

QUESTIONS REGARDING THE HYPOTHETICAL CASE 1996

I. INTERNATIONAL LAW

A. INTER-AMERICAN SYSTEM

1. Mrs. Sybille Olivera was arrested on October 7 under the charge of advocacy of terrorism. Articles 12 and 13 of the Convention regulate the right of freedom of thought and expression within that context. How has the Inter-American Commission on Human Rights doctrinally interpreted the meaning of advocacy when the Commission recognized the admissibility of the petition made by Mrs. Sybille Olivera (according to Section 4 - Article 48 of the Convention)?

This is a matter that can be discussed in both the memorial and the oral arguments.

2. Marelle acceded to the Inter-American Convention on Forced Disappearance of Persons on February 1, 1996, the same day the Commission adopted its preliminary report, following Article 50 of the Convention. Can the Commission present and consider, as part of the facts and its conclusions, the lack of compliance with the Inter-American Convention on Forced Disappearance of Persons by Marelle?

This is a matter that can be discussed in both the memorial and the oral arguments.

3. What day did Marelle sign the Inter-American Convention on Forced Disappearance of Persons?

The same day the Convention was adopted.

B. OTHER INTERNATIONAL TREATIES

4. Has Marelle ratified the Vienna Convention on the Law of Treaties? If yes, what was the date of ratification?

Yes, Marelle ratified the Vienna Convention on the Law of Treaties on August 6, 1980.

II. DOMESTIC LAW

A. CONTENT OF DOMESTIC LEGISLATION DATES OF COMING INTO FORCE

5. What date did the following laws come into effect: 12.466 and 14.122?

Law 12.466 was adopted on May 3, 1983. Law 14.22 was adopted on July 5, 1994.

6. Please send the following documents:

- Text of Law 12.466
- Text of Law 14.122
- Text of Law 15.134
- Text of Emergency Decree 30 on Terrorism

This information is not necessary to analyze the hypothetical case.

7. Send each document mentioned in the case, such as the Constitution of Marelle, Emergency Decree 30, Law 12.466, Law 14.122 and Law 15.134.

This information is not necessary to analyze the hypothetical case.

8. Pursuant to Marelle's legislation, has Mrs. Olivera had the opportunity to present a new appeal based on the provision established for such a remedy in the type of special criminal process under which he was prosecuted?

No.

9. What date was Decree 30 adopted?

June 16, 1994.

10. Aside from Article 50, are any other provisions in Marelle Constitution related to emergency situations?

No.

11. What is the precise date that Law 12.466 was passed?

See the answer to question No. 5.

12. What date was Law 12.422 (sic) [12.466] repealed?

July 4, 1994

13. On many occasions during this case the term “decree” is used; What governmental entity has the authority to promulgate decrees when the term is not accompanied by the modifier “presidential”?

In this case, the concept “Decree” is equivalent to “Presidential Decree.”

14. If, in terms of par. 22, the First District Court concluded that the actions of the members of the Sixth Battalion were excluded from the jurisdictional purview of the military court, on what jurisdictional basis did the Military Tribunal 5 hold that their respective actions constituted grounds for the disciplinary procedure under the Regulations of the Armed Forces (par. 30)?

The Constitution and Regulations of the Armed Forces establish two types of jurisdiction for Military tribunals. Criminal-penal and disciplinary-administrative.

15. Under the state of emergency decrees against terrorism, how were the procedures on arrest and treatment of detainees handled? At what opportunity or point in time after being arrested is a person provided with an attorney?

The right to liberty guaranteed in the Marelle Constitution is one of the rights that were suspended during the State of Emergency. In reference to the second question, constitutional norms guarantee the right to counsel.

16. State in full detail any and all circumstances under which the government of Marelle can declare a state of emergency as discussed in Article 50 of the Constitution of Marelle.

Article 50 of the Constitution establishes the circumstances under which the government may declare a state of emergency.

17. What are the grounds for an appeal to the Supreme Court of Marelle of the Special Tribunal decision?

Refer to paragraph 29 and 32 of the hypothetical case.

18. What legal actions, if any, did Mrs. Olivera pursue against Marelle on her behalf so as to exhaust any and all domestic remedies in Marelle?

Refer to the facts of the case.

