

Vélez Loor v. Panama

ABSTRACT¹

This is the case of an Ecuadorian citizen who entered Panama illegally three times. He was expelled two times but at the third time he was arrested, tried and detained. Mr. Vélez Loor was sentenced to a 2-year prison term and allegedly tortured and mistreated. The Court held that Panama was liable for the breach of the American Convention on Human Rights and the American Convention on Forced Disappearance of Persons.

I. FACTS

A. Chronology of Events

June 30, 1960: Decree Law Sixteen of 1960 on Migration (hereinafter “Decree Law Sixteen”) goes into effect.² Decree Law Sixteen establishes: “[a]ny alien who evades the order for deportation issued against him by staying in the country in a clandestine way, or who flouts the penalty by returning to the country, shall be sentenced to two (2) years of agricultural work in the Penal Colony of Coiba and will be obliged to leave the country at the end of that period.”³ Such a foreigner will be placed at the disposal of the Director of the Immigration Department of the Ministry of Interior and Justice.⁴

September 16, 1996: The National Police of Panama arrest Mr. Jesús Tranquilino Vélez Loor, an Ecuadorian citizen who makes his living as an itinerant trader,⁵ and send him to the National Directorate for

1. Grace Kim, Author; Jennifer Barrera, Amy Choe, Elise Cossart-Daly, Sarah Frost, Erika Green, Melissa Kurata, and Shamin Rostami, Editors; Laura Ybarra, Chief Articles Editor; Cesare Romano, Faculty Advisor.

2. Vélez Loor v. Panama, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 132, ¶ 94 (Nov. 23, 2010).

3. *Id.* ¶ 185.

4. *Id.* ¶ 109.

5. Vélez Loor v. Panama, Admissibility Report, Report No. 95/06, Inter-Am. Comm’n H.R., Case No. 12.581, ¶ 44 (Oct. 23, 2006).

Migration and Naturalization for entering Panamanian territory without any documents to accredit his identity or nationality.⁶

September 18, 1996: Mr. Vélez Loor is deported pursuant to Resolution No. 6425 for having entered Panama illegally.⁷ Under the terms of the Resolution he is unable to re-enter Panama without the express agreement of the Directorate of Migration.⁸

January 3, 2002: The National Police again arrest Mr. Vélez Loor in the Darién Province, near the Colombian border, because he does not possess any documents authorizing his presence in Panama.⁹

January 9, 2002: The Migration authorities deport Mr. Vélez Loor for the second time.¹⁰

November 11, 2002: The National Police arrest Mr. Vélez Loor for the third time, in the town of Nueva Esperanza, Darién Province,¹¹ because he does not have valid papers or the proper visa to be in the country.¹² They confiscate his personal effects, including \$1,900, a camera, and his identity card.¹³ The border police handcuff Mr. Vélez Loor, shackle his feet, and force him to walk barefoot to a small indigenous town in Embera.¹⁴ He is then handcuffed to a metal post for eight hours until he is transferred by helicopter to the town of Meteti.¹⁵

November 12, 2002: Mr. Vélez Loor is placed at the disposal of the Office of Migration and Naturalization of Darién.¹⁶ His arrest is ordered through Detention Order 1430, which states he was arrested for “having entered the country illegally and for reasons of security and public order.”¹⁷ He is then transferred to La Palma Public Prison because the National Office of Immigration does not have special cellblocks for

6. *Id.* ¶ 20.

7. *Id.*

8. *Id.*

9. *Id.* ¶ 21.

10. *Id.*

11. Vélez Loor v. Panama, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 132, ¶ 92 (Nov. 23, 2010).

12. *Id.*

13. Vélez Loor v. Panama, Admissibility Report, ¶ 6.

14. *Id.*

15. *Id.*

16. Vélez Loor v. Panama, Preliminary Objections, Merits, Reparations, and Costs, ¶ 93.

17. *Id.* ¶ 114.

undocumented persons.¹⁸

Mr. Vélez Loor is not informed of his individual right to seek consular assistance¹⁹ nor is he aware of the charges against him, as he has not been formally accused.²⁰ During his imprisonment at La Palma he starts a hunger strike with other prisoners who are detained for lack of documentation and demands to be deported immediately.²¹ According to Mr. Vélez Loor, after his protest he was tortured, and suffered blows to his spine and head with a wooden stick.²²

The National Office of Immigration notifies the Consulate of Ecuador of Mr. Vélez Loor's detention;²³ however, the actual date and manner of the notification are unknown.²⁴

December 6, 2002: The Director of the National Migration Office confirms that Mr. Vélez Loor had previously been deported from Panama twice (in 1996 and 2002) and sentences him to a two-year prison term in a Penitentiary facility for violating the terms of his previous deportation orders.²⁵ This is the first time he is formally accused of specific charges.²⁶ Mr. Vélez Loor is not served with the order mandating his prison term,²⁷ given access to a state-appointed attorney, allowed to consult with his own attorney, or given the opportunity to contact the Ecuadorian consulate.²⁸ No hearing before a judicial authority is granted.²⁹ Approximately two weeks after receiving his sentence, Mr. Vélez Loor is transferred to La Joya-Joyita Penitentiary in Panama City.³⁰ While in detention he receives basic medical attention; however, he does not receive the specialized treatment needed for his fractured skull he apparently suffered.³¹

February 2003: In poor health because of the beatings he received,

18. *Id.* ¶ 93.

