

Benavides Cevallos v. Ecuador

ABSTRACT¹

This case is about the disappearance and murder of a woman suspected of being associated with the Alfaro Vive Carajo guerilla group by Ecuador's Marine Corps during the turbulent mid-1980s. Ecuador admitted full responsibility for the violations and the Court briefly took note of the acknowledgment of responsibility and agreement to settle the case between the parties.

I. FACTS

A. Chronology of Events

December 4, 1985: Agents of the Ecuadorian Marine Corps in Quinde, Esmeraldas Province, arbitrarily arrest Professor Consuelo Benavides Cevallos (“Ms. Benavides Cevallos”) to investigate her alleged criminal association with the *Alfaro Vive Carajo* (“AVC”) guerilla group.²

December 13, 1985: Ms. Benavides Cevallos’ tortured body is discovered in the town of Rocafuerte in Esmeraldas Province, Ecuador.³ Her family does not learn of her disappearance and death until three years later.⁴

October 30, 1987: Ecuador initiates a military legal proceeding in the Third Naval District Military Criminal Court to determine who perpetrated the attacks against Ms. Benavides Cevallos.⁵ Throughout the proceedings, there are many delays and inefficient mechanisms that prevent the administration of justice.⁶

1. Shushan Khorozyan, Author; Diane Chang, Editor; Megan Venanzi, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Benavides Cevallos v. Ecuador, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 38, ¶ 35 (Jun. 19, 1998).

3. *Id.*

4. *Id.* ¶ 36.

5. *Id.* ¶ 4.

6. *Id.* ¶ 35.

December 1988: A multiparty investigation committee, created by the National Congress of Ecuador, reveals that Ms. Benavides Cevallos was arbitrarily arrested, illegally detained, tortured and killed by State agents, all of which was covered up; however, the wrongdoers are not punished for their criminal acts.⁷

B. Other Relevant Facts

The left-wing guerilla group, AVC, is named after Eloy Alfaro, an Ecuadoran liberal who is assassinated in 1912.⁸ During the inauguration of Ecuador's 38th president, Leon Febres Cordero, in August 10, 1984, the liberal guerillas announce they oppose President Febres Cordero and his conservative administration.⁹ President Febres Cordero pledges to alter the entire Ecuadorian economy by encouraging foreign investment and free enterprise during his inauguration¹⁰ The guerillas are accused of recent bombings and kidnappings, including kidnapping the former radio executive, Eduardo Zurita.¹¹ The kidnapping is allegedly intended to force the radio station to play a tape outing the incoming government as an "oligarchy."¹² The AVC lasts as a guerilla group until February 1989, because in September 1988, a new Democratic Left president is elected, President Borja, whom the group believes will govern following their political agenda.¹³ The guerillas promise that they will continue to monitor the president and that, if necessary, they will create hostility if the government does not accept certain orders and demands.¹⁴

Ms. Benavides Cevallos is not the only individual the military officials victimize during Mr. Febres Cordero's presidency.¹⁵ From 1985 to 1988, criminal trials are held against the five former military officials ac-

7. *Id.* ¶ 36.

8. Daniel Drosdoff, *Leon Febres Cordero was sworn in as Ecuador's 38th. . .*, UPI. (Aug. 10, 1984). <http://www.upi.com/Archives/1984/08/10/Leon-Febres-Cordero-was-sworn-in-as-Ecuador-38th/5197460958400/>.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Immigration and Refugee Board of Canada: Information on the Alfaro Vive Carajo guerilla group in Ecuador [ECU2782]*, IRB, (Nov. 3, 1989) http://www.ecoi.net/local_link/175596/292400_de.html.

14. *Id.*

15. See generally Michelle Mark, *First Ecuador Human Rights Trial Begins For Crimes Against Humanity In Alleged 1980s Abuses*, IBT. (Nov. 9, 2015, 12:34 PM). <http://www.ibtimes.com/first-ecuador-human-rights-trial-begins-crimes-against-humanity-alleged-1980s-abuses-2175709>.

cused of illegal detention, sexual violence, torture and enforced disappearance of three AVC members.¹⁶ During the trial, 69 witnesses and eleven experts testify, and dozens of videos documenting the illegals acts the military officials committed against those three victims are shown.¹⁷ The Attorney General, Galo Chiriboga Zambrano, expresses, “We hope that Ecuadorean justice avails the evidence presented by the prosecution against five former military officials allegedly responsible for the crime against humanity.”¹⁸ He also explains that the intent of the trial is to achieve justice, not revenge, against the military.¹⁹ The guerilla group’s ideology may seem radical, but it is inspired by the countless victims of political persecution during Cordero’s presidency, including arbitrary detentions, extrajudicial killings, and torture.²⁰ It reaches the point that in 2007, president Rafael Correa creates a Truth Commission to investigate allegations of human right violations.²¹

II. PROCEDURAL HISTORY

A. Before the Commission

August 22, 1988: A petition is filed against the State before the Inter-American Commission (“the Commission”).²²

February 21, 1990: The State informs the Commission that a military legal proceeding was initiated on October 30, 1987, in the Military Criminal Court of the Third Naval District, to determine the individuals culpable for the acts committed against Ms. Benavides Cevallos.²³

September 12, 1995: The Commission approves Report on Merits No. 21/95.²⁴ The Commission determined the State had violated Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention, and failed to defend Article 1 (Obligation to Respect Rights).²⁵ The Commission

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.*

21. Mark, *supra* note 15.

22. Benavides Cevallos v. Ecuador, Merits, Reparations and Costs, ¶ 3.

23. *Id.* ¶ 4.

