

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 64/03; Petition 12.188
Session: Hundred and Eighteenth Regular Session (7 – 24 October 2003)
Title/Style of Cause: Joffre Jose Valencia Mero, Ivonne Rocío Valencia Sanchez and Priscila Zoreida Valencia Sanchez v. Ecuador
Doc. Type: Decision
Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioner: Robert K. Goldman.
Dr. Julio Prado Vallejo, an Ecuadorian national, did not participate in the discussion of this case in compliance with Article 17 of the Commission's Rules of Procedure.
Dated: 10 October 2003
Citation: Valencia Mero v. Ecuador, Petition 12.188, Inter-Am. C.H.R., Report No. 64/03, OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)
Represented by: APPLICANT: the Ecumenical Human Rights Commission
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I. SUMMARY

1. The Ecumenical Human Rights Commission (CEDHU); hereinafter “the petitioner” lodged a petition with the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) against the Republic of Ecuador (hereinafter “the State”) in which it alleged that the following rights protected by the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) had been violated: the right to humane treatment (Article 5), the right to personal liberty (Article 7), the right to a fair trial (Article 8), the right to privacy (Article 11), the right to equal protection before the law (Article 24), and the right to judicial protection (Article 25), in contravention of the obligations set forth in Article 1(1), with respect to Mr. Joffre José Valencia Mero and his daughters Ivonne Rocío Valencia Sánchez and Priscila Zoreida Valencia Sánchez.

2. The parties reached a friendly settlement in the present case on November 12, 2002. This report contains a brief statement of the facts of the case and the text of the solution reached, in accordance with Article 49 of the Convention.

II. FACTS OF THE CASE

3. The complaint of December 28, 1998, reports that at 3:00 p.m. on May 19, 1993, Mr. Joffre José Valencia Mero and his daughters Ivonne Rocío Valencia Sánchez and Priscilla

Zoreida Valencia Sánchez were arrested by police officers at the Guayaquil home of Rosendo Torres, the husband of another of Mr. Valencia's daughters. The heavily armed police burst into the house in search of Rosendo Torres, without a search warrant or an order for his arrest. The victims were accused of being drug traffickers and were taken to police headquarters, where they were kept incommunicado for 12 days. During that time they were subjected to verbal and physical abuse; they were forced to sleep on the floor and, on many occasions, standing up; and they received death threats, to be carried out if they did not confess to the crime of drug trafficking. During the first few days, they were kept blindfolded and were given no food or washing facilities. On June 1, 1993, Mr. Valencia was transferred to the Quito Social Rehabilitation Center for Men and his daughters were admitted to the Quito women's prison.

4. On May 28, 1993, the judicial proceedings were initiated with a preventive detention order, on charges of drug trafficking and asset laundering. On the same date, an order for their imprisonment was issued. In August 1993 the drug-trafficking trial was transferred to the Second Criminal Court in Pichincha, which affirmed the preventive detention order. On September 8, 1993, the proceedings for asset laundering were sent to the Tenth Criminal Court, which also affirmed their preventive detention. The indictments do not stipulate the degree of participation in the alleged crime; instead, they level accusations in a general fashion at all the detainees named in the police report.

5. On January 20, 1995, during the drug-trafficking trial, the second Criminal Law Prosecutor accused them of being accomplices, and this level of responsibility was accepted by the Second Criminal Law Judge on May 31, 1996. The Second Criminal Court, in ruling on the case on May 12, 1997, convicted them, as accomplices, to four-year prison terms; it also referred the proceedings to the Superior Court for the obligatory consultation, which was heard by the Fourth Chamber and in which, in a resolution of November 19, 1997, overturned the conviction and acquitted them. In the asset-laundering trial, the indictment phase was closed on April 5, 1994; the proceedings were then referred to the tenth Criminal Law Prosecutor, who issued his ruling on February 17, 1997. The ruling charged them with being accomplices, and this level of responsibility was accepted by the Tenth Criminal Law Judge in ruling on the case on June 27, 1997; the full proceedings were heard by the second Criminal Court, which ultimately acquitted them and ordered the consultation required by law; this was heard by the Fifth Chamber of the Superior Court which, in July 1998, affirmed the acquittals.

