



Fredy Marcelo N  ez Naranjo, et al. v. Ecuador

Fredy Marcelo N  ez Naranjo, et al. v. Ecuador, P1011-03, Inter-Am. Comm. H.R., Report No. 2/10 (2010).

Country: Ecuador

Region: Americas

Year: 2010

Court: Inter-American Commission on Human Rights

Health Topics: Violence

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Right to bodily integrity, Right to due process/fair trial, Right to liberty and security of person, Right to life

Facts

The petitioners alleged that more than 400 members of the Punachizag Community had abducted one of the petitioners' son, Fredy Marcelo N  ez Naranjo, from jail "with the acquiescence of agents of the Ecuadorian State" and his whereabouts remained unknown. Petitioners also claimed that his mother and sister were kidnapped from their home. They alleged that they were all tortured. One of the petitioners, the father of the alleged victim, lodged a complaint regarding the disappearance of his son and the lower court charged the seven suspects with the crime of conspiracy to create civil discord and commit kidnapping. However, the seven suspects filed a "recurso de amparo de libertad" (a constitutional remedy for the protection of personal liberty) and the superior court revoked the arrest orders, as they were not sufficiently precise as to the identity of the perpetrators or accomplices of the alleged crimes. Therefore, the petitioners claimed that the State had failed to judicially clarify the events surrounding his abduction and his disappearance.

Petitioners filed a claim against Ecuador alleging the violation of the rights to life (Article 4), humane treatment (Article 5), personal liberty and judicial guarantees (Article 8) enshrined in the American Convention on Human Rights and Article I of the Inter-American Convention on Forced Disappearance of Persons.

Decision and Reasoning

The Commission recognized its competency and declared the petition admissible.

The Commission found that the failure to judicially clarify the facts surrounding the abduction and disappearance of Fredy Marcelo Nunez Naranjo and the absence of due diligence by the State to prevent and investigate these events could characterize possible violations of the rights to life, humane treatment, personal liberty and juridical guarantees as protected by the American Convention on Human Rights.

Decision Excerpts

"30. The Commission notes that more than eight years have passed since the facts alleged in the petition occurred, the criminal investigation remains provisionally suspended, and no person has been held criminally responsible. In this respect, the Commission observes that, as a general rule, a criminal investigation must be carried out promptly to protect the interests of the victims, preserve evidence, and protect the rights of any person considered as a suspect in the context of the investigation. As the Inter-American Court has stated, although any criminal investigation must comply with a series of legal requirements, the rule of prior exhaustion of domestic remedies must not cause international action in support of the victims to be halted or delayed to the point that it is ineffective."

...

32. Therefore, given the characteristics of the present case, the fact that there is a pending open investigation without any information about concrete measures since 2004, and the amount of time that has passed since the facts alleged in the petition occurred, the Commission considers applicable the exception provided in Article 46(2)(c) of the American Convention with respect to delay in the domestic criminal proceedings. As a result, the prerequisite of exhaustion of domestic remedies is not required.