

REPORT No. 43/12
DECISION TO ARCHIVE
PETITION 661-01
ECUADOR
March 20, 2012

ALLEGED VICTIMS: Pedro Muñoz Ulloa and Miriam García Gutiérrez

PETITIONER: Ernesto López Freire and Alejandro Ponce Villacís

ALLEGED VIOLATIONS: Articles 1, 5, 7, 8, 9, 11, 25, and 29 of the American Convention on Human Rights

DATE THE PROCEEDING STARTED: November 8, 2001

I. POSITION OF THE PETITIONER

1. On January 18, 2001, the Inter-American Commission on Human Rights (hereinafter referred to as “the Commission” or “IACHR”) received a petition filed by Ernesto López Freire and Alejandro Ponce Villacís (hereinafter referred to as “the petitioners”) alleging that the State of Ecuador was responsible for the violation of the rights to freedom, personal integrity and judicial protection during the alleged illegal imprisonment and criminal proceedings against Pedro Muñoz Ulloa and for the absence of reparations for himself and his wife Miriam García Gutiérrez, both of them Colombian nationals.

2. The petitioners alleged that Pedro Muñoz Ulloa was imprisoned by the National Police Force on May 19, 1993, without an arrest warrant ordered by a judge having jurisdiction over the alleged crimes of drug trafficking, unlawful association and money laundering. They alleged that he was taken to the cells of the INTERPOL of Pichincha in Quito, where he was held incommunicado for 13 days in a very small prison cell, which prevented him from lying down and sleep and where he had no light or food, and after that lapse of time he was allegedly taken to the García Moreno penitentiary.

3. The petitioners alleged that, during his detention and first seven days in the penitentiary, his spouse was told he had not been imprisoned and she was permanently being lied to about his whereabouts. They claimed that the alleged victim was able to send his spouse a note informing her of his imprisonment. They contended that, on the fourth day of his imprisonment, during the investigations conducted by the Police, he was required to make a statement without the assistance of his attorney.

4. They claimed that three bills of indictment were ordered against Pedro Muñoz Ulloa, for drug trafficking on May 28, 1993, for money laundering on September 8, 1993, and for unlawful association on September 22, 1993. They alleged that, at the same time, preventive detention was ordered and that the three proceedings were filed later than the 24 hours stipulated by the Ecuadorian Constitution for bringing the accused before a judge. They alleged that, in the three proceedings, the District Attorney refrained from formally indicting Pedro Muñoz, as a result of which the charges were dismissed.

5. They claimed that, despite this, the alleged victim was not released because he had to wait confirmation from the Superior Court of Justice regarding the judgments issued. They alleged that, on June 2, 1997, the Superior Court confirmed dismissal of the charges for drug trafficking. They claimed that, because of the delay in the other two proceedings, Pedro Muñoz and other prisoners started a hunger strike and other protests (which also included a voluntary crucifixion), which lasted more than 80 days, until the dismissals ruled in the two remaining proceedings were confirmed on September 22 and 27, 1997. They claim that, afterwards, the alleged victim was released.

6. They allege that, during the prolonged preventive detention of the alleged victim, both the Colombian Embassy and the Colombian Consulate in Ecuador took steps so that the proceedings would not be delayed unjustifiably. They indicated that Pedro Muñoz was in preventive detention for more than

53 months (four years, five months) before his innocence was confirmed. They claimed that the alleged victim was subjected to a pre-sentencing imprisonment system that prevails *de facto* and illegally in Ecuador.

7. The petitioners contended that, for this detention, they filed administrative complaints against the President of the Republic, the President of the Supreme Court of Justice and the Attorney General of the State, requesting US\$1.5 million as compensation in terms of redress for damages sustained. They claimed that only a lower-echelon employee of the Attorney General's Office replied, as indicated below:

The mission of the Office of the Attorney General of the State is to intervene in defending government institutions, either as a complainant or as a defendant, for the defense of the Ecuadorian State and its institutions.

... In the present case, the Office of the Attorney General of the State has no jurisdiction over, and is not responsible for, the alleged violations, although of course Mr. Pedro Gustavo Muñoz Ulloa has the right to file any proceedings he believes he might be entitled to.

8. They alleged that, in view of this refusal, they submitted a personal legal action in conformity with the provisions of the Statute of the Judiciary Administrative System of the Executive Branch of Government (Estatuto del Régimen Jurídico Administrativo de la Función Ejecutiva—ERJAFE), (hereinafter referred to as the ERJAFE). They claimed that, on June 22, 1999, the First Chamber of District Court No. 1 of Administrative Disputes declined to hear the case. They also claimed that, in view of the failure to reply of the presidents of the Supreme Court of Justice and of the Republic, they filed the respective requests for provision of compensation and they did not obtain any reply.

9. They contended that they submitted an appeal on constitutional grounds so that the President of the Republic would rule on the request and provide Pedro Muñoz with compensation for damages. They indicated that the appeal was turned down by both the judge hearing the case and the Constitutional Court, arguing that the President of the Republic was not legally obliged to respond to the complaint that was filed. They alleged that said ruling was notified on July 19, 2000.

10. The petitioners claimed that Ecuador's Constitution provides that, when a judgment is issued three times by the Supreme Court of Justice, it becomes binding and enforceable. They alleged that, regarding the Supreme Court of Justice's failure to reply, in three judgments it has ruled that the right be granted to implement what was requested to the administration when this administration has neglected to respond to a request for a period of over 15 days. They alleged that, in this case, said failure to reply had occurred, but that for enforcement of this right, the alleged victim would have had to pay a court fee equivalent to 1% of the amount requested, which in this case amounted to US\$15,000, which he was unable to pay because of his financial situation.