6. Mr. Joffre José Valencia Mero and his daughters claim compensation for the damages inflicted by their being arbitrarily kept in detention for more than five years. Joffre Valencia was arrested on May 19, 1993, and released on July 22, 1998. Ivonne and Priscila were arrested on May 19, 1993, and released on July 24, 1998. On February 23, 1998, they filed suit against the State before the Administrative Tribunal, demanding proper compensation for the damages suffered. On March 5, 1999, the Second Chamber of the Administrative Tribunal ruled itself incompetent to hear the case, declared the suit inadmissible, and ordered the proceedings filed.

III. PROCESSING BY THE COMMISSION

7. On July 2, 1999, the Commission sent letters to the State and to the petitioner, respectively. On September 27, 1999, the State, through its Attorney General, responded to the

complaint, claiming that the petitioners had not exhausted the available domestic remedies and that they should first file suit for damages in order to comply with the exhaustion requirement. On November 24, 1999, the Government of Ecuador sent additional information that had been furnished by the Supreme Court. On December 3, 1999, the petitioners reported that they were willing to work toward a friendly settlement in this matter. On December 8, 1999, a copy of the information furnished by the Ecuadorian Government on November 24, 1999, was forwarded to CEDHU. On January 4, 2000, the State reported that it was not interested in a friendly settlement, reiterating that the petitioners had not exhausted the available domestic remedies. This information was transmitted to the petitioners on February 10, 2000. On February 22, March 8, and July 7, 2000, the petitioners submitted comments on the State's reply. The petitioners' comments were forwarded to the State on May 23 and August 30, 2000. On March 27, 2000, the Commission told the State that the petitioners were interested in a friendly settlement. On May 23, 2000, the Commission forwarded the State's replies of September 27 and November 24, 1999, to the petitioners.

8. On April 2, 2001, the State informed the Commission that it had begun direct talks with the petitioners or their next-of-kin in a number of cases, including the one at hand, with a view toward reaching friendly settlement agreements.

9. During a July 2003 visit to Ecuador, representatives of the Attorney General informed the President of the IACHR, Dr. Marta Altolaguirre, that they had reached independent friendly settlements with Joffre José Valencia Mero, Ivonne Rocío Valencia Sánchez, and Priscilla Zoreida Valencia Sánchez. The parties accepted the possibility of reaching a friendly settlement, and the three Agreements with the State were signed on November 12, 2002. The parties asked the Commission to ratify all parts of this Friendly Settlement Agreement and to oversee its implementation. In the interests of procedural economy the three Agreements will be dealt with in a single report, using brackets to indicate textual variations corresponding to the individual victims.

IV. FRIENDLY SETTLEMENT REACHED

10. The Friendly Settlement Agreement signed by the parties reads as follows:

I. BACKGROUND

The Ecuadorian State, through the office of the Attorney General, with a view to promoting and protecting human rights, and recognizing that the unreserved respect for human rights is currently of great importance for our country's international image, as the foundation of a just, honorable, democratic, and representative society, has decided to take a new course in the evolution of human rights in Ecuador.

The Attorney General's office has begun talks with all those individuals who have suffered human rights violations, with a view to reaching friendly settlement agreements to make reparations for the damages caused.

The Ecuadorian State, in strict compliance with the obligations it acquired upon signing the American Convention on Human Rights and other international human rights instruments, is aware that any violation of an international obligation that has caused damages triggers the duty to make adequate reparations, with monetary reparations and criminal punishment of the perpetrators being the most just and equitable form. Accordingly, the office of the Attorney General and Mr. Joffre José Valencia Mero [Ms. Ivonne Rocío Valencia Sánchez] [Ms. Priscilla Zoreida Valencia Sánchez] have agreed to reach a friendly settlement pursuant to the provisions of Articles 48(1)(f) and 49 of the American Convention on Human Rights and Article 45 of the Rules of Procedure of the Inter-American Commission on Human Rights.