19. *Id.* ¶ 149.

20. Vélez Loor v. Panama, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.581, ¶ 76 (Oct. 8, 2009).

21. Vélez Loor v. Panama, Admissibility Report, ¶ 7.

22. *Id.* ¶ 8.

23. Vélez Loor v. Panama, Preliminary Objections, Merits, Reparations, and Costs, ¶ 150.

24. *Id.* ¶ 156.

25. Vélez Loor v. Panama, Petition to the Court, ¶ 31.

26. *Id.* ¶ 76.

27. Vélez Loor v. Panama, Preliminary Objections, Merits, Reparations, and Costs, ¶ 94.

28. Vélez Loor v. Panama, Petition to the Court, ¶ 32.

29. *Id.*

30. *Id.* ¶ 33.

31. *Id.* ¶ 34.

Mr. Vélez Loor requests treatment from a doctor.³² His request is denied.³³

March 20, 2003: Mr. Vélez Loor faints and is taken to Santo Tomás hospital.³⁴ According to his medical record, he is evaluated for migraines and dizziness that are the product of a former cranial fracture that had been there for almost a year.³⁵ The physician orders a CAT scan that is never carried out.³⁶

March 30, 2003: Mr. Vélez Loor files a complaint with the Panamanian Ombudsman seeking an immediate deportation.³⁷

April 10, 2003: Mr. Vélez Loor is summoned for a medical evaluation and refuses to go.³⁸ Nonetheless, a physician reviews his medical record and determines that Mr. Vélez Loor has a fractured skull and that the ordered CAT scan has not been performed.³⁹

April 22, 2003: Mr. Vélez Loor is again examined for headaches and dizziness.⁴⁰ A CAT scan is again prescribed.⁴¹ Due to its high cost, the CAT scan is not performed.⁴² According to Flores Torrico, an expert witness in the case, “the headaches, migraines, blurred vision, tearing, vertigo and dizziness” Mr. Vélez Loor has experienced relates perfectly to the blow he received to his head from a blunt object.⁴³

June 1, 2003: Mr. Vélez Loor initiates a hunger strike in protest of his lack of medical attention and sews part of his mouth shut.⁴⁴ He is transferred to the high-security punishment block reserved for

32. Vélez Loor v. Panama, Admissibility Report, Report No. 95/06, Inter-Am. Comm'n H.R., Case No. 12.581, ¶ 11 (Oct. 23, 2006).

33. *Id.*

34. Vélez Loor v. Panama, Preliminary Objections, Merits, Reparations, and Costs, ¶ 221.

35. *Id.*

36. *Id.*

37. Vélez Loor v. Panama, Petition to the Court, ¶ 44.

38. Vélez Loor v. Panama, Preliminary Objections, Merits, Reparations, and Costs, ¶ 221.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.* ¶ 222.

44. Vélez Loor v. Panama, Admissibility Report, Report No. 95/06, Inter-Am. Comm'n H.R., Case No. 12.581, ¶ 12 (Oct. 23, 2006).

extremely dangerous prisoners.⁴⁵ In the new block, police officers strip him naked, throw him on the ground, beat him with a club, and scrape his scalp with their boots.⁴⁶ Officers pour tear gas on his face forcing him to unstitch his mouth to breathe.⁴⁷

June 20, 2003: Three months after Mr. Vélez Loor files his complaint, the Panamanian Ombudsman files a petition with the Office of Migration on his behalf, seeking immediate deportation.⁴⁸

June 23, 2003: The Supervision Program of Inmates' Rights of the Ombudsman's Office conducts an inspection of La Joyita Penitentiary Center.⁴⁹ A group of inmates complain about the lack of drinking water at the penitentiary for more than fifteen days that has caused dehydration, diarrhea, and conjunctivitis in the inmates as well as the overflow of waste water.⁵⁰

July 1, 2003: The Ombudsman investigates inmate complaints that the facility has been without potable water for more than two weeks.⁵¹ Another inspection verifies that the lack of water is due to an electrical problem that affected the water supply.⁵²

July 27, 2003: Another prisoner pays for a guard to arrange a medical appointment for Mr. Vélez Loor.⁵³ The doctor detects an ulcer.⁵⁴

The report on his situation is sent to the Ecuadorian Embassy in Panama.⁵⁵ He maintains that the report contains misleading information that doctors are treating him when in fact they are not.⁵⁶

July 29, 2003: Mr. Vélez Loor's request for deportation is denied because the law requires an undocumented migrant who violates the terms of a prior order of deportation by attempting to reenter the

45. *Id.*

46. *Id.*

47. *Id.*

48. Vélez Loor v. Panama, Petition to the Court, ¶ 44.

49. Vélez Loor v. Panama, Preliminary Objections, Merits, Reparations, and Costs, ¶ 214.

50. *Id.*

51. Vélez Loor v. Panama, Petition to the Court, ¶ 37.

52. Vélez Loor v. Panama, Preliminary Objections, Merits, Reparations, and Costs, ¶ 214.

53. Vélez Loor v. Panama, Admissibility Report, ¶ 13.

54. *Id.*

55. *Id.*

56. *Id.* ¶ 14.

