Case of Gonzalo Belano and 807 Other Wairan Persons

Victims

v.

Republic of Arcadia

Respondent

Representatives for the Victims

III. Statement of Facts

A. *Background on the Republic of Arcadia*

Arcadia is a developed country with a sound democracy, a clear separation of powers, and strong system of public institutions, which has been progressively consolidated since its independence in 1825. Throughout the following years, it has ratified the following treaties: the International Covenant on Civil and Political Rights (1966), ratified in 1969; the International Covenant on Economic, Social and Cultural Rights (1966), ratified in 1969; the International Convention on the Elimination of All Forms of Racial Discrimination (1965), ratified in 1969; the Convention on the Elimination of All Forms of Discrimination against Women (1979), ratified in 1982, and its Optional Protocol (1999), ratified in 2002; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), ratified in 1985, and the Optional Protocol to the Convention against Torture (OPCAT) (2002), ratified in 2004; the Convention on the Rights of the Child (1989), ratified in 1990, and its Optional Protocols (2000), ratified in 2002; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their on

agencies of the UN System, including representatives of the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM) to explore a detailed diversified response to the mass influx of Wairans into its territory. [15] As a consequence of the mass influx of Wairans, Arcadia began to face grave

The family of Gonzalo Belano, one of the Wairans who had been deported, sought legal advice from the Legal Clinic for Displaced Persons, Migrants, and Refugees of the National University of Puerto Waira. [28] Gonzalo Belano was forcibly recruited by a gang when he was 14 years old and as a R ol 0.004 Tw (as)ea gal ayw (

child (Article 19), equal protection (Article 24), and judicial protection (Article 25) of the American Convention on Human Rights, all in relation to Article 1.1 thereof, to the detriment of Gonzalo Belano and 807 other Wairans. [34]

(henceforth “the IACHR

the Pima Immigration Court would have recently rejected the proceedings regarding the same underlying issue of deportation, therefore this remedy would not be required to be exhausted.

2. *The exhaustion of domestic remedies in respect of Arcadia's alleged noncompliance with the domestic legal requirements, which consist of filing the administrative lawsuit directly with the competent court.*

The rule of exhaustion of domestic remedies "is not meant to be a procedural obstacle course" which requires the victims to jump every possible hurdle before resorting to an international forum."[38] Rather it is meant to allow the State the opportunity to resolve the problem under its internal law before being confronted with an international proceeding. The IACHR prescribes that

> "If a person who is seeking the protection of the law in order to assert rights which the Convention guarantees finds that his economic status (in this case, his indigency), prevents him from so doing because he cannot afford either the necessary legal counsel or the costs of the proceedings, that person is being discriminated against by reason of his economic status and, hence, is not receiving equal protection before the law".[39]

In the present case due to the Legal Clinic's limited resources and the families' interest in pursuing the case, the decision was made to file the claim for reparation for direct harm with the Arcadian consulate on November 15, 2015. This was in contravention of Arcadia's domestic legal requirements which prescribes filing administrative lawsuits directly with the competent

[38] Jo M. Pasqualucci, The Practice and Procedure Of the Inter-American Court of Human Rights, (Cambridge University Press, 2013), p.96.
[39] I/A Court H.R., *Exceptions to the Exhaustion of Domestic Remedies*, Advisory Opinion OC-11/90, 10 August 1990, para. 22, available at http://www.corteidh.or.cr/docs/opiniones/seriea_11_ing. pdf

court. However, such a requirement could not be observed due to the lack of resources of the Legal Clinic and in such a circumstance the State of Arcadia stipulated that free legal assistance would only be provided in matters of a criminal matter. Both Arcadia's domestic legal requirement and the aforementioned stipulation acts as a bar for the families of the Puerto Wairan's migrants to access the remedy available under Acadian law. The IACHR emphasized that, "Any state that does not provide indigents with such counsel free of charge cannot, therefore, later assert that appropriate remedies existed but were not exhausted".[40] Hence, the state of Arcadia cannot assert that the appropriate domestic remedy was not exhausted as no legal assistance was provided to the families of the 808 migrants. This is bolstered by the court's pronouncements which prescribes "that it must be concluded that if legal services are required either as a matter of law or fact in order for a right guaranteed by the Convention to be recognized and a person is unable to obtain such services because of his indigency, then that person would be exempted from the requirement to exhaust domestic remedies".[41]

Argument on the Merits

A. Arcadia violated Article 24 (Right to Equal Protection) of the Convention, read in conjunction with Article 1(1) to the detriment Gonzalo Belano and 807 Other Wairan persons.

