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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 100/00; Case 11.991
Session:	Hundred and Eighth Regular Session (2 – 20 October 2000)
Title/Style of Cause:	Kelvin Vicente Torres Cueva v. Ecuador
Doc. Type:	Decision
Decided by:	Chairman: Helio Bicudo; First Vice-Chairman: Claudio Grossman; 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:	Torres Cueva v. Ecuador, Case 11.991, Inter-Am. C.H.R., Report No. 100/00, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)
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I. SUMMARY

1. On December 10, 1997, Kelvin Vicente Torres Cueva (hereinafter “the petitioner”) 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”) alleging violations of the following rights protected by the American Convention on Human Rights (hereinafter “the American Convention” or the “Convention”): 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 equality before the law (Article 24); and the right to judicial protection (Article 25), all in breach of the obligations assumed under Article 1(1), to the detriment of Mr. Torres.

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

II. THE FACTS

3. On June 21, 1992, the petitioner was detained at 12:00 noon by a group of 20 hooded and heavily-armed persons, who, beating him, forced him into a vehicle. At no time was he shown an arrest warrant by a judge with jurisdiction, nor was he informed of the motives for his detention, nor did they identify themselves as police. He was deprived of his liberty, mistreated, and subjected to prolonged incommunicado detention. This detention occurred in the context of “Operation Cyclone” (“Operativo Ciclón”) of the National Police, to fight drug trafficking,

according to the petitioner, merely for being a relative of Jorge Hugo Reyes Torres, the alleged head of a group of drug traffickers.

4. Later, the petitioner was taken to the offices of the former SIC, now Quito Regiment No. 2, where he was placed in an underground cell and held incommunicado for 33 days. During this time he was tortured by being beaten in the stomach and about the ears, and with electric shock, to get him to memorize a statement that he was to give afterwards to the representative of the Public Ministry.

5. After 33 days of incommunicado detention during which time he was unable to see his family or an attorney, the petitioner was taken to a yard along with several detainees, where some 50 hooded and heavily armed police pointed their weapons at him and the other detainees. They inserted the weapons in their mouths and pulled the trigger, but they were not loaded. This was part of an effort to get them to sign self-incriminating statements. Afterwards, he was blindfolded and taken to Pavilion "A" of the Penal García Moreno prison, where he was allowed to receive visitors. He was held incommunicado for a total of 38 days.

6. The police report was made known to the police chief who accused him, ordering pre-trial detention in trials for illicit enrichment and conversion of assets, and issued arrest warrants on July 30 and 31, 1992, respectively.

7. Later, the judges disqualified themselves from continuing the investigative phase, when it was shown that one of the accused was subject to special jurisdiction, and they remitted the proceedings to the Office of the President of the Superior Court of Quito, which had jurisdiction, and criminal proceedings were begun again during September and November 1992, affirming the pre-trial detention order issued against the petitioner in the criminal proceedings, with issuance of the respective imprisonment orders on December 1, 1992. According to the petitioner, this showed that he was illegally arrested, as there was no arrest warrant issued by a judge, and he remained in that condition until July 31, 1992, when the chief of police issued the first arrest warrant.

8. In 1996, in the trials for conversion of assets and illicit enrichment, the President of the Superior Court, when ruling, provisionally dismissed the charges against the petitioner and ordered his release. This ruling could not be carried out, as the Law on Narcotic and Psychotropic Substances of Ecuador provides that such an order must necessarily be subject to consultation with the next highest body, and that the accused cannot be released until that body makes its ruling. The petitioner also filed a habeas corpus motion before the President of the Supreme Court of Justice, seeking his immediate release; this petition went unanswered, even though from 1995 to 1998 the petitioner constantly sought action on these motions. Finally, on May 7, 1998, the consultation was resolved and it was ordered that charges be dismissed with prejudice. The petitioner also denounced that according to the laws of Ecuador, the consultation must be resolved within 15 days, and in this case it took more than one year. On July 6, 1998, after an appeal by the petitioner of the refusal of the mayor to release him through the filing of a writ of habeas corpus, the Constitutional Court ordered the petitioner released. Petitioner was released on July 16, 1998, after having been detained for six years and 25 days on suspicion, with a provisional arrest warrant.