country illegally to either serve a two-year prison sentence or pay the cost for the State to remove the migrant from Panama.⁵⁷ After Mr. Vélez Loor contacts the Ecuadorian Embassy and receives three visits from representatives from the Embassy, Ecuadorian officials in Panama gather the funds for his deportation.⁵⁸

September 8, 2003: The National Office of Migration commutes Mr. Vélez Loor's sentence.⁵⁹

September 10, 2003: Mr. Vélez Loor is deported to the Republic of Ecuador.⁶⁰

September 15, 2003: Mr. Vélez Loor files a complaint with the Permanent Committee on the Defense of Human Rights in Ecuador.⁶¹

November 10, 2003: Mr. Vélez Loor files a complaint with the Ombudsman's Office in Ecuador.⁶²

January 27, 2004: Mr. Vélez Loor files a complaint with the Panamanian Embassy in Ecuador in which he alleges acts of torture were committed against him while he was imprisoned in Panama.⁶³ The Panamanian Office of Foreign Affairs initiates an investigation and solicits reports from the National Office on Migration and the National Police.⁶⁴

February 2004: Mr. Vélez Loor files a complaint with the Panamanian Embassy in Ecuador.⁶⁵

September 15, 2004: Mr. Loor files a complaint directly with the Panamanian Foreign Affairs Office alleging that he was charged \$2,500 USD for a visa at the Panamanian Consulate in Cartagena, Colombia.⁶⁶

The Office of Foreign Affairs responds to Mr. Vélez Loor's

57. Vélez Loor v. Panama, Petition to the Court, ¶ 44.

58. *Id.*

59. Vélez Loor v. Panama, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 132, ¶ 95 (Nov. 23, 2010).

60. *Id.* ¶ 2.

61. Vélez Loor v. Panama, Petition to the Court, ¶ 46.

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.* ¶ 49.

66. *Id.* ¶ 47.

second complaint by providing records that indicate Mr. Vélez Loor paid 940 balboas or \$949 USD for a visa.⁶⁷ The Office of Foreign Affairs requests that Mr. Vélez Loor provide documentation of his alleged payment of \$2,500 for a visa.⁶⁸ The Commission never receives information regarding a response from Mr. Vélez Loor or whether he in fact had a valid visa to enter Panama.⁶⁹

July 10, 2006: The Public Prosecutor's Office of Panama initiates the investigation of the crime against liberty alleged by Mr. Vélez Loor.⁷⁰

As of October 2007: La Joya's prison has 2,200 inmates despite only having the physical capacity for 1,556 inmates.⁷¹ Likewise, la Joyita prison holds around 3,375 inmates despite that the facility's maximum capacity is for 1,850 people.⁷² This extreme disparity results in deplorable living conditions for detainees—including frequent lack of potable water and excessive use of tear gas and physical abuse to control the inmates.⁷³

December 2007: The Commission receives a petition from the Center for Democratic Initiatives ("CIDEM") for provisional measures against the State to resolve the deplorable living reflected in the chronic shortage of potable water at la Joya-Joyita due to the complete collapse of the water system serving the detention facility.⁷⁴

February 22, 2008: Decree Law Sixteen is annulled by Article 141 of Decree Law N°3.⁷⁵ This law eliminates the penalty of imprisonment for repeated unlawful entry into Panama.⁷⁶ Although this law serves to reform the Panamanian framework for immigration, it does not alter Mr. Vélez Loor's case because his case must be decided according to the laws in force during his arrest and detention.⁷⁷

June 2008: Mr. Vélez Loor undergoes an expert medical and

67. *Id.*

68. *Id.*

69. *Id.*

70. Vélez Loor v. Panama, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 132, ¶ 242 (Nov. 23, 2010).

71. Vélez Loor v. Panama, Petition to the Court, ¶ 38.

72. *Id.*

73. *Id.*

74. *Id.* ¶ 39.

75. Vélez Loor v. Panama, Preliminary Objections, Merits, Reparations, and Costs, ¶ 96.

76. *Id.* ¶ 192.

77. *Id.* ¶ 96.

psychological exam for his case in La Paz, Bolivia.⁷⁸ The report includes four photographs showing scars on Mr. Vélez Loor's body.⁷⁹ Three of the photographs show five cigarette burns, four near his shoulders and another on his left arm.⁸⁰ The scars are consistent with Mr. Vélez Loor's allegations of torture at the hands of private security forces in Guayaquil, Ecuador.⁸¹ He never alleges receiving cigarette burns during the alleged torture in Panama. The last photograph shows a scar on the left side of Mr. Vélez Loor's head, which could be consistent with his allegations of torture in Panama or in Ecuador.⁸²

July 10, 2009: The State initiates an investigation into Mr. Vélez Loor's allegations of torture and mistreatment.⁸³ The State also implements measures to improve the living conditions of the imprisoned peoples at La Joya prison, including instituting medical visits to the centers in the interior of the country, provisioning supplies to the clinics of the penitentiaries, and increasing the medical services at the clinic at La Joya prison.⁸⁴

B. Other Relevant Facts

A March 2008 report by Harvard University International Human Rights Clinic detailed the prevailing conditions of la Joya-Joyita prison during the time while Mr. Vélez Loor was detained there.⁸⁵ The report found that overcrowding of the prison had led to deplorable, inhumane conditions.⁸⁶ According to the report, there was disturbing evidence of a lack of basic sanitary living conditions.⁸⁷ There was approximately one toilet and two showers for every 120 inmates and the drainage system, for both human excrement and bath water, was in a state of disrepair.⁸⁸ To survive in such cramped conditions, many inmates created makeshift hammocks that they hung at different levels above the floor all the way

78. Vélez Loor v. Panama, Petition to the Court, ¶ 49.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. Vélez Loor v. Panama, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 132, ¶ 245 (Nov. 23, 2010).