[40] I/A Court H.R., *Exceptions to the Exhaustion of Domestic Remedies*, Advisory Opinion OC-11/90, 10 August 1990, para. 26, available at http://www.corteidh.or.cr/docs/opiniones/seriea_11_ing. pdf

[41] I/A Court H.R., *Excep Td [(Remedies, Advisory Opinion OC-11/90, 253 0-)Tj 4 Tw 0.253 0 Td (to)Tj 0 Tc 0 T4.51325 0 Td [(*

Inter-American system, recognizes the right of not only refugees but any alien, to not be returned, when there is a risk of that person's life or personal freedom being violated.

Article 1(1) imposes on the States Parties, the duty of the States Parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.[52] Article 1(1) of the ACHR prohibits a state from discriminating on numerous grounds, one such being a person's economic status.[53] Discrimination, employed under Article 24 should be done with respects to the list enumerated in Article 1(1). [54] A person who believes that their rights under the convention have been violated, has the right to simple and prompt recourse, or any other effective recourse under Article 25(1) of the ACHR. If the person seeking recourse is not able to do so because of indigency, and as result is unable to afford the necessary legal counsel and the cost of the proceedings, that

right in the 1948 American Declaration of Rights and Duties of Man Article XXVII, which influenced the universal adoption in Article 14 of the 1948 Universal Declaration of Human Rights (hereinafter "(UDHR)"[59]. The 1951 Convention even though not explicitly establishing the right, is considered to be implicitly incorporated in its text.[60] Under Article 22(7) of the Convention every person has "the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the state and international conventions". The Court in *Pacheco Tineo Family v Bolivia*, highlighted this interrelationship between the scope and content of the right and international refugee law.[61] The Court, reaffirmed the international law requirement within Inter-American syste[illegible]

2. In case

In accordance with the established minimum guarantees laid down in Articles 8, 22(7) and 25 of the ACHR, and alluding to the guidelines and criteria established under the UNHCR, asylum seekers should have access to procedures that allow for adherence to proper effective and substantive examinations of their application, in accordance with the fundamental guarantees contained in the ACHR and other related international instruments.[69] As such, States are obligated to:

A. Ensure applicant guaranteed right to the necessary facilities, including the services of a competent interpreter, and where appropriate, access to legal assistance and representation to submit their request to the authorities. The applicant should receive the necessary guidance concerning the procedure to be followed, in a manner that he can understand and, if appropriate, he should be given the opportunity to contact a UNHCR representative;
B. The request must be examined, objectively, within the framework of the relevant procedure, by a competent and clearly identified authority, and requires a personal interview;
C. Decisions taken by the competent bodies should be properly and explicitly substantiated in order to protect the rights of applicants who may be in danger, all stages of the asylum procedure must respect the protection of the applicant's personal information and the [redacted]
D. If the applicant is denied refugee status, he should be provided with information on how to file an appeal under the prevailing system and granted a reasonablethe

while the decision is being appealed, unless it can be shown that the request is manifestly unfounded.[70]

Despite Arcadia's compliance with the procedural and substantive adherence to the requirements laid down by the commission[71], they failed to respect the overarching duty of non-refoulement after the verification of a substantial and reasonable likelihood of danger.[72] The Court has repeatedly clarified that a reasoned decision regarding expulsion should be carried out, in keeping with the international obligations of a State concerning the right of non-refoulement.[73] The Respondent, failed at their special obligation of caution, diligence and care in processing the deportation cases of the 808 cases despite the verification of a substantial risk of danger present both in United State of Tlàxochitlán and Puerto Waira.[74] As such, the respondent violated the right to seek and be granted asylum under article 22 (7) in conjunction with

1. *Arcadia was in*

aforementioned standard of an effective remedy when the immigration courts found, without sufficient legal grounds, that Arcadian officials had acted legally. The Court's lack of finding of human rights violations washuman

irrespective of the knowledge that these migrants would face a risk to their life if returned to Puerto Waira. Pubic condemnation of these individuals allowed for them to be cast in a negative light throughout numerous social media and broadcasting outlets.[84] The general social atmosphere prevailing in Arcadia prior to the deportation of the Puerto Wairans in conjunction with the violations of the rights to life, personal liberty, a fair trial, to seek and be granted asylum, non-refoulement, family unity, the best interests of the child, equal protection, and judicial protection, played a role in rendering the amparo an ineffective remedy. In *Cantoral Benavides v Peru* the IACHR concluded that "the in-existence of an effective recourse against violations of the acknowledged rights by the American Convention constitutes a transgression thereof by the State Party."[85] Arcadia was in violation of the right to judicial protection by failing to provide an effective remedy which could provide redress for the rights violated.