II. POSITION OF THE STATE

11. The State alleged that the petitioner did not submit facts that would tend to show a violation of the rights guaranteed in the American Convention and that the petition was inadmissible because domestic legal remedies had not been exhausted. It alleged that the petitioners filed inappropriate and irrelevant appeals.

12. The State pointed out that all the reasons based on fact and law submitted by the petitioner were false. It alleged that it was not true that the detention had been illegal or that he had been held in a prison cell incommunicado, without light or food, etc. It alleged that there were no legal grounds to the facts that were submitted.

13. It contended that the petitioners had filed administrative complaints against the President of the Republic, the President of the Supreme Court of Justice and the Attorney General of the State and had requested compensation for damages sustained. It claimed that this complaint was inappropriately filed because, according to Article 20 of the Political Constitution

[t]he institutions of the State, their delegates and concession holders are required to compensate individuals for damages caused as a consequence of a deficient provision of public services or the actions of government officials and employees in the performance of their duties.

14. Likewise, the State indicated that the alleged victims had not been harmed by the deficient provision of public service or by administrative actions carried out by government officials and employees. It alleged that Article 22 of the Constitution¹ provides for rapid, effective and simple procedures to hold the State liable for any miscarriage of justice and that articles 979 and following of the Civil Proceedings Code sets forth the procedures required for filing a lawsuit for compensation for damages against magistrates, judges, officers and employees of the judiciary branch of government.

15. The State claimed that the petitioners should have filed a civil lawsuit for damages in a civil court of law against the judge who had heard the criminal case filed against Pedro Muñoz Ulloa, because they were seeking to hold the State liable in civil terms and to secure compensation. It alleged that the petitioners could not file a claim for compensation with the President of the Republic and the President of the Supreme Court of Justice unless a judgment of conviction had previously been issued against the government official who had caused the damage.

16. The State alleged that, on the basis of the ERJAFE, the petitioners had filed a personal or full jurisdiction proceeding as a result of the failure of the President of the Republic and the President of the Supreme Court of Justice to reply to their petition. It claimed that said action was unsuccessful because the aforementioned Statute exclusively governs the executive branch of government and its institutions. Furthermore, it alleged that ERJAFE points out that administrative failure to reply is not applicable when the public official against whom the proceedings are filed does not have jurisdiction to rule on the matter. It alleged that, along this same line of reasoning, the Constitutional Court had ruled in response to the appeal on constitutional grounds filed by the petitioners.

17. It contended that domestic legal remedies cannot be viewed as exhausted as a result of Resolution Number 128-2000-TP issued by the Constitutional Court in case 1119-99RA, which turned down the appeal on constitutional grounds because, in the present case, it was not the adequate appeal for the compensation that the petitioner had requested.

18. Regarding the allegation made by the petitioners regarding payment of an unduly high court fee (see *supra* I), the State responded that the Civil Code provides that proceedings for damages against a magistrate or judge who, in the performance of his/her duties, causes economic damage to the parties because delays in administering justice or failure to do so, are not subjected to the payment of court fees. It alleged that Article 982 of the Civil Code points out that “the parties shall not pay court fees to litigate” and that Article 7 of the Law on the Establishment of Court Fees provides that “court fees shall be set with respect to the amount of the claim,” but that in no case shall it exceed the amount equivalent to ten consolidated minimum monthly wages. It claimed that the existence of court fees to have access to justice does not constitute a constraint to justice.

III. PROCEEDINGS WITH THE IACHR

19. The petition was recorded under number 661-01 and after a preliminary review, the IACHR passed on the petition to the State for its observations on November 8, 2001. On September 2, 2005, the IACHR repeated its request for information to the State. On February 8, 2006, the State submitted its reply, which was sent to the petitioners for their observations on April 5, 2006.

20. On December 15, 2008, the IACHR repeated its request for information. On July 6, 2010, the IACHR requested up-to-date information from the petitioners in order to decide whether or not there continued to be grounds for the petition, and the petitioners were informed that if the IACHR did not receive any reply, the IACHR would be able to archive the case.

¹ Article 22 of the Constitution provides that: “the State shall bear civil liability for the miscarriage of justice, for the inadequate administration of justice, for actions that might have led to the imprisonment or arbitrary detention of an innocent person.”

IV. LEGAL BASIS FOR ARCHIVING THE INVESTIGATION

21. 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 the time-limits have expired without the information being received, the IACHR shall check whether or not there exist or subsist the grounds for the petition or the communication; and if these grounds do not exist or subsist, it shall order that the case be archived.

22. The present petition alleged violation of the rights enshrined in Articles 1, 5, 7, 8, 9, 11, 25 and 29 of the American Convention. As for the State, it claimed that the petition was inadmissible because the allegations of the petitioners did not tend to show any violation of the American Convention and because domestic legal remedies had not been exhausted.

23. In the present proceedings, the petitioners only filed their petition and did not respond to any of the requests for information made by the IACHR in April 2006, December 2008 and July 2010. Under such circumstances, it is not possible to make any progress reviewing or deciding whether or not the grounds for the initial petition subsist. Therefore, in conformity with Article 48.1.b) of the American Convention, as well as Article 42 of the Rules of Procedure of the IACHR, it hereby decides to archive the present 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.