

INTER-AMERICAN COURT OF HUMAN RIGHTS

EL AMPARO CASE

JUDGMENT OF JANUARY 18, 1995

In the El Amparo Case,

the Inter-American Court of Human Rights, composed of the following judges^(*):

Héctor Fix-Zamudio, President
Hernán Salgado-Pesantes, Vice President
Alejandro Montiel-Argüello, Judge
Máximo Pacheco-Gómez, Judge
Antônio A. Cançado Trindade, Judge;

also present:

Manuel E. Ventura-Robles, Secretary, and
Ana María Reina, Deputy Secretary

delivers the following judgment pursuant to Articles 45 and 46 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Rules of Procedure") on the instant case submitted by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") against the Republic of Venezuela (hereinafter "the Government" or "Venezuela").

^(*)Judge Oliver Jackman abstained from hearing this case due to his previous participation in several stages of the case while it was being examined by the Inter-American Commission on Human Rights.

I

1. This case was submitted to the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") by the Inter-American Commission by note of January 14, 1994, which was accompanied by Report N° 29/93 of October 12, 1993. It originated in a petition (N° 10.602) against Venezuela lodged with the Secretariat of the Commission on August 10, 1990.

2. The Commission submitted this case in order for the Court to determine whether there had been a violation, by the Government, of the following Articles of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"): 2 (Domestic Legal Effects); 4 (Right to Life); 5 (Right to Humane Treatment); 8(1) (Right to a Fair Trial); 24 (Right to Equal Protection); 25 (Right to Judicial Protection), and all of the above in relation to Article 1(1) (Obligation to Respect Rights) of the same Convention, for the deaths of

José R. Araujo, Luis A. Berríos, Moisés A. Blanco, Julio P. Ceballos, Antonio Eregua, Rafael M. Moreno, José Indalecio Guerrero, Arín O. Maldonado, Justo Mercado, Pedro Mosquera, José Puerta, Marino Torrealba, José Torrealba and Marino Rivas, [on account of the] events that occurred on October 29, 1988 on the "La Colorada" Canal, Páez District, State of Apure, Venezuela.

3. It also requested the Court to find that Venezuela is responsible for "*the violation of the right to humane treatment, to a fair trial, to equal protection and to judicial protection of Wollmer Gregorio Pinilla and José Augusto Arias (Articles 5, 8(1), 24 and 25 of the Convention), survivors of the events that occurred on October 29, 1988 on the 'La Colorada' Canal.*"

4. The Commission further asked the Court:

3. That, on the basis of the pacta sunt servanda principle it declare that the State of Venezuela has violated Article 51(2) of the

American Convention by not carrying out the recommendations made by the Commission.

4. That the State of Venezuela be required to identify and punish, on the basis of investigations made, the intellectual and accessory violators, thereby preventing the consummation of acts of grave impunity that damage the foundations of legal order.

5. That it declare that the enforceability of Article 54, paragraphs 2 and 3 of the Military Code of Justice analyzed in confidential Report N° 29/93, is incompatible with the purpose and objective of the American Convention on Human Rights, and that it must be adjusted to the latter in conformity with the commitments acquired pursuant to Article 2 thereof.

6. That it declare that the State of Venezuela must provide reparation and indemnification to the next-of-kin of the victims for the acts committed by State agents, as described in this petition, in accordance with Article 63(1) of the Convention.

7. That the State of Venezuela be sentenced to pay court costs and attorneys' fees of this action.

5. In submitting the case to the Court, the Commission designated Oscar Luján-Fappiano and Michael Reisman as its Delegates, and David J. Padilla, Deputy Executive Secretary, and Milton Castillo, an attorney of the Secretariat of the Commission, as Assistants. By note of February 2, 1994, the Commission informed the Court that Claudio Grossman would replace Michael Reisman as Delegate.

6. On May 3, 1994, the Commission also designated Pedro Nikken (Programa Venezolano de Educación-Acción en Derechos Humanos, PROVEA / Venezuelan Program of Education-Action on Human Rights), Juan Méndez (Americas Watch), José Miguel Vivanco (Center for Justice and International Law, CEJIL) and Ligia Bolívar (PROVEA), as Assistants in this case. These same people were designated by the relatives of the victims as their representatives, in conformity with the provisions of Article 22(2) of the Rules of Procedure.

7. On February 17, 1994, the Secretariat of the Court (hereinafter "the Secretariat"), after the President of the Court (hereinafter "the President") had concluded his preliminary study, notified the Government of the petition. It advised the Government that it had the right to file a written response to the petition within three months (Art. 29(1) of the Rules of Procedure) and to file preliminary objections within 30 days following notification of the application (Art. 31(1) of the Rules of Procedure).

8. By note of February 28, 1994 the Government informed the Court of the designation of Ildegar Pérez-Segnini, Ambassador of Venezuela to Costa Rica, as Agent and Luis Herrera-Marcano as Attorney in this case. By communication of May 16, 1994, the Government appointed Rodolfo Enrique Piza-Rocafort as its Legal Advisor for this case.