II. PARTIES TO THE AGREEMENT

The following persons were present at the signing of this Friendly Settlement agreement:

- a) Dr. Ramón Jiménez Carbo, Attorney General of the State, as indicated in his appointment and certificate of office, which are attached hereto as qualifying documents.
- b) Mr. Joffre José Valencia Mero, an Ecuadorian national, with citizenship document No. 120027574-9, attached hereto as a qualifying document.
- c) Ms. Ivonne Rocío Valencia Sánchez, an Ecuadorian national, with citizenship document No. 091197036-6, attached hereto as a qualifying document.]
- d) Ms. Priscilla Zoreida Valencia Sánchez, an Ecuadorian national, with citizenship document No. 091492945-0, attached hereto as a qualifying document.]

III. STATE RESPONSIBILITY AND ACCEPTANCE

The Ecuadorian State recognizes its international responsibility for having violated the human rights of Mr. Joffre José Valencia Mero [of Ms. Ivonne Rocío Valencia Sánchez] [of Ms. Priscilla Zoreida Valencia Sánchez] as enshrined in Article 8 (Right to a Fair Trial), Article 7 (Right to Personal Liberty), and Article 25 (Judicial Protection) of the American Convention on Human Rights, in conjunction with the general obligation contained in Article 1(1) thereof, and in other international instruments, since the violations were committed by State agents and could not be disproved by the State, thus giving rise to State responsibility.

Given the above, the Ecuadorian State accepts the facts in case No. 12.188 now before the Inter-American Commission on Human Rights and agrees to undertake the necessary reparatory steps to compensate the victims, or their successors, for the damages caused by those violations.

IV. COMPENSATION

In view of the foregoing, the Ecuadorian State, through the Attorney General, as the sole judicial representative of the Ecuadorian State, according to Article 215 of the Constitution of Ecuador, promulgated in Official Register No. 1, and in force since August 11, 1998, is awarding Mr. Joffre José Valencia Mero, citizenship document No. 120027574-9 [is awarding Ms. Ivonne Valencia Sánchez, citizenship document No. 091197036-6] [is awarding Ms. Priscilla Zoreida Valencia Sánchez, citizenship document No. 091492945-0] lump sum compensatory damages of

twenty-five thousand United States dollars (USD \$25,000.00), to be paid from the National Budget.

This compensation is in settlement of all material damages, loss of income, and moral damages suffered by Mr. Joffre José Valencia Mero [Ms. Ivonne Valencia Sánchez] [Ms. Priscilla Zoreida Valencia Sánchez], as well as any other claims that Mr. Joffre José Valencia Mero [Ms. Ivonne Valencia Sánchez] [Ms. Priscilla Zoreida Valencia Sánchez] or his [her] relatives might entertain regarding the matter of this agreement, in accordance with domestic and international law, payable from the National Budget, for which purpose the Attorney General will notify the Minister of Economy and Finance so that the obligation may be fulfilled.

V. PUNISHMENT OF THOSE RESPONSIBLE

The Ecuadorian State undertakes, to the extent possible, to bring both civil and criminal proceedings and to pursue administrative sanctions against those persons who, in the course of their official duties or the exercise of public power, are presumed to have participated in the reported violations.

The office of the Attorney General undertakes to encourage the Public Prosecutor of the State, the competent judicial organs, and the competent public or private agencies to provide legal evidence to determine the responsibility of those persons. If appropriate, prosecution will be pursued in accordance with the constitutional and legal framework of the Ecuadorian State.

VI. RIGHT TO SEEK INDEMNITY

The Ecuadorian State reserves the right to seek indemnity, pursuant to Article 22 of the Constitution of Ecuador, from those persons found guilty of human rights violations in a final judgment handed down by an Ecuadorian court, or when administrative liability has been determined, in accordance with Article 8 of the American Convention on Human Rights.

