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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 98/00; Case 11.783
Session:	Hundred and Eighth Regular Session (2 – 20 October 2000)
Title/Style of Cause:	Marcia Irene Clavijo Tapia v. Ecuador
Doc. Type:	Decision
Decided by:	Chairman: Helio Bicudo; First Vice-Chairman: Claudio Grossman; Second Vice-Chairman: Juan E. Mendez; Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie Dr. Julio Prado Vallejo, of Ecuadorian nationality, did not participate in the discussion of this case, in keeping with Article 19 of the Commission's Regulations.
Dated:	5 October 2000
Citation:	Clavijo Tapia v. Ecuador, Case 11.783, Inter-Am. C.H.R., Report No. 98/00, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)
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I. SUMMARY

1. On January 28, 1997, Marcia Irene Clavijo Tapia (hereinafter “the petitioner”), with the legal assistance of the Comisión Ecuménica de Derechos Humanos del Ecuador (Ecumenical Commission for Human Rights) (hereinafter “the Petitioner” or “CEDHU”), submitted a petition to the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) against the Republic of Ecuador (hereinafter “the State”), in which she alleged violations of the following rights protected by the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”): the right to humane treatment (Article 5), the right to personal liberty (Article 7), the right to a fair trial (Article 8), and the right to judicial protection (Article 25), all in breach of the obligations set forth in Article 1(1), to the detriment of Mrs. Clavijo Tapia.

2. The parties reached a friendly settlement in this case on June 11, 1999. This report contains a brief statement of the facts and the text of the settlement agreement, in keeping with Article 49 of the Convention.

II. THE FACTS

3. On May 17, 1993, the petitioner was detained in Guayaquil, without any arrest warrant, in connection with “Operation Silver” (la “Operativo Plata”), an anti-drug operation. She was taken to the Interpol offices in Guayas, where she was held incommunicado for 15 days. During

this time she was tortured in an effort to get her to state that she was guilty of having participated in the act under investigation.

4. Later, the petitioner was taken to the city of Quito and brought before the Second, Seventh, and Tenth Criminal Judges of Pichincha, who initiated criminal proceedings without indicating the motive or reason for the petitioner's detention, and all the persons whose names appeared in the police report were accused generally, without analyzing the indicia of responsibility in each case.

5. In the proceedings in the Tenth Court (Juzgado Décimo), the petitioner filed an amparo motion seeking her release before the President of the Superior Court, which ruled favorably on it on September 10, 1996, and ordered the petitioner released. The petitioner also brought an amparo motion within the proceeding in the Seventh Court (Juzgado Séptimo), but it was rejected on the grounds that the petitioner was not accused in that proceeding.

6. On May 31, 1996, charges against petitioner were dismissed provisionally in the proceeding before the Second Court (Segundo Juzgado). The Fourth Chamber of the Superior Court, on ruling in consultation, as provided for by Ecuadorian law in drug cases, affirmed the dismissal on May 27, 1997. On June 4, 1997, the Second Court (Segundo Juzgado) ordered the petitioner released, and she regained her freedom on June 6, 1997.

7. The injury which is the cause of the allegation against the State was for the time of deprivation of liberty without a verdict, in addition to the violations of the right to humane treatment, to a fair trial, and to judicial protection. The fact that an individual is later released or convicted does not rule out a violation of the reasonable time in pre-trial detention, as provided for by Article 7 of the American Convention.

III. PROCESSING BEFORE THE COMMISSION

8. On March 5, 1997, the Commission received the complaint in this case, which was opened as a case on July 31, 1997. The case was then processed in keeping with the Commission's Regulations.

9. On February 9, 1999, the Commission invited the parties to pursue a friendly settlement in this case. On February 15, 1999, the petitioner accepted, and on July 11, 1999, the friendly settlement agreement was signed in the city of Quito.

IV. THE FRIENDLY SETTLEMENT AGREEMENT

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

FRIENDLY SETTLEMENT AGREEMENT

I. BACKGROUND

The Ecuadorian State, through the Office of the Attorney General, with a view to promoting and protecting human rights and given the great importance of the full observance of human rights at this time for the international image of our country, as the foundation of a just, dignified, democratic, and representative society, has decided to take a new course in the evolution of human rights in Ecuador.

The Office of the Attorney General has initiated conversations with all persons who have been victims of human rights violations, aimed at reaching friendly settlement agreements to provide 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 law instruments, is aware that any violation of an international obligation that has caused damages triggers the duty to make adequate reparations--monetary reparations and criminal punishment of the perpetrators being the most just and equitable form. Therefore the Office of the Attorney General and Mr. Segundo César Duque Chasi, on behalf and in representation of Mrs. Marcia Irene Clavijo Tapia, have reached 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 Regulations of the Inter-American Commission on Human Rights.

II. THE PARTIES

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 as qualifying documents;
- b. Mr. Segundo César Duque Chasi, on behalf and in representation of Mrs. Marcia Irene Clavijo Tapia, as appears from the special power of attorney executed before the 19th Notary of Guayaquil, Mrs. Ketty Romoleroux; a copy of that document is also attached as a qualifying document.

III. STATE RESPONSIBILITY AND ACCEPTANCE

The Ecuadorian State acknowledges its international responsibility for having violated the human rights of Mrs. Marcia Irene Clavijo Tapia enshrined in Article 5 (right to humane treatment), Article 7 (right to personal liberty), Article 8 (fair trial), and Article 25 (judicial protection), and at the same time the general obligation contained in Article 1(1) of the American Convention on Human Rights and other international instruments, and that the violations were committed by State agents, which could not be disproved by the State, giving rise to State responsibility.

