American Commission on Human Rights (hereinafter referred to as “the Commission” or “IACHR”) received a petition alleging responsibility of agents of the Republic of Venezuela (hereinafter referred to as “the State of Venezuela” or “Venezuela”) for the death of José Luis Palomares, which took place on September 19, 1987 in Bachaquero, state of Zulia, Caracas, Venezuela.

2. The petitioners alleged that, on August 28, 1987, the 16-year-old adolescent José Luis Palomares entered the Rear Admiral José Ramón Yépez Armed Forces Petroleum Training Center (Centro de Capacitación Petrolera de las Fuerzas Armadas “Contralmirante José Ramón Yépez”) (hereinafter referred to as the “Training Center”) for training, in the State of Zulia. They also pointed out that, before entering the above-mentioned center, José Luis Palomares had undergone a medical checkup, which reported that his health condition was normal at the time of entering the Training Center.

3. They alleged that, during his first week staying in the Petroleum Training Center, José Luis Palomares was visited by his next-of-kin, who found him to be in good health. They contended that, one week later, on September 6, 1987, his brother and mother visited him and pointed out that he was unrecognizable because he had lost 15 kilos, his eyes had rings under them, were irritated and sunken, he had a vacant gaze, he had an abrasion on his coccyx, the skin on his arm seemed to be rotting, he was shaking and unable to stand up by himself. They indicated that the adolescent had partial loss of consciousness, severe headaches and backache, parched lips, sores on his tongue and was suffering from severe stress. According to relatives and the medical staff of the center who provided him with medical care during those days, the adolescent had gone several days without eating or urinating.

4. When the next-of-kin of José Luis Palomares saw him in that condition, they requested the authorities of the military center to transfer him to a hospital because they considered he was not receiving adequate care because of the lack of human and material resources. They alleged that this request was turned down by the authorities of the Training Center, because they considered that, among other things, José Luis had what they called “mamitis” [he was a mama’s boy, tied to mommy’s apron strings].

5. They indicated that, at his mother’s insistence, on September 7, 1987, José Luis Palomares was transferred to the Maracaibo University Hospital (Hospital Universitario de Maracaibo), where four dialysis procedures were administered, without obtaining any positive response. They

¹ In accordance with the provisions of Article 17.2 of the Commission’s Rules of Procedure, Commissioner Luz Patricia Mejía, a Venezuelan national, did not participate in the discussion or decision regarding the present file.

claimed that, 12 days after being admitted to the hospital, the adolescent died of acute kidney failure, severe dehydration, cerebral edema and a cardiac arrest. The petitioners pointed out that José Luis Palomares had hematomas and injuries all over his body.

6. They alleged that they reported the facts to the Office of the Fourth Prosecutor General for Juveniles, the Inspector General of the National Armed Forces, the Education Department of the Ministry of Defense, the Military Attorney General of Maracaibo and the Office of the Attorney General of the Republic.

7. They indicated that a preliminary inquiry was began at the order of the Major General and Second Permanent Military Court of Maracaibo, relevant inquiries were made and few months later the inquiry was declared closed. They indicated that this decision was appealed and upheld by the Permanent War Council of Maracaibo.

8. In view of the above, the petitioners alleged that the State is responsible for its failure to fulfill its obligation to adequately investigate, prosecute and punish those responsible for the incidents as provided for in Article 1(1) of the American Convention; therefore the Commission understands that the petitioners alleged the violation of the rights enshrined in Articles 8 and 25 of the American Convention in connection with its Article 1 (1).

II. POSITION OF THE STATE

9. In response to the claim submitted by the petitioners, the State considered that it was inadmissible. It contended that the allegation about the lack of medical care provided to José Luis Palomares in the Training Center's Medical Center was false, because on September 3, 1987 he was diagnosed as having pharyngotonsillitis, prescribed antibiotics and administered intravenous fluids and was ordered to remain in the dispensary for 12 hours.

8. It also indicated that, on September 7, 1987, the adolescent was once again treated and it was observed that he was "dehydrated" and, as background to this condition, for the preceding 24 hours "the patient had by his own will completely refrained from eating." It alleged that José Luis Palomares was prescribed rehydration salts and because he did not take them, it was decided to transfer him to the Maracaibo Hospital. Therefore, it alleged that there had been no negligence, recklessness, lack of expertise or professional wrongdoing by the medical staff who took care of him and that all the care within their reach was provided to him, in conformity with the Internal Regulations of the Medical Service of the Petroleum Training Center.

