

REPORT No. 41/12
DECISION TO ARCHIVE
Petition 12.364
ECUADOR
March 20, 2012

ALLEGED VICTIM: Luís Mazón and Workers in the Ministry of Health

PETITIONER: Center for Economic and Social Rights (CDES)

ALLEGED VIOLATIONS: Articles 8, 25, and 26 of the American Convention on Human Rights and Articles 10, 15, and 17 of the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights, "Protocol of San Salvador"

DATE PROCESSING BEGAN: February 16, 2001

I. POSITION OF THE PETITIONER

1. On December 20, 2000, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition lodged by the Center for Economic and Social Rights (CDES) (hereinafter "the petitioners") against the State of Ecuador (hereinafter "the State" or "Ecuador"). In said petition, the petitioners maintained that the government's decision to reduce health benefits in the 1999 National Budget violated the constitutional provision on the right to health and had led to a crisis in that regard.

2. The petitioners contended that they had filed two appeals against the reduction in the National Health Budget and that they also called for an increase in the budget and argued that human rights norms and instruments had been violated. The first appeal was purportedly an action of unconstitutionality, which was formally admitted by the Constitutional Court (hereinafter "CC") on December 21, 1999. With regard to that appeal, they said that the State, as the respondent, had not replied by the established deadline, since the National Congress had responded two months after and the President of the Republic had submitted an undated reply. They argued that on March 28, 2000, they had requested a public hearing before the CC and that it did not respond to its request and, on June 7, 2000, five months after the deadline set by law,¹ it had issued a resolution in which it declared the appeal inadmissible.

3. As concerns the second appeal, the petitioners claimed that on September 10, 1999, they had filed an amparo action; however, it had been denied on October 12, 1999. They added that they had appealed that ruling before the CC and that, on June 19, 2000, the CC had upheld the ruling as it considered that: the President and the Congress fulfilled their procedural constitutional obligations by drawing up the budget and that the petitioners did not have legal standing to file the appeal on behalf of others.

4. The petitioners alleged violations of the obligation of progressive development of the right to health, as well as the absence of guarantees and judicial protection to appeal and redress violations of rights established in the American Convention on Human Rights (hereinafter "the Convention") and in Articles 10, 15, and 17 of the Protocol of San Salvador.

5. Finally, as concerns the requirement of prior exhaustion of domestic remedies established in Article 46.1(a) of the American Convention, the petitioners argued the impossibility to

¹ They contended that, at the time they filed their appeal, the National Budget was in place and, had the respondent and the Constitutional Court met the deadlines, it could have been changed at the time of the ruling.

access remedies since neither their basic rights nor the judicial mechanisms established in the Convention had been guaranteed.

II. POSITION OF THE STATE

6. In response to the petitioners' claim, the State considered the petition inadmissible. In that connection, it said that it recognized the progressive nature of the development of economic, social, and political rights (hereinafter "ESPR") established in Article 26 of the Convention and their justiciability. However, the State contended that the IACHR was not competent *rationae materiae* to take up violations of Articles 10, 15, and 17 of the Protocol of San Salvador, as indicated in the Limburg Principles, on the implementation of the International Covenant on the ESPR.

7. The State argued that Ecuadorian law allowed for the ESPR to be enforced by courts of justice, as the petitioner had attempted to do through the action to challenge the constitutionality. However, the CC purportedly declared that action without merit since it could not consider the constitutionality of a provision that was not in force anymore. Likewise, it said that the Protocol of San Salvador expressly excluded the possibility of implementing the Inter-American human rights system, through individual petitions, for violations not explicitly set forth in its Article 19, i.e., trade union rights and the right to education.

8. It added that the petitioner's disagreement with the court rulings issued by competent judges within their sphere of responsibility did not provide a basis for the Commission to alter those rulings. It therefore considered that the petitioners could not have recourse to the IACHR, inasmuch as the Commission was not a court of fourth instance and could not alter the rulings of national courts acting within their competence.

9. In addition, the State claimed that several events and circumstances of *force majeure* had taken place in 1999 that had obliged the National Government to devise solutions, so as to neutralize adverse internal and external factors and, insofar as possible, maintain community well-being. It said that, despite the serious budgetary deficit, those circumstances had required the Government to use considerable unbudgeted resources to deal with the natural disaster, which had a major impact on the country's health, housing, trade, and agricultural sectors and on its road network.

III. PROCESSING BY THE IACHR

10. The IACHR registered the petition under No. 12.364 and, after a preliminary review, it transmitted it to the State on February 16, 2001, for its observations. On August 31, 2001, the State submitted its response, which was transmitted to the petitioners for their observations. On October 11, 2001, the petitioners presented their response, which was transmitted to the State for its observations. On December 3, 2001, the State submitted its response, which was transmitted to the petitioners for their observations.

11. The petitioners presented observations and additional information on January 16, February 6, and February 11, 2001. On May 3, 2002, the State submitted observations on August 7 and 30, 2002, the petitioners submitted additional information. That information was commented on by the State on March 31, 2003. On May 9 and July 14, 2003, the petitioners presented an overall review of the information.

12. On July 30, 2010, the IACHR asked both parties for current information. On August 10, 2010, the State asked the Commission for a copy of the pertinent parts of the file, which were transmitted to it on August 17, 2010. On September 23, 2010, the State submitted its response, which was transmitted to the petitioners on September 28, 2010. Said response was returned by the postal service. The IACHR resent the communication electronically to an address found on the Internet and, as of the date of approval of this report, it has not received a reply.

IV. BASIS FOR THE DECISION TO ARCHIVE

13. 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 communication exist, or continue to exist, and, if they do not, will order that the case be archived.

14. In this case, the petitioners have not been in contact with the IACHR since July 14, 2003. The request for current information that the IACHR sent to the petitioners on July 30, 2010, was returned by the postal service. The IACHR then resent the communication electronically to an address found on the Internet and, as of the date of approval of this report, it has not received a reply. Under the circumstances, it is unable to pursue its examination or to ascertain whether the grounds for the original petition still exist. Consequently, pursuant to Article 48.1(b) of the American Convention and Article 42 of the Rules of Procedure of the IACHR, the decision has been made to archive this petition.

Done and signed in the city of Washington, D.C., on the 20th day of the month of March 2012.
(Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Felipe González, Second Vice-President; Dinah Shelton, Rodrigo Escobar Gil, Rosa María Ortiz, and Rose-Marie Antoine, Commissioners.