

November 21, 2014

Ref.: Case No. 11.438
Herrera Espinoza et al.
Ecuador

Dear Mr. Secretary:

I am pleased to write to you on behalf of the Inter-American Commission on Human Rights to submit to the jurisdiction of the Honorable Inter-American Court of Human Rights Case No. 11.438, *Herrera Espinoza et al.* in respect of the Republic of Ecuador (hereinafter “the State,” “the Ecuadorian State,” or “Ecuador”).

The case involves the arbitrary deprivation of liberty and torture suffered to the detriment of Messrs. Jorge Eliécer Herrera Espinoza, Luis Alfonso Jaramillo González, Eusebio Domingo Revelles, and Emmanuel Cano during an investigation for the crime of international drug trafficking, as well as violations of the rights to due process and to a fair trial to the detriment of Mr. Eusebio Domingo Revelles in the framework of the criminal proceeding against him in which he was convicted on the basis of said investigation. The Commission considered that the pre-trial detentions to which the victims were subject took place in a legal framework that violated the American Convention. Likewise, the Commission established that the application for a writ of habeas corpus filed by Eusebio Domingo Revelles did not constitute an effective judicial remedy since, among other reasons, it was heard by an administrative rather than a judicial authority.

The Commission established that the victims were tortured while they were in the facilities of the National Police of Pichincha in order to get them to make self-incriminating statements, which were the basis for involving Mr. Eusebio Domingo Revelles in a criminal trial in which he was not guaranteed the right to defense or to information on consular assistance, since he was a Spanish national.

The Commission noted that the judicial authorities also violated the principle of the presumption of innocence by validating the self-incriminating statements obtained from Mr. Eusebio Domingo Revelles under torture, without assessing or disproving on adequate grounds the evidence in favor of his innocence. This was done, among other reasons, because of the application of Article 116 of the Law on Narcotic and Psychotropic Substances, which established a “presumption of guilt provided it was justified by the corpus delicti. Lastly, the Commission determined that the State violated its international obligations by failing to exclude from the criminal proceeding the evidence obtained under torture and by failing to investigate thus far the torture to which all the victims were subject.

The State of Ecuador ratified the American Convention on Human Rights on December 28, 1977, and accepted the contentious jurisdiction of the Court on July 24, 1984.

Mr. Pablo Saavedra Alessandri, Secretary
Inter-American Court of Human Rights
P.O. Box 6906-1000

San José, Costa Rica

Attachments

The Commission has designated Commissioner Rose Marie B. Antoine and Executive Secretary Emilio Álvarez Icaza L. as its delegates. Likewise, Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán and Jorge H. Meza Flores, attorneys of the Executive Secretariat of the IACHR, will serve as legal advisors.

In accordance with Article 35 of the Rules of Procedure of the Inter-American Court, the Commission has attached a copy of the admissibility report and the report on the merits, Report No. 40/14, prepared in compliance with Article 50 of the Convention, together with a copy of the complete record of the case before the Inter-American Commission (Appendix I) and the annexes used in the preparation of Report No. 40/14 (Annexes). Said report on the merits was notified to the State of Ecuador in a communication dated August 21, 2014, giving the State two months to report on compliance with the recommendations. The State of Ecuador did not respond to the Commission's request.

Accordingly, the Inter-American Commission submits to the jurisdiction of the Court all of the facts and human rights violations described in Report No. 40/14, in view of the need to obtain justice for the victims in the case.

In this connection, the Commission requests that the Court conclude and declare that the State of Ecuador bears international responsibility for violating Articles 5 and 7 of the American Convention, in relation to Articles 1.1 and 2 of the same instrument, as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Jorge Eliécer Herrera Espinoza, Luis Alfonso Jaramillo González, Eusebio Revelles, and Emmanuel Cano. Likewise, the Commission requests that the Court conclude and declare that the State of Ecuador bears international responsibility for violating Articles 8 and 25 of the American Convention on Human Rights to the detriment of Mr. Eusebio Domingo Revelles, in relation to Articles 1.1 and 2 of said instrument.

The Commission requests that the Court establish the following reparation measures:

1. Provide comprehensive reparations to the victims in the instant case, including both the material and immaterial aspect.
2. Conduct a serious, diligent, and effective investigation, within a reasonable period of time, to clarify the acts of torture described in the report, identify those responsible, and impose the corresponding sanctions.
3. Order that the corresponding administrative, disciplinary, and criminal measures be taken for actions or omissions by government officials (police officers, prosecutors, public defenders, and judges at various levels) whose conduct contributed to the violation of rights to the detriment of the victims in the case.
4. Adopt the measures necessary to prevent similar events from taking place in the future. Specifically, hold training programs for security forces, judges, and prosecutors on the absolute prohibition of acts of torture and of cruel, inhuman, or degrading acts, as well as on obligations under the exclusionary rule. Likewise, strengthen accountability mechanisms for officials responsible for the treatment of persons deprived of liberty.

In addition to the need to obtain justice, the Commission underscores that the instant case involves matters of inter-American public order (*ordre public*). Specifically, the facts of the case reflect the implementation of a legal framework for the investigation and criminal prosecution of crimes related to drug trafficking that is incompatible with the American Convention. Thus, the case will enable the Court to deepen its jurisprudence on the obligations imposed by the rights to personal liberty, due process guarantees, and judicial protection, as well as limitations on the State's efforts to

combat certain crimes, such as drug trafficking and consumption. In addition, the case will allow the Court to take a position on the prohibition on States from resorting to torture to obtain self-incriminating statements from defendants and on the scope of the obligation of authorities to exclude such evidence from proceedings. The Commission considers that the case also affords the Court an opportunity to set the parameters to be used, without undertaking a criminal analysis, to determine whether the presumption of innocence has been violated in the face of the choices a judge makes among contradictory statements.

Because these matters have an important impact on inter-American public order (*ordre public*), pursuant to Article 35.1 (f) of the Rules of Procedure of the Inter-American Court, the Commission would like to offer the following expert testimony:

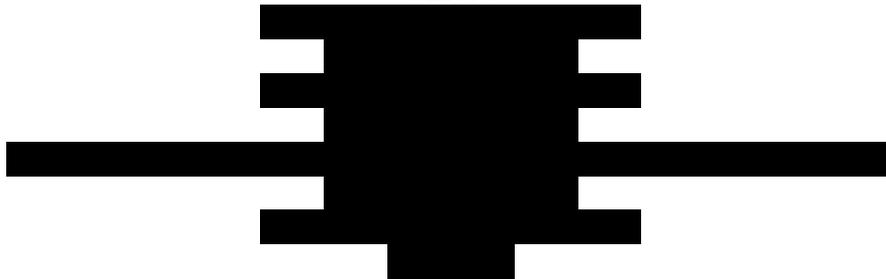
An expert, whose name will be provided shortly, who will testify, in light of international human rights law and comparative law, on the exclusionary rule as a corollary to the absolute prohibition of torture, as well as on its concrete implications at the various stages of a criminal trial.

An expert, whose name will be provided shortly, who will testify on the specific obligations incumbent on judges in keeping with the principle of the presumption of innocence and the duty to state reasons, for determining the criminal liability of defendants when there is contradictory testimony about their participation in crimes.

The curricula vitae of the proposed experts will be included in the annexes to the report on the merits, No. 40/14.

The Commission hereby provides the Court with the following information on those who acted as petitioners throughout the proceedings:

Comisión EcuMénica de Derechos Humanos
CEDHU



I would like to take this opportunity to convey my highest regards.

Sincerely yours,

Signed in the original
Elizabeth Abi-Mershed
Deputy Executive Secretary