84. *Id.* ¶ 275.

85. Vélez Loor v. Panama, Petition to the Court, ¶ 41.

86. *Id.* ¶ 40.

87. HARVARD UNIV. INT'L HUMAN RIGHTS CLINIC, HUMAN RIGHTS STOP AT THESE DOORS: INJUSTICE AND INEQUALITY IN PANAMANIAN PRISONS 40 (March 2008); Vélez Loor v. Panama, Petition to the Court, ¶ 40.

88. Vélez Loor v. Panama, Petition to the Court, ¶ 40.

up to the ceiling's height of six meters.⁸⁹ Inmates reported frequent falls that caused serious injuries.⁹⁰

Organizations that monitored the situation in the prison found that prison officials did not separate prisoners convicted of violent or other serious crimes from the rest of the prison population.⁹¹ Various independent investigations reported that prison officials excessively used tear gas and other chemical irritants within the different cellblocks to quell any disturbances.⁹² Prison officials also often deployed excessive use of force against prisoners, causing them serious injuries.⁹³

II. PROCEDURAL HISTORY

A. Before the Commission

February 10, 2004: Mr. Vélez Loor presents a petition to the Inter-American Commission on Human Rights.⁹⁴

March 17, 2005: Mr. Vélez Loor retains Mr. José Villagrán as his lawyer.⁹⁵

November 7, 2005: Mr. Villagrán informs the Commission he is working on the case with the Permanent Committee for the Defense of Human Rights in Guayaquil, Ecuador.⁹⁶

October 21, 2006: The Commission declares the petition admissible by adopting the Report on Admissibility N° 95/06.⁹⁷ The Report states that the detention of Mr. Vélez Loor raises questions on the “arbitrariness of the arrest,” and, additionally, that he was not held in the detention center identified in the arrest decree that authorized his detention (Coiba) where he was supposed to perform “agricultural work.”⁹⁸ Possible violations of the American Convention include that the administrative authorities in the State imposed a two-year prison sentence on an

89. *Id.* ¶ 41.

90. *Id.*

91. *Id.* ¶ 42.

92. *Id.* ¶ 43.

93. *Id.*

94. Vélez Loor v. Panama, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 132, ¶ 1 (Nov. 23, 2010).

95. Vélez Loor v. Panama, Admissibility Report, ¶ 5.

96. *Id.*

97. Vélez Loor v. Panama, Preliminary Objections, Merits, Reparations, and Costs, ¶ 1,

98. Vélez Loor v. Panama, Admissibility Report, ¶ 55.

“illegal” person without the possibility of judicial review,⁹⁹ the alleged torture and lack of information regarding criminal investigations and penalties relating to those facts,¹⁰⁰ as well as the allegations about a lack of suitable medical attention to treat the after-effects of torture.¹⁰¹

The State asserts that the petition is not admissible.¹⁰² First, Mr. Vélez Loor entered the State illegally on a number of previous occasions, was deported on two previous occasions, and had previously been forbidden to re-enter the country.¹⁰³ He was sentenced to two years imprisonment and once the necessary formalities for repatriation had been complied with his sentence was invalidated and steps to secure his subsequent deportation were undertaken.¹⁰⁴

Second, prison doctors treated Mr. Vélez Loor on six separate occasions while he was imprisoned and, following an eleven-day hunger strike, he denied that he required medical attention.¹⁰⁵

Third, Mr. Vélez Loor has not filed a formal application with the domestic judicial authorities that have the jurisdiction to order the performance of the necessary inquiries to respond to his allegations.¹⁰⁶

May 25, 2007: Mr. Vélez Loor transfers his legal representation to the Center for Justice and International Law (“CEJIL”).¹⁰⁷

March 27, 2009: The Commission adopts the Report on the Merits No. 37/09.¹⁰⁸ The Commission finds the violation of Articles 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) in conjunction with Articles 1(1) (Obligation to Respect Rights) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.¹⁰⁹

B. Before the Court

October 8, 2009: The Commission submits the case to the Court, after

99. *Id.* ¶ 56.

100. *Id.* ¶ 59.

101. *Id.*

102. *Id.* ¶ 30.

103. *Id.* ¶ 24.

104. *Id.* ¶ 25.

105. *Id.* ¶ 28.

106. *Id.* ¶ 30.