D. Arcadia violated Article 22 (8) (Right to Non- refoulement) and Article 4 (1) (Right to Life) read conjunction with Article 1(1), to the detriment of Gonzalo Belano and 807 Other Wairan persons

The Respondent State of Arcadia assumed responsibility 2.25 0oJ 0 Tc 0 Tw (91 0 l(1)-3((1)-3()y [(ju

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return an alien individual to a country, regardless of whether or not it is his country of origin, where his right to life or personal freedom is in danger of being violated because of his race, country, is

establishes that “[n]o Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” The 1951 Convention however, excludes this means of protection to persons who fall outside the spectrum of a refugee, pursuant to article 1F or 33(2).[91]A refugee as defined by the 1951 convention is defined as a person"owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it." The protection given by article 22 (8) has no equivalent to 1F or 33(2), substantiating the claim that within the Inter-American system the right to non-refoulement is non-derogable by virtue of the fact that any other interpretation would fall foul of article 27 (1) and 29 (b).[92]

In *Pacheco Tineo Family v.*

Obligating a State not to extradite, deport, expel, or otherwise remove a person from their territory, where there is substantial grounds that there is a real risk of irreparable harm, either in the country to which removal is to be effected or in any country to which the person may be subsequently be removed or is at risk.[95] After the arrival of the Wairans in Arcadia the authorities in a collaborative effort with the National Commission for Refugees (CONARE), Ministry of Foreign Affairs and the Intelligence Service of the Ministry of the Interior were able to identify and detain 808 asylum claims with alleged criminal records.[96] It was determined that 729 individuals cases would face a "high risk" of torture and that their

right violations for the return of Wairans to Puerto Waira.[100] Following the arrival and a brief detention in Tlàxcochitlan; immigration authorities deported them to Puerto Waira.[101] Therefore, the Respondent State, failed to prevent the violation of the 808 cases substantial risk of violations of their fundamental rights afforded under the ACHR.

refoulemnt is recognized where his, life, integrity and/or freedom are in danger of being violated, whatsoever his legal status or migratory situation in the country'.[104]

Therefore, the respondent State violated its positive duty of ensuring the adherence to the right to life under Article 4 (1) of the Convention, after its authorization for the expulsion for the 808 Wairans to the United States of Tlàxcochitlan and then to Puerto Wairan which led to the death of Gonzalo Belano and 29 other murder victims.[105]

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E. The State of Arcadia violated Article 7 (Right to Personal Liberty) of the Convention read in conjunction with Article 1(1) to the detriment of the 808 Puerto Waira individuals.

Article 7 (1) of the ACHR guarantees all every persons the right to personal liberty and security. Article 7 (2) goes further to prescribe that an individual must not deprived of his liberty except for the reasons and under the conditions established by the constitution of the State Party concerned or by a law established. The Republic of

migration issues shall not be deprived of liberty in institutions designed to hold persons deprived of liberty on criminal charges.[106] The IACHR's stance is in accordance with Principle 8 of the United Nations General Assembly resolution, which states, "Persons in detention shall be subject to treatment appropriate to their unconvicted status."[107] Accordingly, they shall, whenever possible, be kept separate from imprisoned persons."[108] The U.N. Working Group on Arbitrary Detention's Body of Principles prescribes that detained, immigrants and asylum seekers should be housed in a facility "specifically intended for this purpose."[109] 48 The Special Rapporteur on the Human Rights of Migrants emphasized that

protection of the refugee's family, especially with a view to ensuring that the unity of the family is maintained' and for 'the protection of refugees who are minors'.[115] The Final Act puts a positive duty on the Respondent State to 'take necessary measures for the protection of the refugee's family, seeking to ensure the maintenance of family unity.[116]

The caravans of person traveling destined for Arcadia consisted of hundreds of families, children, adolescents, pregnant women and older adults who were in a vulnerable state.[117] Arcadia expelled 808 Wairans who had reportedly committed criminal offenses and would therefore be excluded from obtaining refugee status.

1. Adjudge and declare that the Republic of Arcadia violated Article 24 of the ACHR read