9. On May 20, 1994 Venezuela requested that the President grant an extension of three months to answer the petition. It further informed the President that it had decided "*not to interpose the objection of failure to exhaust domestic legal remedies.*" By note of the same date, the Secretariat transmitted to the Government the President's decision to grant an additional 30 days to answer the complaint. By note of June 13, 1994 the Government asked the President to reconsider the 30-day extension and to grant the extension that had originally been requested. In its communication of June 16, 1994, the President extended the term to answer the petition until August 1, 1994. On this date the answer to the complaint was received by the Secretariat.

II

10. According to the petition, the events occurred when "*16 fishermen who resided in the town of 'El Amparo' were traveling in the direction of the 'La Colorada' Canal on the Arauca River, in the Páez District of the State of Apure, to participate in a fishing trip . . . on board [a] boat driven by José Indalecio Guerrero.*" The complaint indicates that at

approximately 11:20 a.m. they stopped and it was under such circumstances —when some of the fishermen were leaving the boat— that members of the military and the police of the "José Antonio Páez Specific Command" [hereinafter "CEJAP"] —who at that time were conducting a military operation known as "Anguila III"— killed 14 of the 16 fishermen who were at the site of the events.

11. The Inter-American Commission expressed that "*Wollmer Gregorio Pinilla and José Augusto Arias, who were still inside the boat, escaped by jumping into the water and swimming across the 'La Colorada' Canal ... The survivors took refuge in the 'Buena Vista' farm located 15 Km. from the site of the events,*" and the following day turned themselves in to the Commandant of the Police of "El Amparo," Adán de Jesús Tovar-Araque, "*who, together with other police officials of the area, immediately offered them protection.*" The complaint further states that "*Tovar was subject to pressure by police and military functionaries of San Cristóbal, State of Táchira, to turn the survivors over to the Army, resulting in an attempt to seize them by force . . . which was thwarted by the presence of numerous persons who stood in front of the police post.*"

12. According to the petition, Celso José Rincón-Fuentes, Chief Inspector of the DISIP (Dirección de los Servicios de Inteligencia y Prevención / Intelligence and Prevention Services Directorate), visited Tovar in the afternoon of October 29, and "*inform[ed] him that they had killed 14 guerrillas and that two had escaped.*" The Commission expressed that

[o]n that very afternoon and early the following day, Tovar was approached by relatives of several fishermen who inquired about the whereabouts of those who had gone fishing on the 29th, since they had not yet returned and the media was beginning to air news about an armed confrontation with irregular Colombian combatants.

13. According to the Commission, the following Government agents participated as military and police members of the CEJAP in the October 29, 1988 "Anguila III" military operation:

Lieutenant Commander, Alí Coromoto-González; First-Class Technical Master (Army), Ernesto Morales-Gómez; First-Class Technical Sergeant (Army), Omar Antonio Pérez-Hudson; Second-Class Sergeant Major (Army), Salvador Ortiz-Hernández; Chief Commissioner (DISIP), Andrés Alberto Román-Romero; Commissioner (DISIP), Maximiliano José Monsalve-Planchart; Chief Inspector (DISIP), Celso José Rincón-Fuentes; Chief Inspector (DISIP), Carlos Alberto Durán-Tolosa; Inspector (DISIP), José Ramón Zerpa-Poveda; Inspector (DISIP), Luis Alberto Villamizar; Deputy Inspector (DISIP), Franklin Gómez-Rodríguez; Deputy Inspector (DISIP), Omar Gregorio Márquez; Detective (DISIP), Tony Richard Urbina-Sojo; Chief of Summary Proceedings III (PTJ) [Policía Técnica Judicial / Technical Judicial Police], Gerardo Rugeles-Molina; Chief Inspector (PTJ), Edgar Arturo Mendoza-Guanagüey; Deputy Commissioner (PTJ), Florentino Javier López; Deputy Inspector (PTJ), Alfredo José Montero; Principal Agent (PTJ), Daniel Virgilio Gómez; Police Official (PTJ), Rafael Rodríguez-Salazar; and, Huber Bayona-Ríos (a Colombian citizen who provided intelligence services to the CEJAP).

14. On August 10, 1990 the Commission opened Case N° 10.602 which it maintained under consideration until October 12, 1993, when, pursuant to Article 50 of the American Convention, it adopted Report N° 29/93 containing the following provisions:

7.1 It is recommended that the Venezuelan Government punish the persons responsible for the commission and covering-up of the crime of homicide to the detriment of the victims from "El Amparo."

7.2 It is recommended that the Venezuelan Government pay fair compensation to the next-of-kin of the victims.

7.3 It is recommended that the Venezuelan Government adopt domestic legislative provisions, in accordance with its constitutional and legal procedures, in order to revise and modify the Military Code of Justice in regards to the articles analyzed in this Report.

7.4 It is recommended that the Venezuelan Government (in accordance with the recommendations in paragraphs 7(1), 7(2)

and 7(3)) inform the Inter-American Commission on Human Rights, within three months, about the measures it adopts in this case.