107. Vélez Loor v. Panama, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 132, ¶ 1 (Nov. 23, 2010).

108. Vélez Loor v. Panama, Petition to the Court, ¶ 18.

109. *Id.*

the State failed to adopt its recommendations.¹¹⁰

1. Violations Alleged by Commission¹¹¹

Article 5(1) (Right to Physical, Mental and Moral Integrity)

Article 5(2) (Prohibition of Torture, Cruel, Inhuman or Degrading Treatment)

Article 7(3) (Prohibition of Arbitrary Arrest or Imprisonment)

Article 7(4) (Right to be Informed of Reasons of Arrest and Charges)

Article 7(5) (Right to be Promptly Brought Before a Judge and Right to a Trial within Reasonable Time)

Article 7(6) (Right to have Recourse to a Competent Court)

Article 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal)

Article 8(2)(d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel)

Article 8(2)(e) (Right to Assistance of Counsel Provided by State)

Article 8(2)(h) (Right to Appeal)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights)

Article 2 (Domestic Legal Effects to Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims¹¹²

Same violations alleged by the Commission, all in relation to:

Article 24 (Right to Equal Protection) of the American Convention.¹¹³

The Representatives of the Victims additionally alleged violation of:

Article 2 (Acts that Constitute Torture) of the Inter-American Convention to Prevent and Punish Torture.

110. *Id.*

111. *Id.* ¶ 3.

112. Ms. Viviana Krsticevic, Mr. Alejandra Nuño, Ms. Gisela De León, and Ms. Marcela Martino of CEJIL served as representatives of Mr. Vélez Loor. Vélez Loor v. Panama, Preliminary Objections, Merits, Reparations, and Costs, ¶ 4.

113. *Id.*

April 23, 2010: The State submits a brief in which it raises two preliminary objections: non-exhaustion of domestic remedies and lack of jurisdiction *ratione materiae* in relation to the Inter-American Convention to Prevent and Punish Torture.¹¹⁴ The State also makes a partial acknowledgement of international responsibility.¹¹⁵ The Court found the State did not adequately assert its objection regarding the non-exhaustion of domestic remedies because it did not provide a complete list of the available domestic remedies that had not been exhausted.¹¹⁶ Regarding the lack of jurisdiction *ratione materiae*, the Court found that, consistent with its jurisprudence, it is competent to interpret and apply the Convention against Torture and declare the responsibility of a State that has consented to be bound by that Convention and accepted the jurisdiction of the Court.¹¹⁷

July 29, 2010: The Public Interest Clinic of the Universidad Sergio Arboleda in Colombia submits an *amicus curiae* brief to the Court.¹¹⁸

November 23, 2010: The Court accepts the first preliminary matter regarding the inadmissibility *ratione materiae* of new claims argued by the representatives.¹¹⁹ The Court reasons that in the current state of evolution of the system of protection of human rights, it is within the power of the representatives of the alleged victim to include legal claims different from those filed by the Commission as long as they are founded within the factual basis of the application.¹²⁰ Moreover, the Court determined that the State had every procedural opportunity to submit its defense arguments concerning the pleadings.¹²¹ The Court holds that the arguments can therefore be heard during the merits of the judgment.¹²²

III. MERITS

A. *Composition of the Court*

114. *Id.* ¶ 5.

115. *Id.*

116. *Id.* ¶ 21.

117. *Id.* ¶ 35.

118. *Id.* ¶ 12.

119. *Id.* ¶ 51.

120. *Id.* ¶ 50.

121. *Id.*

122. *Id.*

Diego García-Sayán, President
Leonardo A. Franco, Judge
Manuel E. Ventura Robles, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge
Alberto Pérez Pérez, Judge
Eduardo Vio Grossi, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. Decision on the Merits

November 23, 2010: The Court issues its Judgment on Preliminary Objections, Merits, Reparations, and Costs.¹²³

The Court found unanimously that Panama had violated:

Article 7(5) (Right to be Promptly Brought Before a Judge and Right to a Trial within Reasonable Time), in relation to Article 1(1) and 2 of the Convention, to the detriment of Mr. Vélez Loor,¹²⁴ because:

The State had not provided sufficient elements that demonstrate its compliance with the principles of judicial control and procedural immediacy required when the detention or arrest of a person is based on his immigration status.¹²⁵ Domestic legislation must ensure that the officer who is authorized by law to carry out judicial functions fulfills the requirements of impartiality and independence that must be present in any body authorized to determine the rights and obligations of persons, including administrative bodies.¹²⁶

Article 7(3) (Prohibition of Arbitrary Arrest or Imprisonment) in relation to Article 1(1) of the Convention, to the detriment of Mr. Vélez Loor,¹²⁷ because:

The State deprived him of his liberty for twenty-five days based on an

123. Vélez Loor v. Panama, Preliminary Objections, Merits, Reparations, and Costs.

124. *Id.* “Declares” ¶ 5.

125. *Id.* ¶ 107.

126. *Id.* ¶ 108.

127. *Id.* “Declares” ¶ 5.

arbitrary arrest order.¹²⁸ The warrant did not contain the grounds for arrest or the reason for the need to issue it.¹²⁹ In fact, the warrant of irregular immigrants was automatically issued after the initial arrest, without consideration of the particular circumstances.¹³⁰

Article Sixty-Seven of Decree Law Sixteen of 1960 did not follow a lawful purpose and was disproportionate, given that it established a punitive penalty for aliens who evade a previous order for deportation and, therefore, resulted in arbitrary detentions.¹³¹

The State, by imposing a punitive measure upon a migrant that reentered a country in an irregular manner after a previous deportation order, did not have a lawful purpose in conformity with the Convention.¹³²

Article 7(6) (Right to Have Recourse to a Competent Court), in relation to Article 1(1) of the Convention, to the detriment of Mr. Loor,¹³³ because:

*The State did not guarantee that Mr. Loor could exercise the available remedies to question the lawfulness of his arrest.*¹³⁴

Articles 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal), 8(2)(d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel), and 8(2)(e) (Right to Assistance of Counsel Provided by State), in relation to Article 1(1), to the detriment of Mr. Loor,¹³⁵ because:

*The State did not provide Mr. Vélez Loor with free legal representation, which is imperative in cases where the accused may be deported, expelled, or deprived of freedom.*¹³⁶

Articles 7(4) (Right to be Informed of Reasons of Arrest and Charges), 8(1) (Right to a Hearing Within Reasonable Time by

128. *Id.* ¶ 118.