19. What difference in definition, penalty or procedural, is there between the crime of terrorism and those crimes against state security which do not involve terrorism, such as rebellion, sedition or treason?

This question is not necessary to the analysis of the hypothetical case.

20. Does Law 15.134 also confirm (in terms of par. 29) that part of Decree 30 as amended by the Presidential decree allowing for “faceless judges” (par. 14), so that reference to “a special tribunal composed of three justices” in par. 29 should be read as three “anonymous” judges?

Yes.

B. DOMESTIC PETITIONS

21. We request that you send the following documents:

- Copy of the proceedings against Mr. Roque Amador and others
- Copy of the proceedings against Mrs. Sybille Olivera
- Copy of the proceedings against the members of the Sixth Battalion
- Copy of the proceedings of the appeal put forward by Mrs. Sybille Olivera before the court.

This information is not necessary to analyze the hypothetical case.

22. Did the circumstance described in paragraph 33 imply the termination of the proceedings against the accused?

No.

23. With respect to paragraph 33, can we assume that the proceedings against those accused of the kidnaping and disappearance of the leaders of “Unidos Actuemos” continued after the 1st of April?

Refer to the answer to question No. 22.

III. FACTS

24. Were the three branches of the Marelle government (especially the legislative and judicial powers) in full exercise of their authority?

Refer to the facts established in the hypothetical case.

25. In reference to the Habeas Corpus claim; did the tribunal make any diligent effort or inquiry in order to determine the whereabouts or place of detention of Mr. Olivera?

The judge in charge of the habeas corpus requested information from several state security agencies.

26. What measures did the State take to determine the whereabouts of Horacio Olivera once the habeas corpus was brought?

Refer to the answer to No. 25.

27. Indicate the provisions of the American Convention that were suspended by Government on the 12th of June 1994.

Refer the to facts established in the hypothetical case.

28. What constitutional guarantees were suspended under the terms of Article 50 of the Constitution (par. 12) and subsequently reinstated (par. 27)?

The Government of Marelle never specified which rights were suspended.

29. What authority ordered the arrest of Sybille Olivera?

The chief of the National Intelligence Department.

30. Can we assume that even though Mrs. Olivera was initially denied requests to communicate with her family and a lawyer immediately after her arrest (see para. 24, “had been denied”), she was represented throughout the process (at the time of charging and trial) by an appointed counsel?

Yes.

31. Can we assume that the emergency legislation referred to in paragraph 14 are the same emergency laws implemented by Decree 30 in paragraph 9?

Yes.

32. Supposing that the 15,000 persons referred to in paragraph 6 were part of the Armed Forces, what were the total number of combatants, including guerilla insurgents and paramilitary fighters?

This is not relevant to analyze the hypothetical case.

33. On what date did the fighting referred to in paragraph 9 end? Did the termination imply the end of the offensive?

The fighting initiated on June 12, 1994 terminated on June 15, 1994; however, the activities of the armed groups continued.

IV. PROCESSING BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

34. Should it be understood that the articles that the petitioner alleges were violated were the same as those that the Commission considered to be violated?

Yes.

35. What measures did the Commission recommend? What specific facts from the hypothetical case did the Commission refer to in the measures taken?

This information is not necessary to analyze the hypothetical case.

36. On what date did the Commission present the application to the Inter-American Court of Human Rights?

The question is not relevant. Procedural issues of this type need not be discussed in the memorial nor during the oral arguments.

V. OTHER MATTERS

37. Chapter II, Title II - Article 26 of the Regulations for the Inter-American Court of Human Rights indicates the requirements for the presentation of the application. In the presentation of our memorials, when arguing the exhaustion of internal remedies, discussing all the questions of the case, should we include a hypothetical copy of the writ of habeas corpus presented by Mrs. Olivera, which was dismissed because the place of detention of Mr. Olivera was not established?

No.

38. There is a difference between the English and the Spanish versions of the problem. In terms of par. 24 the English version states that Mrs Olivera was arrested on October 24 1994, whereas the Spanish text refers to 4 October 1994 as the date of arrest. We are accepting the Spanish version as the most accurate in the context. We request, furthermore, that we be informed of any other typographical discrepancies.

Correct: the correct date is October 4, 1994, according the Spanish version (an errata was sent previously to all teams). We have not detected other discrepancies between the text in Spanish and the text in English.