

REPORT No. 105/12
DECISION TO ARCHIVE
PETITION 12.092
ECUADOR
November 8, 2012

ALLEGED VICTIMS: Pedro Eladio Mata Martínez and Isabel María Bruckmann Velásquez viuda de Mata¹

PETITIONER: José Leonardo Obando Laaz

ALLEGED VIOLATIONS: Articles 21 and 25 of the American Convention on Human Rights

PROCESSING BEGAN: January 26, 1999

A. POSITION OF THE PETITIONER

1. On December 2, 1988, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition lodged by José Leonardo Obando Laaz (hereinafter “the petitioner”) alleging the responsibility of the State of Ecuador (hereinafter “the State” or “Ecuador”) in violating the right to property and to judicial protection of Isabel María Bruckmann Velásquez viuda de Mata and of her late husband Pedro Eladio Mata Martínez (hereinafter “the alleged victims”).

2. The petitioner claimed that the alleged victims were stripped of properties by the judicial authorities of the district of Guayaquil “without having committed any criminal offense, having been involved in any crime, or having faced criminal charges.”

3. The petitioner maintained that on December 3, 1990, Carlos Luis Emanuel Veliz was arrested at the “San Pedro y Mariquita” estate, located on the Quevedo to El Empalme road, where the police claimed to have seized 10 packages of cocaine hydrochloride and two planks containing a further 20 packages. He claimed that the police officers, in violation of the terms of the American Convention on Human Rights (hereinafter “the American Convention”), went to the home of José Antonio Mata Bruckmann, the alleged victims’ son, illegally and arbitrarily arrested him, and invaded his home, located on Calle Chambers in Guayaquil, without a search warrant signed by a competent authority. He claimed that that house, the property of the alleged victims, was being rented by Nelly Elizabeth Saltos Coello (José Antonio’s wife). He stated that “during the search of Mata Bruckmann’s home, 20 packages of the same drug were found.” The petitioner claimed that the drugs were planted in the property by the police and were a portion of the drugs found hours earlier at the San Pedro y Mariquita estate. He reported that after the home search, the police illegally remained on the property.

4. In addition, he claimed that in that property and absent an arrest warrant, they held Marco Antonio Cepeda Mora, Raúl Roberto Zambrano Valenzuela, Mario Cesar Zapata Escalante, and Sergio Gil Gil (a Colombian citizen) in custody for the space of ten days. He alleged that those individuals were abducted, kept incommunicado, tortured, and investigated without the assistance of either private or publicly appointed legal counsel. The petitioner claimed that at no time did Mr. Mata Martínez or Mrs. Bruckmann have any connection with the investigation that the police were purportedly conducting on their property.

5. The petitioner maintained that on December 14, 1990, the First Criminal Judge of Guayas issued a trial commencement deed and illegally ordered the deposit with the court of the property

¹ Died on August 20, 2002.

belonging to the alleged victims that had been seized. He claimed that the judge gave this order knowing that the alleged victims had no connection or criminal relationship whatsoever with the drugs seized at the San Pedro y Mariquita estate.

6. He further contended that in the INTERPOL report, the National Police did not establish any kind of responsibility on the part of the alleged victims; in issuing the initial deed, the judge did not charge them; neither did the Public Prosecution Service establish any form of responsibility; no summons to plenary proceedings was served on the owners of the illegally seized properties; the Fifth Chamber of the Superior Court of Justice de Guayaquil (hereinafter "Fifth Chamber") formalized no charges against the alleged victims; and, also, Nelly E. Saltos Coello was dismissed from the proceedings. He claimed that the Fifth Chamber justified the seizure of the real estate solely under Article 121, since repealed, of the Law on Narcotic and Psychotropic Substances.²

7. The petitioner claimed that the order for the seizure of the property of the Mata-Bruckmann family, in the absence of any charges against them, was a violation of the right to property. He said they were stripped of the property located at Km 24 of the Guayaquil to Salinas road, where no traces of drugs were found, and of the house on Calle Chambers, where the drugs were planted.

8. The petitioner claimed that the State denied the alleged victims the use and enjoyment of the property under Articles 116 and 121 of the Law on Narcotic and Psychotropic Substances. He stated that the judges used Article 116 to establish a presumption of guilt, and that the article in question was suspended and ruled unconstitutional by the Constitutional Court of Ecuador in Resolution No. 119 of December 24, 1997.

9. The petitioner claimed that the alleged victims filed a complaint as injured third parties in criminal proceedings No. 442-90, which was processed by the First Criminal Court of Guayas. He stated that they made countless requests for their property to be returned to them, but that they were ignored. In addition, he claimed that he lodged a request with the Fifth Chamber, which was denied. He claimed that they also filed an unconstitutionality suit with the Constitutional Court against Articles 116 and 121 of the Law on Narcotic and Psychotropic Substances.