129. *Id.*

130. *Id.*

131. *Id.* ¶ 172.

132. *Id.* ¶ 169.

133. *Id.* "Declares" ¶ 5.

134. *Id.* ¶ 139.

135. *Id.* "Declares" ¶ 6.

136. *Id.* ¶ 146.

Competent and Independent Tribunal), and 8(2)(d) (Right to Self-Defense or Legal Assistance and to Communicate Freely with Counsel) in relation to Article 1(1), to the detriment of Mr. Vélez Loor,¹³⁷ because:

*The State did not notify Mr. Vélez Loor of his right to communicate with a consular official of his country.*¹³⁸

*The administrative proceedings conducted between November 12, 2002 and December 6, 2002 did not give Mr. Vélez Loor the opportunity to avail himself of the right to a defense, to a hearing, or to the safeguards of adversarial proceedings.*¹³⁹

*The absence of information regarding Mr. Vélez Loor's rights to communicate with the consulate of his country and the lack of effective access to consular assistance is a component of the right to defense and due process.*¹⁴⁰

Article 8(2)(h) (Right to Appeal), in relation to Article 1(1) of the Convention, to the detriment of Mr. Loor,¹⁴¹ because:

*During the almost ten months of Mr. Vélez Loor's imprisonment, he was not notified of the Order 7306 of December 6, 2002, issued by the National Office of Immigration, which states that the decision made by the General Director of Migration could be reviewed, in the second instance, by a court or tribunal.*¹⁴² *The lack of notification constituted a violation of Article 8 (Right to a Fair Trial) given that it placed Mr. Vélez Loor in a situation of uncertainty regarding his legal situation and made the exercise of the right to appeal a judgment unfeasible.*¹⁴³

Article 7(1) (Right to Personal Liberty and Security), in relation to Article 1(1) of the Convention, to the detriment of Mr. Vélez Loor,¹⁴⁴ because:

137. *Id.* "Declares" ¶¶ 5, 6.

138. *Id.* ¶ 155.

139. *Id.* ¶ 159.

140. *Id.* ¶ 160.

141. *Id.* "Declares" ¶ 6.

142. *Id.* ¶ 180.

143. *Id.*

144. *Id.* "Declares" ¶ 5.

*Any violation of Articles 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law), 7(3) (Prohibition of Arbitrary Arrest or Imprisonment), 7(4) (Right to Be Informed of Reasons of Arrest and Charges), 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time), 7(6) (Right to Have Recourse before a Competent Court), or 7(7) (Prohibition of Prison for Debt) of the Convention necessarily entails the violation of Article 7(1) (Right to Personal Liberty and Security) since a failure to respect the guarantees of the person deprived of liberty leads to the lack of protection of that person's right to liberty.*¹⁴⁵

Article 8(2)(b) (Right to Have Prior Notification of Charges), 8(2)(c) (Right to Adequate Time and Means to Prepare Defense), 8(2)(f) (Right of Defense to Obtain the Appearance of Witnesses and Examine Them), in relation to Article 1(1) of the Convention, to the detriment of Mr. Vélez Loor,¹⁴⁶ because:

*The Court did not specifically discuss violations of 8(2)(b) (Right to Have Prior Notification of Charges), 8(2)(c) (Right to Adequate Time and Means to Prepare Defense), 8(2)(f) (Right of Defense to Obtain the Appearance of Witnesses and Examine Them).*¹⁴⁷ *Nevertheless, the Court found violations of these Articles.*¹⁴⁸

Article 9 (Freedom from *Ex Post Facto* Laws), in relation to Article 1(1) of the Convention, to the detriment of Mr. Vélez Loor,¹⁴⁹ because:

*The application of a heavier sanction than the one stipulated in Article 67 of Decree Law 16 of 1960 infringes the principle of legality.*¹⁵⁰

*The penalty imposed on Mr. Vélez Loor is not consistent with what was established in the domestic legislation.*¹⁵¹

The National Office of Immigration did not provide any reasoning in its Order 7306 regarding the grounds for the application of a penalty in a

145. *Id.* ¶ 189.

146. *Id.* ¶ 191, "Declares" ¶ 6.

147. *See generally id.*

148. *Id.*

149. *Id.* "Declares" ¶ 7.

150. *Id.* ¶ 188.

151. *Id.* ¶ 185.