10. The State contended that, in the present case, an exhaustive inquiry was conducted, which concluded that the decease of José Luis Palomares was due to "moderate to severe dehydration, not because the student had been tortured or physically punished."

11. The State alleged that the facts that were the target of the complaint were investigated, processed, resolved and ruled upon by the military court, in accordance with the provisions of laws in force at the time. It alleged that the War Council decided "to terminate the preliminary inquiry because there was no reason to proceed with it" and that that ruling was in line with the legal framework and Article 8 of the American Convention.

12. In view of the above, the State considered that the case did not constitute a violation of any right, according to the provisions of Article 47 of the American Convention on Human Rights and Article 27 of its Rules of Procedure, therefore the petition was considered inadmissible.

III. PROCEEDINGS WITH THE CIDH

13. The IACHR recorded the case under number 10.442 and, on August 28, 1989, proceeded to transmit a copy of the relevant parts to the State for its observations. The State submitted its reply on February 1, 1990, which was sent to the petitioners for their observations. On September 17,

1990, the IACHR reiterated its request for information to the petitioners.

14. On October 2, 1990, the petitioners submitted their observations, which were sent to the State for its observations. On January 11, 1991, the IACHR reiterated its request for information to the State. On March 1, 1991, the State submitted its observations, which were sent to the petitioners for their observations. On April 29, 1991, the petitioners submitted their observations.

15. On May 31, 1994, the State requested up-to-date information from the IACHR, which request was sent to the petitioners. On May 18 and November 20, 1995 and on April 9, 1997, the IACHR reiterated its request for information to the petitioners.

18. On May 16, 1997, the petitioners submitted their reply, which was sent to the State for its observations. On August 1, 1997, the State submitted its reply, which was sent to the petitioners for their observations. On September 22, 1997, the State sent additional information.

16. On September 23, 1997, the IACHR reiterated its request for information to the petitioners. On October 16, 1997, the petitioners requested an extension to submit information, which was granted by IACHR. On December 2, 1997, the petitioners submitted their reply, which was sent to the State for its observations. On March 19, 1998, the IACHR reiterated its request for information to the State.

17. On July 13, 1998, the State submitted its reply, which was sent to the petitioners on July 27, 1998 for their observations. On September 28, 1998, the petitioners requested an extension, which was granted by IACHR. On December 28, 1998, the petitioners submitted their observations.

18. On November 11, 2004, the IACHR requested up-to-date information from both parties. On December 21, 2004, the petitioners submitted their reply, which was sent to the State on February 17, 2005 for its observations. On June 17, 2005, the State submitted its reply, which was sent to the petitioners for their observations. On October 17, 2006, the IACHR reiterated its request for information to the petitioners.

19. On July 20, 2007, the petitioners replied that “despite the efforts that were made, they were unable to contact the next-of-kin of the victim” and because of this they requested that the petition be archived.

IV. GROUNDS FOR THE DECISION TO ARCHIVE THE CASE

20. Both Article 48(1)(b) of the American Convention and Article 42 of the Commission’s Rules of Procedure provide that, in the processing of a petition, after the information has been received or the deadline has elapsed without receiving them, the IACHR shall ascertain whether the grounds for the petition or communication still exist or subsist and if they do not exist or subsist, the case shall be archived.

21. On the subject of withdrawal, Article 41 of the IACHR Rules of Procedure points out that that the petitioner may at any time desist from his or her petition or case, to which effect he or she must so notify it in writing to the Commission, which may archive the petition or case if it deems it appropriate.

22. In the present petition, the petitioners alleged that the State was responsible for failure to comply with the obligation enshrined in Article 1 of the American Convention and submitted allegations regarding the absence of investigation, trial and punishment of those responsible for the death of José Luis Palomares. As for the State, it alleged that the petition was inadmissible as it did not constitute a violation of any right and that it had been ruled upon by the authorities having jurisdiction in accordance with domestic law, in compliance with Article 8 of the American Convention.

23. In response to the request for information made by the Commission, on July 20, 2007, the petitioners requested that the petition be archived.

24. In view of the request for archiving the case submitted by the petitioners, the Commission in accordance with Article 41 of the IACHR Rules of Procedure, as well as Article 48(1)(b) of the American Convention and Article 42 of the IACHR Rules of Procedure, hereby decides to archive the present petition.

Done and signed in the city of Washington, D.C., on the 23rd day of March 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González and María Silvia Guillén, Commissioners.