9. In the trial for illegal straw man on March 23, 1998, it was ordered that the trial phase, with petitioner as the accused, proceed; the respective judgment is about to be handed down in that case.

III. PROCESSING BEFORE THE COMMISSION

10. On December 29, 1997, the Commission received the complaint and on March 19, 1998, the Commission initiated the processing of this case and asked the State to provide the pertinent information.

11. On February 9, 1999, the Commission proposed to the parties that they initiate the procedure to pursue a friendly settlement. On February 15, 1999, the petitioner accepted the proposal. On June 11, 1999, the friendly settlement agreement was signed by the parties, with the presence of then-member of the Commission and rapporteur for Ecuador, Carlos Ayala Corao, who had traveled to Quito to facilitate the process.

IV. THE FRIENDLY SETTLEMENT AGREEMENT

12. 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 Mr. Kelvin Vicente Torres Cueva, 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 Mr. Kelvin Vicente Torres Cueva, as appears from the special power of attorney No. 12/99 executed before the Consulate of Ecuador in London, England; 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 Mr. Kelvin Vicente Torres Cueva enshrined in Article 5 (right to humane treatment), Article 7 (right to personal liberty), Article 8 (fair trial), Article 24 (equality before the law), 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, considering 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. 11.991 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 Mr. Kelvin Vicente Torres Cueva a one-time compensatory payment in the amount of fifty thousand US dollars (US\$ 50,000) 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 Mr. Kelvin Vicente Torres Cueva, as well as any other claims that Mr. Kelvin Vicente Torres Cueva or his family members 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 Mr. Kelvin Vicente Torres Cueva 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

Mr. Kelvin Vicente Torres Cueva 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 Mr. Kelvin Vicente Torres Cueva.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

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

14. On September 25, 2000, CEDHU reported to the Commission that on August 30, 2000, the State proceeded to make payment of the compensation agreed upon. Even though the State undertook to pay interest for the delinquency in payment, and even though the compensation was to be exempt from any tax other than the one-percent, the State has failed to comply with the commitments acquired on June 11, 1999, in respect of both interest and taxes.

15. The State has not met its duty to try and punish the persons responsible.

VI. CONCLUSIONS

16. The Commission reiterates its recognition of the Ecuadorian State for its decision to settle the case through reparative measures, including those needed to punish the persons responsible for the violation alleged. The IACHR also reiterates its recognition of the petitioner for accepting the terms of the agreement.

17. The IACHR will continue to monitor compliance with the commitments assumed by Ecuador, regarding the trial of the persons considered responsible for the facts alleged, and payment of the interest for late payment of the compensation, which to date have not been carried out.

18. The IACHR ratifies that the friendly settlement procedure provided for in the American Convention makes it possible to conclude individual cases in a non-contentious manner, and has proven, in cases from several countries, to offer an important vehicle for resolving alleged violations, which may be used by both parties (petitioners and the State).

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To recognize that the State has made payment of the US\$ 50,000 in compensation, and to note its failure to carry out its commitments to punish the persons responsible for the violation alleged, and to pay interest for the delinquency in payment of the compensation.
2. To urge the State to make the decisions needed to carry out the pending commitments to bring to trial the persons considered responsible for the facts alleged, and to pay interest for the delinquency in payment of the compensation.
3. To continue to monitor and supervise compliance with each and every one of the points of the friendly settlement agreement, and, in that context, to remind the State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months on 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 Washington D.C., on this the 5th day of October 5, 2000. (Signed): Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Commissioners: Marta Altolaguirre, Robert K. Goldman and Peter Laurie.