

REPORT No. 38/11
DECISION TO ARCHIVE
CASE 11,488
ECUADOR
March 23, 2011

ALLEGED VICTIM: Segundo Stivenson Ramos Salazar

PETITIONERS: Segundo Stivenson Ramos Salazar and Rodrigo Bucheli Mera

ALLEGED VIOLATIONS: Articles 8, 11, and 25 of the American Convention on Human Rights.

DATE PROCESSING BEGAN: May 17, 1995

I. POSITION OF THE PETITIONER:

1. On November 10, 1994, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received the complaint presented by Segundo Stivenson Ramos Salazar and Roberto Guzmán Mera (hereinafter “the petitioners”), in which they argued that the Ecuadorian State (hereinafter “the State” or “Ecuador”) was responsible for violations of the rights to privacy, a fair trial, and judicial protection of former Ecuadorian Army Assistant Superintendent Segundo Stivenson Ramos Salazar (hereinafter “the alleged victim”).

2. The petitioners claimed that the alleged victim was dismissed from his post and discharged from the military institution according to the final report issued by the Department of Military Intelligence on December 30, 1993, which charged him with “engaging in homosexual acts” with one of the members of his guard. They indicate that the Ground Forces Auxiliary Officers Council issued the decision to discharge him, which was appealed by the petitioners before the Ground Forces Superior Officers Council, and that the latter, on October 11, 1994, decided to deny the appeal and ratify the initial ruling of “...’misconduct’ in the interest of the good service.” The petitioners claimed that the decision was final and unappealable, established *res judicata*, and therefore was irreversible.

3. They claimed that the administrative proceeding by which Sub-Lieutenant Segundo Stivenson Ramos was discharged from the Armed Forces was a “false administrative proceeding” which did not follow the proper stages or adhere to due process, and that the right of defense was not observed, in that the alleged victim’s attorney was not allowed to participate. They claim that the alleged victim was submitted to questioning in which he virtually was not allowed to respond, and in which the “wording was adjusted to the whims of the members of the Councils.” They allege that a corrupt intelligence report containing evidence obtained by physical torture from Corporal Marcos Cabezas was substituted for the investigations phase. They allege that the Military Legal Adviser disregarded due process and submitted the report to the Auxiliary Officers Council instead of duly transmitting it to the Military Criminal Court of the appropriate jurisdiction or to the Military Disciplinary Council.

4. The petitioners allege that the Auxiliary Officers Council and the Ground Forces Superior Officers Council did not allow participation by the defense attorney of Sub-Lieutenant Segundo Stivenson Ramos Salazar, “who issued repeated requests that were not answered in any way,” and that they also

prevented the submission of evidence in his defense by his counsel. In addition, they claim that during his questioning Sub-Lieutenant Segundo Stivenson Ramos Salazar was not allowed to reply, the questioning was manipulated, and the wording of his statements was adjusted for the convenience of those bodies. They allege that the interrogators “spewed insults and offensive comments at him.”

5. The petitioners claim that there exists no evidence for charging Sub-Lieutenant Segundo Stivenson Ramos Salazar with “misconduct or even any indicia of homosexual behavior.”

6. Finally, the petitioners maintain that the silence of the Ecuadorian State regarding the physical torture inflicted on Corporal Marco Cabezas demonstrates “the intent to conceal these violations and to violate the human rights of persons.”

II. POSITION OF THE STATE:

7. The State maintained that former Sub-Lieutenant Ramos Salazar was discharged after having been “involved in homosexual acts, which made it impossible from any moral or professional point of view for him to remain in active service.”

8. The State claims that discharge from the Ground Forces for “misconduct” is applied directly and does not require a Military Disciplinary Council or the participation of military judges. It claims that the conduct of the former sub-lieutenant was evaluated by the competent bodies and this information was made available in accordance with regulations.

9. The State maintains that the disciplinary and behavioral requirements of Ecuadorian institutions, particularly those of the Armed Forces, cannot be limited in any way. It indicates that “in its sovereignty, and in keeping with the sentiments, public opinion, and values of the majority of its citizens, it has established that certain behaviors are incompatible with public service [...], and that this is not inconsistent either with the letter or with the spirit of the American Convention on Human Rights.”

III. PROCESSING BY THE IACHR:

10. The petition was registered under No. 11,488 and transmitted to the State on May 17, 1995, for observations. The State submitted information on August 21 and December 27, 1995, and on April 16, 1996, which was transmitted to the petitioners for their observations.

11. On December 30, 1998, the IACHR requested additional information from both parties. On March 8, 1999, the State sent additional information, which was transmitted to the petitioners for their observations. On April 16, 2009, the IACHR requested updated information from the petitioners in order to determine whether grounds for the petition continued to exist, in accordance with Article 48.1.b.

IV. GROUNDS FOR THE DECISION TO ARCHIVE

12. Both Article 48.1.b of the American Convention and Article 42 of the Rules of Procedure of the IACHR provide that, in the processing of a petition, once the information has been received, or once the deadline has passed and the information has not been received, the IACHR will verify whether the grounds for the petition or case exist, or continue to exist, and, if they do not, will order that the case be archived.

13. In this case, the petitioners alleged that the State was responsible for violations of rights enshrined in Articles 8, 11, and 25 of the American Convention. For its part, the State argued that the events alleged by the petitioners did not constitute violations of the Convention.

14. In this case, since April 1996 the petitioners have not replied to the observations of the State, nor have they provided additional or updated information on their claims, despite requests for current information issued by the Commission in December 1998 and March 1999. On April 16, 2009, the IACHR sent a request for updated information, to which the petitioners also did not respond.

15. Consequently, it is impossible to determine whether the grounds for the initial petition continue to exist, and, in keeping with Article 48.1.b of the Convention and Article 42 of the Rules of Procedure of the IACHR, the Commission has decided to archive this case.

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, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commission Members.