*facility that was not the one stipulated in the law.*¹⁵² *This is a breach of the principle of freedom from ex post facto laws as it is based on extensive interpretations of criminal law.*¹⁵³

Articles 5(1) (Right to Physical, Mental and Moral Integrity) and 5(2) (Prohibition of Torture, Cruel, Inhuman or Degrading Treatment), in relation to Article 1(1) of the Convention, and Article 1 (Obligation to Prevent and Punish Torture), Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment) and Article 8 (Obligation to Investigate and Prosecute) of the American Convention to Prevent and Punish Torture, to the detriment of Mr. Vélez Loor,¹⁵⁴ because:

*Mr. Vélez Loor was deprived of his liberty at La Palma Public Prison and later at the La Joyita Penitentiary Center, in which he was held together with people awaiting criminal trial and/or who were serving time for the commission of a crime.*¹⁵⁵

*The State did not abstain from acting in such a way that deepened the vulnerability of migrants.*¹⁵⁶ *The State must adopt, when appropriate, measures necessary and reasonable to prevent or protect the rights of migrants when, who due to their irregular immigration status, are held in penitentiary centers together with individuals undergoing a criminal trial or serving time for the commission of a crime.*¹⁵⁷

*The conditions of imprisonment at La Palma Public Prison and La Joyita Penitentiary Center constitute cruel, inhumane, and degrading treatment.*¹⁵⁸ *The population density at La Palma Public Prison and La Joyita Penitentiary Centers when Mr. Vélez Loor was imprisoned there was 135% and 164%, respectively.*¹⁵⁹ *The lack of an adequate supply of drinking water in a penitentiary center constitutes a serious failure of the State's duty to guarantee the rights of those held in the State's custody.*¹⁶⁰ *The State has a duty to provide detainees with regular*

152. *Id.* ¶ 187.

153. *Id.*

154. *Id.* "Declares" ¶¶ 8, 9.

155. *Id.* ¶ 210.

156. *Id.* ¶ 207.

157. *Id.*

158. *Id.* ¶ 227.

159. *Id.* ¶ 203.

160. *Id.* ¶ 216.

*medical checks and care and adequate treatment whenever necessary.*¹⁶¹ *The medical care services that Mr. Vélez Loor had access to were not provided in a timely, adequate, and complete manner given that he did not receive specialized medical treatment for the apparent cranial fracture he suffered.*¹⁶²

Articles 8(1) (Right to a Hearing Within Reasonable Time by Competent and Independent Tribunal) and 25 (Right to Judicial Protection), in relation to Article 1(1) of the Convention, to the detriment of to the detriment of Mr. Vélez Loor,¹⁶³ because:

*Mr. Vélez Loor did not have equal access to justice.*¹⁶⁴ *The State did not provide Mr. Vélez Loor with counsel, which affected his ability to challenge the State's actions against him.*¹⁶⁵ *That failure to provide such counsel constitutes a violation of the State's duty to guarantee equal rights in accessing legal remedies.*¹⁶⁶

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. Provide Medical and Psychological Treatment

The State must provide Mr. Vélez Loor with an amount to cover the expenses of the specialized medical and psychological treatment.¹⁶⁷ In order to comply with the purpose and end of rehabilitation, the treatment must be available to him at the place where he resides, rather

161. *Id.* ¶ 210.

162. *Id.* ¶ 223.

163. *Id.* "Declares" ¶ 10.

164. *Id.* ¶¶ 253, 254.

165. *Id.* ¶ 254.

166. *Id.*

167. *Id.* ¶ 263.

than in Panama.¹⁶⁸ Consequently, the State must allocate to Mr. Vélez Loor once, within six months of the notification of this Judgment, \$7,500 for specialized medical and psychological treatment, medicines, and other future related expenses.¹⁶⁹

2. Publish the Judgment

The State shall publish the Judgment's headings and the operative paragraphs at least once in the Official Gazette.¹⁷⁰ The State must also publish the Court's official summary of the Judgment in a newspaper with national circulation in Panama and in another newspaper in Ecuador.¹⁷¹ Additionally, the Judgment must be entirely published in an official website and be available for a year.¹⁷²

3. Investigate Acts of Torture and Identify, Prosecute, and Punish those Responsible

The Court ordered the State to effectively investigate the crimes committed against Mr. Vélez Loor.¹⁷³ When investigating allegations of torture, the State authorities must consider the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment ("Istanbul Protocol").¹⁷⁴

4. Separate Inmates Imprisoned for Immigration Violations From Those Imprisoned for Criminal Offenses

The State must provide institutions capable of providing conditions of detention necessary and proportionate for immigration purposes.¹⁷⁵ These institutions must be equipped with sufficient facilities and personnel working at such institutions must be qualified and trained.¹⁷⁶ Moreover, the institutions must display, in different languages, written information regarding the legal situation of the detainees, forms with names and telephones of consulates, legal advisors, and organizations

168. *Id.*

169. *Id.* ¶ 265.

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.* ¶ 270.

174. *Id.*

175. *Id.* ¶ 272.

176. *Id.*

that can provide support for the detainees.¹⁷⁷

5. Bring La Palma Public Prison and La Joya-La Joyita Penitentiary Center into Compliance with International Standards

The State must provide an adequate water supply in La Joya-La Joyita Penitentiary Center and ensure that the Center's conditions, as well as in La Palma Public Prison, conform to international human rights standards.¹⁷⁸

6. Train Government Officials

The State must implement an education and training program for officials who deal with migrants regarding international standards related to the human rights of migrants, the guarantees of due process, and the right to consular assistance.¹⁷⁹ In the program, the State shall specially refer to the present Judgment and to international human rights treaties to which the State is a party.¹⁸⁰ The State must implement training programs on prohibiting torture and the obligation to initiate *ex officio* investigations if there is an accusation or a well-grounded reason to believe torture has occurred within its jurisdiction.¹⁸¹

7. Ensure Immigration Laws Conform to the American Convention on Human Rights

The State is obliged to adopt all necessary measures to ensure that its immigration laws and application of all provisions related to immigration conform to the American Convention.¹⁸²

B. Compensation

The Court awarded the following amounts:

1. Pecuniary Damages

The Court ordered the State to pay \$2,500 for Mr. Vélez Loo's

177. *Id.*

178. *Id.* ¶ 276.