Given the above, the Ecuadorian State accepts the facts in case No. 11.783 before the Inter-American Commission on Human Rights and undertakes the necessary reparative 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, pursuant to Article 215 of the Constitution of Ecuador, enacted in Official Register No. 1 and in force since August 11, 1998, is awarding Mrs. Marcia Irene Clavijo Tapia a one-time compensatory payment in the amount of sixty-three thousand US dollars (US\$ 63,000) or the equivalent in local currency, calculated at the exchange rate in effect at the time the payment is made, to be paid from the National Budget.

This compensation covers the consequential damages, loss of income, and moral damages suffered by Mrs. Marcia Irene Clavijo Tapia, as well as any other claims that Mrs. Marcia Irene Clavijo Tapia may have, regarding the subject of this agreement, under domestic and international law, and is chargeable to the National Budget. To this end, the Office of the Attorney General will notify the Ministry of Finance, for it to carry out this obligation within 90 days of the signing of this document.

V. PUNISHMENT OF THE PERSONS RESPONSIBLE

The Ecuadorian State pledges to bring civil and criminal proceedings and pursue administrative sanctions against those persons who are alleged to have participated in the violation in the performance of State functions or under the color of public authority.

The Office of the Attorney General pledges to encourage the State Attorney General, the competent judicial organs, and public agencies or private institutions to contribute legal evidence to determine the liability of those persons. If admissible, the prosecution will be subject to the constitution and laws 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 the Republic of Ecuador, from those persons found responsible for human rights violations through a final and firm judgment handed down by the country's courts or when administrative liability is found, in keeping with Article 8 of the American Convention on Human Rights.

VII. TAX EXEMPTION AND DELAY IN COMPLIANCE

The payment made by the Ecuadorian State to the other party to this agreement is not subject to any current or future taxes, except for the 1% tax on capital flows.

In the event that the State is delinquent for over three months from the date the agreement is signed, it must pay interest on the amount owed, corresponding to the current bank rate of the three largest banks in Ecuador for the duration of its delinquency.

VIII. REPORTING

The Ecuadorian State, through the Office of the Attorney General, agrees to report every three months to the Inter-American Commission on Human Rights on compliance with the obligations assumed by the State in 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 Mrs. Marcia Irene Clavijo Tapia are provided for in Articles 22 and 24 of the Constitution of the Republic of Ecuador, for violation of the Constitution, other national laws, and the norms in the American Convention on Human Rights and other international human rights instruments.

This friendly settlement is entered into based on respect for the human rights enshrined in the American Convention on Human Rights and other international human rights instruments and on the policy of the Government of Ecuador to respect and protect human rights.

X. NOTIFICATION AND CONFIRMATION

Mrs. Marcia Irene Clavijo Tapia specifically authorizes the Attorney General to notify the Inter-American Commission on Human Rights of this Friendly Settlement Agreement, so that the Commission may confirm and ratify it in its entirety.

XI. ACCEPTANCE

The parties to this agreement freely and voluntarily express their conformity with and their acceptance of the content of the preceding clauses and state for the record that they hereby end the dispute before the Inter-American Commission on Human Rights on the international responsibility of the State for violating the rights of Mrs. Marcia Irene Clavijo Tapia.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

11. The Commission determined that the settlement agreement transcribed is compatible with the provisions of Article 48(1)(f) of the American Convention.

12. On August 29, 2000, CEDHU informed the Commission that the State proceeded to make the payment agreed upon. Even though the State undertook to pay the interest for the delinquency in paying the compensation, and that the compensation payment would be exempt from any tax, except for the one percent tax on the circulation of capital, the State has failed to carry out any of the commitments it acquired on June 11, 1999, under this agreement. The State has not paid the interest for delinquency in payment of the compensation, and it has collected a tax of 0.8 percent on the circulation of capital, at the moment of cashing the checks by which the compensation was paid.

13. The State has failed in its duty to bring to trial and punish the persons responsible.

VI. CONCLUSIONS

14. The Commission reiterates its recognition of the Ecuadorian State for its decision to settle the case through reparative measures, including those required to punish the persons responsible for the violations alleged. The IACHR also reiterates its recognition of the petitioner for accepting the terms of the agreement in question.

15. The IACHR will continue monitoring compliance with the commitment assumed by Ecuador with respect to the trial and punishment of the persons responsible for the violations alleged and payment of the interest for late payment, commitments which have not been carried out to date.

16. The IACHR ratifies that the friendly settlement provision of the American Convention makes it possible to conclude individual cases in a non-contentious manner, and has proven, in cases regarding several countries, to offer an important vehicle for settling violations alleged, which may be used by both parties (petitioner and the State).

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To recognize that the State has made payment of US\$ 63,000 as compensation, and to note its failure to carry out its commitments to punish the persons responsible for the violations alleged and to pay interest for the delinquency in payment of the compensation.
2. To urge the State to take the measures necessary to carry out the commitments pending with respect to bringing to trial and punishing the persons responsible for the violations alleged, and to paying interest for the delinquency in payment of the compensation.
3. To continue to monitor and supervise each and every one of the points of the friendly settlement agreement, and, in this context, to remind the State of its commitment to report to the IACHR every three months regarding performance of the obligations assumed by the State under this friendly settlement agreement.
4. To make this report public and to include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., October 5, 2000. (Signed) Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Juan Méndez, Second Vice-Chairman; Commissioners: Marta Altolaguirre, Robert K. Goldman, and Peter Laurie.