10. The petitioner claimed that after the seizure, the State made no efforts to provide the alleged victims with legal protection for the return of their property. He said in 2002, twelve years ago, that the properties were still in the hands of the Superior Court of Justice of Guayaquil.

11. He claimed that the State violated the alleged victims' right to be heard with due guarantees and within a reasonable time by a competent judge in determining their rights, and so they were denied both due process and the right of defense.

II. POSITION OF THE STATE

12. The State maintained that the petition was inadmissible. It maintained that the alleged facts did not tend to establish a violation of the American Convention and that the domestic remedies had not been exhausted.

13. Regarding the facts, the State maintained that the INTERPOL report of December 9, 1990, indicated that ten packages of cocaine hydrochloride were seized at the San Pedro estate, along with two planks in which a further 20 packages of that same drug were concealed; and that, later, at the home of José Antonio Mata Bruckmann, another 20 packages of cocaine were seized. It claimed that the investigation conducted at the estate revealed 180 kilograms of cocaine hydrochloride, which was buried in six 30-kg sacks. It maintained that those investigation procedures were verified by the duty provincial prosecutors of Guayas and Los Ríos. It added that the report concluded that the persons involved were in possession of a total of 230 kilograms of cocaine hydrochloride.

² The petitioner indicates that the law in question was published on September 17, 1990, in Official Register No. 523.

14. Ecuador stated that on December 20, 1990, the Guayaquil Canton Property Registrar was asked to record, in the corresponding books, a prohibition on transferring property belonging to the accused, including the properties of José Antonio Mata Bruckmann and Nelly Elizabeth Saltos Coello. It contended that on October 31, 1991, the First Criminal Judge of Guayas issued a summons to a plenary hearing in the trial for the crime of drug trafficking and referred the proceedings to the Fifth Chamber of the Superior Court of Guayaquil for it to resolve the appeal lodged by, *inter alia*, José Antonio Mata Bruckmann, Nelly Elizabeth Saltos Coello, and Jorge Francisco Rivera Olivares, the remedy for annulment lodged by Julio Salazar, and the consultation regarding the dismissal of several of the accused.

15. It noted that on December 23, 1992, the alleged victims transferred ownership of their real property³ to the company STARLUX, S.A. The State maintained that the alleged victims were aware of the offense they were committing in carrying out this procedure. It stated that on March 29, 1994, the plenary proceedings initiation deed issued against José Antonio Mata Bruckman and others was confirmed, together with the seizure of the property, pursuant to the ruling of the Guayas prosecution service.

16. It reported that on October 31, 1994, the First Criminal Judge of Guayas issued a deed for the commencement of plenary proceedings against the accused, including José Antonio Mata Bruckmann as both mastermind and physical perpetrator. It maintained that the drugs found at the raided estate and house were the property of the alleged victims, the parents of José Antonio Mata Bruckman, and so the precautionary measures ordered by the judges of the Fifth Criminal Chamber were legally grounded.

17. It maintained that on December 10, 1999, the criminal judge of Guayas was presented with the record of the arrests made in "Operation Pescador," indicating that drugs were being sent to the Dominican Republic through doors that were camouflaged at the estate and shipped from there, and that 22 such doors were seized.

18. Regarding the exhaustion of domestic remedies, the State noted that the criminal trial for drug trafficking was pending resolution by the competent courts. It claimed the proceedings had been discharged normally and had been assisted by specialized experts, who issued reports favorable to the petitioner. In addition, it maintained that the Public Prosecution Service refrained from accusing the alleged victims, who were not involved in the proceedings.

19. It maintained that judgment in the criminal trial, be it favorable or not, would be the most suitable way for resolving the alleged victims' legal situation. It maintained that another effective remedy that the petitioner could pursue against the future judgment of the Criminal Court was an appeal for annulment, if the judges incurred in errors of law. It also said that a review remedy could be filed, if a conviction was handed down.

20. Ecuador contended that the petitioner made incorrect use of the appeal for annulment, in that the resolution that he challenged was merely a procedural deed on the precautionary measures adopted regarding the real property, and not the judgment. It claimed that the petitioner should have appealed the 1990 deed forbidding the transfer of that property. It maintained that the petitioner was able to file that remedy, and that it would have been effective.

21. The State disputed the petitioner's claim that his right to a trial within a reasonable time was not respected, contending that that guarantee was observed. It maintained that it upheld the right of defense in that the petitioner had available to him all the resources of Ecuadorian law to address the alleged violations and at no time was he denied the exercise of his right to be heard on an equal footing by the competent agencies.