179. *Id.* ¶ 278.

180. *Id.*

181. *Id.* ¶ 280.

182. *Id.* ¶ 288.

loss of earnings during his imprisonment.¹⁸³ The Court also ordered the State to pay \$5,000 for reimbursement of legal and other expenses incurred at the international level.¹⁸⁴

2. Non-Pecuniary Damages

The Court ordered the State to pay \$20,000 for the cruel, inhumane, and degrading confinement conditions Mr. Vélez Loor endured that caused him physical emotional sufferings as well as their consequences.¹⁸⁵

3. Costs and Expenses

The Court ordered the State to pay \$24,000 to CEJIL to compensate for the costs and expenses incurred before the domestic authorities and those arising from processing the case before the Inter-American System.¹⁸⁶

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

\$51,500

C. Deadlines

The Judgment must be published in the Official Gazette, the newspapers, and the Internet within one year of the notification of the Judgment.¹⁸⁷

Pecuniary and non-pecuniary damages as well as the reimbursement of costs and expenses shall be paid within one year of the notice of the Judgment.¹⁸⁸

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

183. *Id.* ¶ 304.

184. *Id.* ¶ 307.

185. *Id.* ¶¶ 312, 314.

186. *Id.* ¶ 319.

187. *Id.* ¶ 266.

188. *Id.* ¶ 321.

February 13, 2013: The Court released its monitoring and compliance report on the Judgment.¹⁸⁹ The Court found that the State complied with several of the Court orders.¹⁹⁰ First, the State paid the medical and psychological treatment fees for Mr. Vélez Loor.¹⁹¹ Second, the State published parts of the Judgment.¹⁹² Finally, the State paid the pecuniary and non-pecuniary damages, as well as the costs and expenses.¹⁹³

On the other hand, the Court found that the State has not fully complied with other orders and therefore the Court will continue to monitor compliance.¹⁹⁴ First, the State has not fully investigated Mr. Vélez Loor's case yet.¹⁹⁵ Second, the State has not yet adopted measures to guarantee the separation of inmates imprisoned due to immigration reasons from those imprisoned for criminal offenses.¹⁹⁶ Third, the Court found that the State has not improved the prison conditions of La Palma Public Prison and La Joya-La Joyita Penitentiary Center according to international standards.¹⁹⁷ Finally, the State has not yet trained its government officials who handle immigration matters.¹⁹⁸

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations, and Costs

[Vélez Loor v. Panama, Compliance Monitoring, Order of the Court, Inter-Am. Ct. H.R. \(ser. C\) No. 132 \(Feb. 13, 2013\).](#)

189. Vélez Loor v. Panama, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. (Feb. 13, 2013).

190. *See id.* "Declares" ¶ 1.

191. *Id.* "Declares" ¶ 1(a).

192. *Id.* "Declares" ¶ 1(b).

193. *Id.* "Declares" ¶ 1(c).

194. *Id.* "Declares" ¶ 2.

195. *Id.* "Declares" ¶ 2(a).

196. *Id.* "Declares" ¶ 2(b).

197. *Id.* "Declares" ¶ 2(c).

198. *Id.* "Declares" ¶ 2(d).

[Vélez Loor v. Panama, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 132 \(Nov. 23, 2010\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[Vélez Loor v. Panama, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(Feb. 13, 2013\).](#)

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

Vélez Loor v. Panama, Petition No. 92/04, Inter-Am. Comm'n H.R. (Feb. 10, 2004).

2. Report on Admissibility

[Vélez Loor v. Panama, Admissibility Report, Report No. 95/06, Inter-Am. Comm'n H.R., Case No. 12.581 \(Oct. 23, 2006\).](#)

3. Provisional Measures

[None]

4. Report on Merits

Vélez Loor v. Panama, Report on Merits, Report No. 37/09, Inter-Am. Comm'n H.R., Case No. 12.581 (Mar. 27, 2009).

5. Application to the Court

[Vélez Loor v. Panama, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.581 \(Oct. 8, 2009\).](#)

VIII. BIBLIOGRAPHY

Ashley Mason, *Comment and Case Note: Interpretation of the American Convention in Latin America: The Impact of the Inter-American Court of Human Rights' Decision in Velez Looz v. Panama on Irregular Migrant Rights*, 18 LAW & BUS. REV. AM. 71 (Winter 2012).

HARVARD UNIV. INT'L HUMAN RIGHTS CLINIC, HUMAN RIGHTS STOP AT THESE DOORS: INJUSTICE AND INEQUALITY IN PANAMANIAN PRISONS 40 (March 2008).

Volker Türk and Alice Edwards, *Introductory Note to the Summary Conclusions of the Global Roundtable on Alternatives to Immigration Detention*, 23 INT'L J. OF REFUGEE L. 873 (2001).