15. On January 11, 1994, the Government requested a reconsideration of the previous report, and the scheduling of a hearing to present new facts and legal arguments. By note of January 12, 1994, the Commission answered that it would consider said request during its 85th Regular Session, and that it would opportunely schedule a hearing to receive the representatives of the Government. On this same date, the Government submitted two documents containing its allegations relative to Report N° 29/93. On January 14, 1994, the Commission rejected the request for reconsideration and decided to confirm Report N° 29/93 and submit the case to the Inter-American Court.

III

16. The Court is competent to hear the instant case. Venezuela is a State Party to the Convention since August 9, 1977, and accepted the Court's contentious jurisdiction on July 24, 1981.

IV

17. In its answer, Venezuela pointed out in relationship to "*the Facts referred to in the Petition . . . [that] neither does it contest them nor does it express objections as to the merits, since these very facts are being tried by the competent courts of the Republic (at this time by the Ad Hoc Military Court).*" It added that

[w]hile the Republic of Venezuela does not either contest or object to this action and the objective responsibility for which it could be liable, due to the abnormal circumstances which surrounded this case internally and at the Inter-American Commission, the moral

and political responsibility does not pertain to the Government of the Republic, let alone to the higher authorities of the State of Venezuela.

18. On October 28, 1994, the Secretariat received a copy of the judgment of the Ad Hoc Military Court on the "El Amparo" Case, dated June 12, 1994. In its judgment it concluded that "*the irregularities noted by the Criminal Cassation Section of the Supreme Court in its judgment dated ninth (9) of November, nineteen hundred ninety-three had been corrected and that it had OVERRULED the judgment . . . [and consequently] it acquitted the accused.*"

19. By note of January 11, 1995 the Government informed the President that Venezuela "*does not contest the facts referred to in the complaint and accepts the international responsibility of the State,*" and requested the Court to ask the Commission "*to come together to a non-litigious procedure with the object of determining in friendly fashion — under supervision by the Court— the reparations applicable, the preceding in conformity with the provisions of Articles 43 and 48 of the Rules of Procedure of the Court.*" The Inter-American Commission was informed about this note by the Secretariat, and acknowledged receipt of same on January 13, 1995.

V

20. By virtue of the preceding, the Court believes that given the recognition of responsibility by Venezuela, the controversy, as to the facts that originated the instant case, has ceased. Therefore, the case should proceed to the stage of the proceedings for the determination of reparations, court costs and attorneys' fees.

21. Exercising the powers of its contentious jurisdiction, the Court deems it appropriate that the determination of the amount for reparations, court costs and attorneys' fees be made by mutual agreement

between the Respondent State and the Commission, taking into account the disposition of the Government and the victims' best interests. Should an agreement not be reached, the Court shall determine the scope of the reparations and the amount of indemnification, court costs and attorneys' fees.

VI

Therefore,

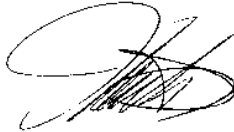
THE COURT

unanimously,

1. Takes note of the recognition of responsibility made by the Republic of Venezuela, and decides that the controversy concerning the facts that originated the instant case has ceased.
2. Decides that the Republic of Venezuela is liable for the payment of damages and to pay a fair indemnification to the surviving victims and the next-of-kin of the dead.
3. Decides that the reparations and the form and amount of the indemnification shall be determined by the Republic of Venezuela and the Inter-American Commission of Human Rights, by mutual agreement, within six months as of the notification of this judgment.
4. Reserves the right to review and approve the agreement, and in the event an agreement is not reached, the Court shall determine the scope of the reparations and the amount of the indemnities, court costs and attorneys' fees, to which effect it retains the case on its docket.

Judge Cançado Trindade transmitted to the Court his concurring opinion, which shall be attached to this judgment.

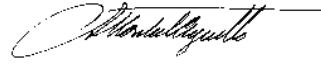
Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San Jose, Costa Rica, this eighteenth day of January, 1995.



Héctor Fix-Zamudio
President



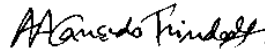
Hernán Salgado-Pesantes



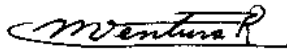
Alejandro Montiel-Argüello



Máximo Pacheco-Gómez



Antônio A. Cançado Trindade



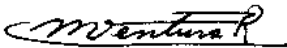
Manuel E. Ventura-Robles
Secretary

Read at the public hearing held at the seat of the Court in San Jose, Costa Rica, on January 20, 1995.

So ordered,



Héctor Fix-Zamudio
President



Manuel E. Ventura-Robles
Secretary

CONCURRING OPINION OF JUDGE A. A. CAÑADO TRINDADE

I concur with the decision of the Court. I understand that at this stage an express clarification should have been added to the effect that the faculty reserved by the Court, in item 4 of the judgment, also extends to examining and deciding upon the request made by the Inter-American Commission on Human Rights (point 5) as to the incompatibility or otherwise of sections 2 and 3 of Article 54 of the Code of Military Justice of Venezuela with the object and purpose of the American Convention on Human Rights.



Antônio A. Cañado Trindade
Judge



Manuel E. Ventura-Robles
Secretary