

REPORT No. 126/11
DECISION TO ARCHIVE
CASE 12.304
ECUADOR
October 19, 2011

ALLEGED VICTIMS: Jorge E. Aguilar Cabezas

PETITIONER: Jorge E. Aguilar Cabezas

ALLEGED VIOLATIONS: Articles 21, 24, and 25 in conjunction with Article 1(1) of the American Convention on Human Rights.

DATE PROCESSING BEGAN: July 12, 2000

I. THE PETITIONER'S POSITION

1. On February 22, 2000, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition filed by Jorge E. Aguilar Cabezas (hereinafter "the petitioner" and "the alleged victim") that alleges the responsibility of the Republic of Ecuador (hereinafter "the State") for unwarranted delay in the enforcement of a final judgment of the Supreme Court of Justice of Ecuador.

2. The petitioner alleged that in 1974, 1975, and 1977 he signed three construction contracts with the Ecuadorean Social Security Institute (hereinafter "IESS") to build 452 housing units in the subdivisions of "La Luz" and "La Delicia". He alleged that when construction of the housing was finalizing, the IESS had considered the contracts terminated, and appropriated the petitioners' value, money, and properties.

3. He alleged that a judicial proceeding was begun into the facts for willful breach of contract, and for the return of the belongings and money, against the IESS, which initially denied the indexing provided for in the contract. The petitioner alleged that he appealed that decision to the Supreme Court of Justice, which affirmed the judgment of first instance on January 10, 1995, adding the payment for monetary devaluation. He alleged that the President of the Supreme Court of Justice began the enforcement of that judgment on designating an expert to calculate the amount of the payment ordered to be made, and that he issued his expert report on May 14, 1995, but that said payment was not made, in view of the removal of the President of the Supreme Court of Justice. He alleged that subsequently the new President of the Supreme Court ordered another expert study to determine that amount once again. That expert report was said to have been delivered to the Supreme Court of Justice on October 4, 1998, for approval and issuance of an order of enforcement of the judgment, which allegedly never happened.

4. The petitioner argued that as a result the State was responsible for violation of the rights to private property, equality before the law, and judicial protection enshrined in Articles 21, 24, and 25, in conjunction with Article 1(1), of the American Convention.

II. THE STATE'S POSITION

5. In response to the petitioner's claim, the State alleged that the petition exceeds the six-month time limit established in Article 46(1)(b) of the American Convention, and so is time-barred. In this respect, it alleged that the processing of the petition began on July 12, 2000, and that the final judgment was handed down on January 5, 1995.

6. Finally, the State alleged that the petitioner did not clearly state facts that tend to establish that the rights that the State had violated, as per Article 47(1)(b).

III. PROCESSING BEFORE THE IACHR

7. On February 22, 2000, the Commission received the initial petition, registered it under number 12,304 and, after making a preliminary analysis, proceeded to transmit a copy of the pertinent parts to the State for its observations on July 12, 2000.

8. On March 27, 2001, the State presented its response, which was forwarded to the petitioner for his observations. On April 11, 2001, the petitioner presented his response, which was forwarded to the State for its observations.

9. On August 31, 2001, the State presented its response, which was forwarded to the petitioner for his observations. On October 12, 2001, the petitioner presented his response, which was forwarded to the State for its observations.

10. On August 5, 2005, the Commission reiterated its request for information to the State. On November 11, 2005, the State presented its response, which was forwarded to the petitioner for his observations on December 2, 2005. On July 26, 2010, the Commission asked that the petitioner submit up-to-date information as to whether the motives of the claim subsist, and it indicated that if that information were not received within one month the IACHR could close the record of the petition in keeping with Article 48(1)(b) of the American Convention and Article 42 of its Rules of Procedure. The petitioner did not submit the information requested.

IV. GROUNDS FOR THE DECISION TO ARCHIVE

11. Both Article 48(1)(b) of the American Convention on Human Rights and Article 42 of the Rules of Procedure of the Inter-American Commission on Human Rights establish that within the processing of a petition, once the information is received, or after the time period established has passed and it has not been received, the IACHR will verify whether the motives for the petition or communication exist or subsist, and if they do not exist or subsist, it will order that the record be closed.

12. In the instant petition the petitioner alleged that the State is responsible for the delay in enforcing a final judgment, in violation of his rights established at Articles 21, 24, and 25 of the American Convention, in conjunction with Article 1(1). For its part, the State alleged that the petitioner had exceeded the time period for filing the petition, as per Article 46(1)(b) of the American Convention, and that he had not established which rights of the Convention were violated by the State.

13. In this process, the petitioner did not respond to the request for information from the IACHR of December 2, 2005. Nor did the petitioner respond to the request for updated information sent by the IACHR on July 26, 2010. In such circumstances, it is not possible to go forward with the analysis or determine whether the motives underlying the initial petition subsist, thus in keeping with Article 48(1)(b) of the American Convention as well as Article 42 of the IACHR's Rules of Procedure, it is decided to close the record in this matter.

14. Done and signed in the city of Washington, D.C., on the 11th day of November 2011. (Signed): José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González and María Silvia Guillén, Commissioners.