³ Hacienda San Pedro y Mariquita, Km 12 of the Quevedo – El Empalme road, and a house located on Calle Chambers No. 302 and Bogotá, Guayaquil.

22. Regarding the claim about the right to property, Ecuador indicated that the Law on Narcotic and Psychotropic Substances was enacted to provide the State and society with redress for the harm caused by drug trafficking. It said that if the petitioner was acquitted on final appeal, all the seized properties would be returned to him. It stated that José Antonio Mata Bruckmann was the owner of the properties seized using a special mechanism on account of their use in the commission of crimes. It claimed that the seizure was therefore legal and that, in addition, there was sufficient evidence pointing to his guilt in the crimes of supplying, trafficking, brokering, storage and illicit possession of narcotics as punishable under the Law on Narcotic and Psychotropic Substances.

23. The Ecuadorian State held that in accordance with the “fourth instance formula,” the Commission cannot review the decisions of national courts that act within their jurisdiction and observe due judicial guarantees, unless violations of the Convention are committed. It contended that the petitioner’s dissatisfaction with the judicial decisions handed down by the competent natural judges does not provide grounds for the Commission to review those decisions.

III. PROCESSING BY THE IACHR

24. The IACHR recorded the petition as No. 12.092 and, after carrying out a preliminary analysis, conveyed it to the State for its comments on January 26, 1999. The State submitted replies on May 5 and June 28, 1999, which were forwarded to the petitioner for his comments. On September 23, 1999, the petitioner presented his reply, which was conveyed to the State for its comments.

25. On November 29, 1999, the State submitted additional information, which was forwarded to the petitioner for his comments. On January 4, 2000, the petitioner presented his reply, which was conveyed to the State for its comments. On July 11, 2000, the State submitted updated information, which was forwarded to the petitioner for his comments. The petitioner submitted updated information on October 2, 2000, which was conveyed to the State for its comments. On January 24, 2001, the State requested an extension, which the IACHR granted.

26. The State submitted updated information on February 22, 2001, which was forwarded to the petitioners for their comments. On May 24, 2001, the petitioner submitted his response, which was conveyed to the State for its comments on October 4, 2001. On January 18, September 3, 13, and 16, and November 15, 2002, the family of the alleged victims submitted additional information.

27. On July 29, 2010, the IACHR asked the petitioner for up-to-date information and repeated the request for information sent to State on October 4, 2001; it also sent the State the additional information presented by the alleged victims’ family for its comments. On September 9, 2010, the State requested copies of the relevant parts of the case file, which was sent to the State by the IACHR. On June 1, 2011, the State submitted its response, which was forwarded to the petitioner for his comments on June 7, 2011. On February 9, 2012, the IACHR repeated its request to the petitioner for additional information in order to determine whether the grounds for the petition subsisted, informing him that if no reply was received within the space of one month the Commission could archive the petition. As of the date of this report’s adoption, the IACHR has received no reply from the petitioner.

IV. GROUNDS FOR THE DECISION TO ARCHIVE

28. Both Article 48.1.b of the American Convention Rights and Article 42 of the IACHR’s Rules of Procedure provide that in the processing of a petition once the observations have been received or the period established has elapsed with no observations received, the IACHR shall ascertain whether the grounds for the petition or communication exist or subsist, and if they do not it shall order the case archived.

29. This petition alleges violations of the rights enshrined in Articles 21 and 25 of the American Convention. In turn, the State maintained that the petition was inadmissible, in that the alleged facts did not constitute violations of the American Convention and because domestic remedies had not been exhausted.

30. In the processing of this case, the petitioner sent his last reply on May 24, 2001, and the alleged victims' family have not communicated with the IACHR since September 2002. The petitioner did not reply to the request for updated information sent by the IACHR on October 4, 2001, nor to the repeat request made on July 29, 2010; neither did he reply to the request for information of June 7, 2011, or the reiteration of that request on February 9, 2012. Under such circumstances, it is impossible to continue with the analysis or to ascertain whether the grounds for the initial petition subsist. Consequently, in accordance with Article 48.1.b of the Convention and Article 42 of the IACHR's Rules of Procedure, the Commission decides to archive the present petition.

Done and signed in the city of Washington, D.C., on the 8th day of the month of November 2012.
(Signed): José de Jesús Orozco Henríquez, President; Felipe González, Second Vice-President; Dinah Shelton, Rodrigo Escobar Gil, Rosa María Ortiz, and Rose-Marie Belle Antoine, Commissioners.