VII. TAX-EXEMPT PAYMENTS

The disbursement made by the Ecuadorian State to the beneficiary of this Friendly Settlement Agreement shall be free from all existing or future taxation.

VIII. INFORMATION

The Ecuadorian State, through the office of the Attorney General, undertakes to report every three months to the Inter-American Commission on Human Rights on its fulfillment of the obligations assumed under this Friendly Settlement Agreement.

In keeping with its consistent practice and obligations under the American Convention, the Inter-American Commission on Human Rights will oversee compliance with this Agreement.

IX. LEGAL BASIS

The compensatory damages that the Ecuadorian State is awarding to Mr. Joffre José Valencia Mero [to Ms. Ivonne Valencia Sánchez] [to Ms. Priscilla Zoreida Valencia Sánchez] are provided for in Articles 22 and 24 of the Constitution of the Republic, for violations of the Constitution, of other national laws, and of the norms in the American Convention on Human Rights and other international human rights instruments.

This Friendly Settlement Agreement is entered into on the basis of respect for the human rights enshrined in the American Convention on Human Rights and other international human rights instruments, and in accordance with the policy of the Government of the Republic of Ecuador to respect and protect human rights.

X. NOTIFICATION AND APPROVAL

Mr. Joffre José Valencia Mero [Ms. Ivonne Valencia Sánchez] [Ms. Priscilla Zoreida Valencia Sánchez] expressly authorizes the Attorney General to bring this friendly settlement to the attention of the Inter-American Commission on Human Rights, so that the Commission may confirm and ratify it in its entirety.

XI. ACCEPTANCE

The parties signing this Agreement freely and voluntarily express their conformity with and acceptance of the contents of the preceding clauses, and they state for the record that they hereby bring to a close the dispute before the Inter-American Commission on Human Rights regarding the international responsibility of the Ecuadorian State for violating the rights of Mr. Joffre José Valencia Mero, [of Ms. Ivonne Valencia Sánchez] [of Ms. Priscilla Zoreida Valencia Sánchez].

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

11. The Commission has found the Friendly Settlement Agreement transcribed above to be compatible with Article 48(1)(f) of the American Convention.[FN2]

[FN2] The Commission notes that the State acknowledged its responsibility in the violation of the rights protected by Articles 7, 8, and 25 of the Convention, in conjunction with Article 1 thereof. The agreement indicates no state acknowledgement of the violations of Articles 5 and 11 reported by the petitioners. This notwithstanding, since the State has admitted the facts of the case and in light of the compensation agreed upon as part of the friendly settlement, the IACHR holds the agreement to be compatible with the Convention.

VI. CONCLUSIONS

12. The Commission welcomes the signing of the three friendly settlements between the State and the petitioners, under the terms of the American Convention.

13. The IACHR will continue to monitor compliance of the commitment assumed by Ecuador with respect to the prosecution of the persons involved in the alleged acts.

14. The IACHR again notes that the friendly settlement procedure provided for in the American Convention offers the possibility of concluding individual cases without resort to litigation, and that in cases involving various countries, it has been proven to be an important procedure for resolving alleged violations, one that can be used by both parties (petitioner and State).

The Inter-American Commission on Human Rights,

Decides:

1. To certify the State's compliance with its commitment to make compensation payments in the amount of USD \$25,000 to each of the three victims in this case.
2. To remind the State that it must comply fully with the Friendly Settlement Agreement by initiating judicial proceedings against the persons involved in the alleged violations.
3. To continue with its monitoring and supervision of compliance with each and every point in the friendly settlement; and, in this context, to remind the State, through the Attorney General, of its commitment to report every three months to the IACHR on compliance with the obligations assumed by the State under these friendly settlements.
4. To publish this report and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 10th day of October 2003. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Robert K. Goldman, Commissioner.