

In the case of *Hurtado v. Switzerland**,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr R. Ryssdal, President,
Mr Thór Vilhjálmsson,
Mr L.-E. Pettiti,
Mr A.N. Loizou,
Mr F. Bigi,
Sir John Freeland,
Mr A.B. Baka,
Mr L. Wildhaber,
Mr D. Gotchev,

and also of Mr M.-A. Eissen, Registrar,

Having deliberated in private on 26 January 1994,

Delivers the following judgment, which was adopted on that date:

* Note by the Registrar: The case is numbered 37/1993/432/511. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 9 September 1993, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in an application (no. 17549/90) against the Swiss Confederation lodged with the Commission under Article 25 (art. 25) by a Colombian national, Mr Antonio Hurtado, on 30 October 1990.

The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Switzerland recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Article 3 (art. 3) of the Convention.

2. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicant stated that he wished to take part in the proceedings and named the lawyer who would represent him (Rule 30). The applicant, who had been designated before the Commission by the initial H., agreed to the disclosure of his identity in the proceedings before the Court.

3. The Chamber to be constituted included *ex officio* Mr L. Wildhaber, the elected judge of Swiss nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 24 September 1993, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr L.-E. Pettiti, Mr C. Russo, Mr A.N. Loizou, Mr F. Bigi, Sir John Freeland, Mr A.B. Baka and Mr D. Gotchev (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

Subsequently, Mr Thór Vilhjálmsson, substitute judge, replaced Mr Russo, who was unable to take part in the further consideration of the case (Rules 22 para. 1 and 24 para. 1).

4. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, obtained the views of the Agent of the Swiss Government ("the Government"), the applicant's lawyer and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38).

5. On 21 December 1993 the Government communicated to the Registrar the text of an agreement concluded with the applicant.

The Delegate of the Commission was consulted and stated, in a letter of 20 January 1994, that he left the matter to the discretion of the Court (see paragraph 13 below).

6. On 26 January the Court decided to dispense with a hearing in the case, having satisfied itself that the conditions for this derogation from its usual procedure had been met (Rules 26 and 38).

AS TO THE FACTS

7. On 5 October 1989 at around 2 p.m. Mr Hurtado was arrested at Yverdon-les-Bains by six officers of the task force of the Vaud cantonal police. They had thrown a stun grenade before entering the flat, forcing the applicant to the ground and handcuffing and hooding him. It is alleged that they then proceeded to beat him until he lost consciousness.

8. He was subsequently taken to the Yverdon police station and to the headquarters of the Lausanne special branch, where he was questioned. It was not until his arrival at the prison on the evening of 6 October that he was able to change his clothes, which had been dirtied during the police action on the previous day. On 7 October, at the latest, he asked to see a doctor. He was examined on 13 October. X-rays taken on 16 October revealed a fracture of the anterior arch of a rib.

9. The applicant lodged a complaint alleging actual bodily harm and abuse of official authority. The resulting proceedings led to a finding by the investigating judge that there was no case to answer. This decision was upheld on 4 September 1990 by the Indictment Division of the Canton of Vaud and on 16 October 1990 by the Criminal Cassation Division of the Federal Court.

10. On 24 May 1991 the Yverdon District Criminal Court sentenced the applicant to five years' imprisonment for a serious breach of the Federal Dangerous Drugs Act and ordered him to pay part of the costs. It also directed that he be expelled from Swiss territory and banned from re-entering for fifteen years.

On 7 October the Criminal Division of the Vaud Cantonal Court increased the prison sentence to eight years.

PROCEEDINGS BEFORE THE COMMISSION

11. Mr Hurtado applied to the Commission on 30 October 1990; he alleged that he had suffered inhuman and degrading treatment contrary to Article 3 (art. 3) of the Convention and that he had been deprived of an effective remedy within the meaning of Article 13 (art. 13).

12. On 3 April 1992 the Commission declared the complaints based on Article 3 (art. 3) admissible. It found the rest of the application (no. 17549/90) inadmissible. In its report of 8 July 1993 (made under Article 31) (art. 31), the Commission expressed the opinion that there had been no violation of Article 3 (art. 3) on account of the

circumstances of the applicant's arrest (twelve votes to four), but that that provision had been violated inasmuch as he had had to wear soiled clothing (fifteen votes to one) and because he was not given immediate medical treatment (unanimously). The full text of the Commission's opinion and of the dissenting opinions contained in the report is reproduced as an annex to this judgment.

* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 280-A of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

AS TO THE LAW

13. On 21 December 1993 the Court received from the Federal Office of Justice of the Swiss Confederation the text of the friendly settlement set out below. It had been proposed by the Deputy Agent of the Government and was approved on 6 and 15 December 1993 by Mr Hurtado.

"1. The Swiss Confederation agrees to pay to the applicant the sum of SF 14,000 as a single, ex gratia payment to cover all the claims made, including the costs and expenses incurred by the applicant in Switzerland and Strasbourg as a result of the events which led him to lodge application no. 17549/90 with the European Commission of Human Rights.

2. This payment shall in no way constitute recognition by the Swiss authorities that there has been a violation of the provisions of the European Convention on Human Rights.

3. In view of the undertaking referred to under 1., the applicant and the Swiss Government ask the Court to strike the case out of the list in accordance with Rule 49 para. 2 of the Rules of Court, as the friendly settlement proposed is such as to provide a solution of the matter.

4. The applicant states in addition that he considers the case to be settled and undertakes not to bring before the national or international authorities other claims arising out of the events which led to the above-mentioned application being lodged."

The Delegate of the Commission was consulted pursuant to Rule 49 para. 2 of the Rules of Court and stated as follows:

"... the Commission expressed the view that Article 3 (art. 3) of the Convention had been violated, in particular inasmuch as the applicant was not examined by a doctor until eight days after his arrest. The Court is referred, inter alia, to paragraphs 79 and 80 of the Commission's opinion.

However, the Delegate is mindful of the fact that the matter of the medical examination of detainees in Switzerland has been examined by the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment itself.

Consequently, the Delegate of the Commission leaves it to the discretion of the Court to determine whether this friendly settlement of the case is consistent with respect for the human rights laid down in the Convention ..."

14. The Court takes formal note of the friendly settlement concluded between the Government and Mr Hurtado. It discerns no reason of public policy (ordre public) militating against striking the case out of the list (Rule 49 paras. 2 and 4).

FOR THESE REASONS, THE COURT UNANIMOUSLY

Decides to strike the case out of the list.

Done in English and in French, and notified in writing under Rule 55 para. 2, second sub-paragraph, of the Rules of Court on 28 January 1994.

Signed: Rolv RYSSDAL
President

Signed: Marc-André EISSEN
Registrar