

REPORT No. 37/11
DECISION TO ARCHIVE
CASE 11,776
ECUADOR
March 23, 2011

ALLEGED VICTIMS: Diego Paredes Peña

PETITIONER: Alejandro Ponce Villacís

ALLEGED VIOLATIONS: Articles 7(5), 8(1), and 25 in relation to Articles 1(1) and 2 of the American Convention on Human Rights

DATE PROCEDURE BEGAN: April 29, 1998

I. PETITIONER'S POSITION

1. On May 8, 1997, the Inter-American Commission on Human Rights received a complaint filed by Alejandro Ponce Villacís (hereinafter "the petitioner") alleging responsibility of the Ecuadorian State (hereinafter "the State" or "Ecuador") for the alleged violation of the rights to personal liberty, judicial protection, and judicial guarantees in relation to the obligations of the State to adopt measures and ensure the implementation of the American Convention on Human Rights (hereinafter the "American Convention"), to the detriment of Diego Paredes Peña.

2. The petitioner indicated that on August 16, 1995, criminal proceedings were instituted for the alleged arbitrary disposition of reserve funds against agents of the Government of Ecuador and that on September 20, 1995, the initial stage of the criminal proceedings was expanded so as to include Diego Paredes Peña, in the degree of complicity in the offense of illicit enrichment, and a preventive arrest warrant was issued for him.

3. The petitioner alleged that in the face of the arrest warrant issued for Diego Paredes Peña, on May 17, 1996, it was asked that bond be set so as to nullify the arrest warrant, to which the response was that bond would be set at the appropriate procedural moment. He alleges that in face of that response, on April 14, 1997, he filed a constitutional *amparo* action, which went unanswered even though the term for resolving it was 48 hours.

4. The petitioner alleged that the Supreme Court of Justice (CSJ) set the bond on June 10, 1997 and that the amount was not calculated based on what was established in the relevant provisions of law, which constituted a violation of Ecuadorian law, but that said decision was not appealed "for it would have implied the indefinite prolongation of his imprisonment." He indicated that despite the incorrect calculation, the bond was offered.

5. The petitioner argued that on September 8, 1998, the Supreme Court of Justice found Diego Paredes Peña guilty of committing the crime of embezzlement (*peculado*) in the degree of complicity, without determining the responsibility of the perpetrator of the offense. He alleged that he was convicted of an offense other than the one for which he was tried (illicit enrichment), which violated his right to defense and due process.

6. In response to the State's argument of failure to exhaust the remedy of constitutional *amparo*, the petitioner alleged that he appealed the conviction, but that the CSJ "had issued an instruction to the judges to refrain sitting in judgment on *amparo* actions due to the lack of a statute." He alleged that said instruction constituted, per se, a violation of Article 25 of the American Convention, given that it impeded the exercise of the constitutional remedy.

7. Finally, the petitioner argued that despite the time elapsed since the filing of the appeal of

that judgment, no final judgment had yet been handed down, which constituted a denial of justice and an unwarranted delay in the processing of the remedy, for the time frames provided for in the Code of Criminal Procedure had been exceeded. The petitioner questioned the reasonableness of the time used by the State due to “the lack of attention to the related petitions, the time frames for resolution that turn out to be abusive ... and the persecution orchestrated by the Ecuadorian State against Mr. Diego Paredes Peña...”

8. THE STATE’S POSITION

8. In response to the claim, the State argued that the petition was inadmissible given that the petitioner did not exhaust the remedy of constitutional *amparo* against the judgment of the CSJ. It alleged that Diego Paredes Peña has exercised his right to defense, has freely turned to the courts of justice to ask that they act on his claims, and that he has been assisted by counsel at all times.

9. It indicated that the competent organs for taking stock of constitutional actions of *amparo* are the District Courts of the Contentious-Administrative Jurisdiction, and on holidays the criminal court judges, but not the Supreme Court of Justice; accordingly the action brought by the petitioner was mistaken. In addition, the State alleges that it is not true that there is an instruction from the Supreme Court of Justice not to agree to process *amparo* actions.

10. The State indicated that on September 8, 1998, the date on which the judgment was handed down against Diego Paredes Peña, the new Constitution of Ecuador was in force. It prohibited the suspension of the criminal proceeding for the offenses of embezzlement and illicit enrichment when the persons responsible for these infractions are fugitives. The State alleged that “... the action to prosecute them and the corresponding penalties will be imprescribable and it is in these cases that the trials will begin and continue even in the absence of the accused...” It argued that accordingly, in the present case, there was no *res judicata* and therefore domestic remedies had not been exhausted.

11. The State alleged that domestic remedies had not been exhausted, given that the appeal filed against the judgment of the CSJ was being heard by the First Criminal Chamber of the CSJ.

9. PROCESSING BEFORE THE IACHR

12. The petition was registered under number 11,776. After making a preliminary analysis, on April 29, 1998, the IACHR proceeded to transmit a copy of the pertinent parts to the State, so that it might submit its observations. On May 19, 1998 the petitioner requested the suspension of the processing of the petition, without prejudice to its possible reactivation in the future.

13. On June 15 and September 30, 1998, the State submitted its observations. On October 9 1998, the petitioner asked the IACHR to reactivate the processing of the matter, and sent its observations. Accordingly, the observations were translated to both parties on December 31, 1998. The State submitted its response on February 16, 1999, and the petitioner submitted it on May 25, 1999. On August 17, 1999, the State’s response of February 1999 was forwarded to the petitioners for their observations.

14. On April 16, 2009, the IACHR asked the petitioner to provide up-to-date information to determine whether the motives of the petition subsist, in keeping with Article 48(1)(b) of the American Convention, and indicated to him that if that information were not received within one month, the IACHR might archive the record of the petition in keeping with Article 48(1)(b) of the Convention and Article 42 of the Commission’s Rules of Procedure. The petitioner did not submit the information requested.

10. BASIS OF THE DECISION TO ARCHIVE

15. Both Article 48(1)(b) of the American Convention on Human Rights and Article 42 of the Rules of Procedure of the IACHR provide that in processing a petition, once the information has been

received or the term set has lapsed and the information has not been received, the IACHR will verify whether the motives of the petition or communication exist or subsist, and if they do not exist or subsist, it will order that the case be archived.

16. In the present petition it is alleged that the rights enshrined in Articles 7(5), 8(2), and 25 have been violated, in conjunction with Articles 1(1) and 2 of the American Convention as a result of the criminal proceeding brought against Diego Paredes Peña. The State, for its part, alleged failure to exhaust domestic remedies, given that an appeal was pending.

17. In this proceeding, the petitioner has not responded to the State since May 1999, nor has it responded to the State's observations or provided additional or up-to-date information on his claims. Nor did the petitioner respond to the request for up-to-date information sent by the IACHR in April 2009.

18. Accordingly, it is not possible to determine whether the motives on which the initial petition was based subsist, thus it is not possible to continue processing the petition. Therefore, in keeping with Article 48(1)(b) of the Convention and Article 42 of the IACHR's Rules of Procedure, it is decided to archive the petition in this matter.

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.