24. *Id.* ¶ 8.

25. *Id.*

recommends the State: (1) investigate the facts promptly, impartially, and effectively; (2) identify and submit the individuals responsible for the murder of Ms. Benavides Cevallos; and (3) provide reparations to those who were negatively affected.²⁶

December 4 and 14, 1995: The State forwards the documents relating to the domestic proceeding to the Commission, including the identities of the individuals responsible for the unlawful and arbitrary detention of Ms. Benavides Cevallos, who were convicted during the military proceedings.²⁷

B. Before the Court

March 21, 1996: The Commission submits the case to the Court after the State failed to adopt its recommendations.²⁸

October 31, 1996: A day before the deadline, the Commission and the State respond to the Court, indicating that they have decided further action was necessary for the case against the State.²⁹ The Court then gives the Commission until December 11, 1996, to file its additional pleadings, and orders the State to file its rejoinder within a month from the time the Commission's pleadings are submitted.³⁰

January 6, 1997: The Commission submits its pleadings to the Court, which repeats the pleadings that were submitted in the original notice and states that there was no doubt that the individuals who inhumanly tortured and murdered Ms. Benavides Cevallos were the State's agents, the State refused to admit responsibility, and the State further refused to comply with its legal obligations and the Commission's requests.³¹ The Commission also informs the Court that Ms. Musalo will no longer be assisting in the case.³²

January 29, 1997: To comply with its obligations, the State submits a copy of the criminal proceedings file held in the Supreme Court of Justice of Ecuador.³³

26. *Id.*

27. *Id.* ¶ 9.

28. *Id.* ¶ 1.

29. Benavides Cevallos v. Ecuador, Merits, Reparations and Costs, ¶ 17.

30. *Id.*

31. *Id.* ¶ 19.

32. *Id.* ¶ 11.

33. *Id.* ¶ 20.

May 19, 1997: The State submits its rejoinder, stating that “[it has] ensured a thorough investigation into the arbitrary imprisonment, torture and death of Ms. Benavides Cevallos and adopted the measures necessary to guarantee reparation for the injury caused to the Benavides Cevallos family, including, as stated, compensation for material and moral damages to her parents who, under Ecuadorian law, are her sole legitimate heirs.”³⁴

January 22, 1998: Amnesty International files an *amicus curiae* brief.³⁵

June 1, 1998: The State informs the Court that the parties have come to a reasonable settlement on Ms. Benavides Cevallos’ behalf, and that a notarized copy of the documents will be submitted with the Court.³⁶

June 4, 1998: The State submits a notarized copy of the settlement agreement it executed with Ms. Benavides Cevallos’ parents, Mr. Luis Benavides Enriquez and Ms. Rosa María Cevallos, on February 20, 1998.³⁷

June 5, 1998: Rights International files its *amicus curiae* brief with the Court.³⁸

June 11, 1998: The Court holds two public hearings regarding this case and the State and the Commission’s representatives attend.³⁹ Also in attendance is the representative of Ms. Benavides Cevallos’ parents, Mr. Robert Goldman, and her brother and sister.⁴⁰ During the hearing, the President informs the parties that the Court evaluated the settlement terms from February 20, 1998, and the State had acknowledged and taken international responsibility for the events leading up to this case.⁴¹ The President further indicates that the Court will consider the following points: (1) the State’s acknowledgment of its responsibility in the events leading up to this case; (2) the Commission’s opinion on the events; (3) the victim’s family’s opinion, or at least what their representative presents regarding the events; and (4) the proposed settlement agreement the State

34. *Id.* ¶ 22.

35. Benavides Cevallos v. Ecuador, Merits, Reparations and Costs, ¶ 24.

36. *Id.* ¶ 27.

37. *Id.* ¶ 29.

38. *Id.* ¶ 31.

39. *Id.* ¶ 32.

40. *Id.*

41. Benavides Cevallos v. Ecuador, Merits, Reparations and Costs, ¶ 33.

proposed.⁴²

1. Violations Alleged by Commission⁴³

Article 3 (Right to Juridical Personality)

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 7 (Right to Personal Liberty)

Article 8 (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation of Non-Discrimination) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁴⁴

Same Violations Alleged by the Commission.

III. MERITS

A. *Composition of the Court*

Antônio A. Cançado Trindade, President

Hernán Salgado Pesantes, Vice-President

Máximo Pacheco Gómez, Judge

Oliver Jackman, Judge

Alirio Abreu Burelli, Judge

Sergio García Ramírez, Judge

Carlos Vicente de Roux Rengifo, Judge

Manuel E. Ventura Robles, Secretary

Víctor M. Rodríguez Rescia, Deputy Secretary

B. *Decision on the Merits*

June 19, 1998: The Court issues its Judgment on Merits, Reparations and Costs.⁴⁵

42. *Id.*

43. *Id.*

44. Mr. Alejandro Ponce Villacís, Mr. William Clark Harrell, Mr. Richard Wilson, and Ms. Karen Musalo serve as representatives of the victim's next of kin. *Id.* ¶ 11.

45. See *Benavides Cevallos v. Ecuador*, Merits, Reparations and Costs, Judgment, Inter-Am.

The Court found unanimously:

*The parties reached a successful and fair settlement, where the State acknowledged its responsibility in the facts leading to the instant case, and declared it violated the rights protected by Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention on Human Rights, in relation to Article 1(1) (Obligation of Non-Discrimination).*⁴⁶

C. Dissenting and Concurring Opinions

[None]

IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Continue the Investigation

Even though the State acknowledged its responsibility in the inhumane acts committed against Ms. Benavides Cevallos, the Court ordered the State to continue investigations to punish any individual who violates the Articles listed in the Judgment regarding Ms. Benavides Cevallos's disappearance and death.⁴⁷

2. Punish the Criminals

The State promised to bring criminal proceedings against the individuals who tortured and murdered Ms. Benavides Cevallos so that they do not go unpunished.⁴⁸

Ct. H.R. (ser. C) No. 38 (Jun. 19, 1998).

46. *Id.* "The Court," ¶¶ 1-2.

47. *Id.* ¶ 47.

48. *Id.* ¶ 48.

3. Memorialize Ms. Benavides Cevallos

The State accepted Ms. Benavides Cevallos' parents' request to instruct the Ministry of Education and Culture to memorialize her name on streets signs or schools.⁴⁹

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

In the agreement, the State committed to compensating Ms. Benavides Cevallos's parents, Mr. Benavides Enríquez and Ms. Sofía Rosa María Cevallos, \$1,000,000 or its equivalent in Ecuador's national currency.⁵⁰ This compensation was determined by estimating the loss of income, expenses and fees, and moral damages, but the individual amounts were not listed, as they were determined between the State and Ms. Benavides Cevallos' parents.⁵¹

2. Non-Pecuniary Damages

[None]

3. Costs and Expenses

[None]

4. Total Compensation (including Costs and Expenses ordered):

\$1,000,000

C. Deadlines

The State must provide the victims with the agreed pecuniary damages within 90 days of the Court's judgment.⁵²

49. *Id.*

50. *Id.*

51. Benavides Cevallos v. Ecuador, Merits, Reparations and Costs, ¶ 48.

52. *Id.*

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

November 27, 2003: The Court determined that the State complied with its obligation to compensate the victim's next of kin.⁵³ However, the Court concluded that the State had not yet fully investigated, prosecuted, and punished the perpetrators.⁵⁴ The State submitted a decision from the Supreme Court of Justice prohibiting a criminal prosecution against the alleged perpetrator because the ten-year statute of limitations had run.⁵⁵ The Court reminded the State of its obligations under the Vienna Convention on the Law of Treaties, which prohibits a State from "invok[ing] the provisions of its internal law as justification for its failure to perform a treaty."⁵⁶ Therefore, the Court decided to report the State's failure to prosecute those responsible to the Organization of American States' General Assembly.⁵⁷

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Benavides Cevallos v. Ecuador, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 38 \(Jun. 19, 1998\).](#)

3. Provisional Measures

[None]

53. *Benavides Cevallos v. Ecuador, Compliance with Judgment, Order of the Inter-American Court of Human Rights, Inter-Am. Ct. H.R. (ser. E), "Declares,"* ¶ 1 (Nov. 27, 2003).

54. *Id.* "Declares," ¶ 2.

55. *Id.* "Considering," ¶ 7.

56. *Id.* "Considering," ¶ 6.

57. *Id.* "And Decides," ¶ 3.

4. Compliance Monitoring

[Benavides Cevallos v. Ecuador, Compliance with Judgment, Order of the Inter-American Court of Human Rights, Inter-Am. Ct. H.R. \(ser. E\) \(Nov. 27, 2003\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[Not Available]

3. Provisional Measures

[None]

4. Report on Merits

[Not Available]

5. Application to the Court

[Not Available]

VIII. BIBLIOGRAPHY

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[*Immigration and Refugee Board of Canada: Information on the Alfaro Vive Carajo guerrilla group in Ecuador \[ECU2782\], IRB, \(Nov. 3, 1989\) \[http://www.ecoi.net/local_link/175596/292400_de.html\]\(http://www.ecoi.net/local_link/175596/292400_de.html\).*](#)

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