

III Inter-American Human Rights Moot Court Competition - May 1998

I. QUESTIONS/ANSWERS

A. Questions relating to relationship of international treaties to domestic law.

1. Are the rights allegedly in violation of the American Convention on Human Rights recognized by the Constitution of Ithaka?

Answer: The Ithaka Constitution enshrines many of the rights protected by the American Convention. Nevertheless, as is affirmed in the hypothetical case, the American Convention has Constitutional rank in accordance with the reform adopted in 1987.

2. What is the hierarchy in Ithaka's legal structure, particularly between the Constitution and international treaties?

Answer: Human rights treaties have Constitutional rank. Treaties in other areas are superior to domestic laws but inferior to the Constitution.

3. What are the other treaties ratified by Ithaka?

Answer: The human rights treaties ratified by Ithaka appear in the facts of the hypothetical case.

B. Questions relating to history and general background

4. Did the journalists ever reveal that Doña Isolda was their first source?

Answer: The journalists never revealed the identity of their sources.

5. In reference to the word "Choclo:" Can they be defined as a farming community of indigenous origin?

Answer: To be discussed in the memorials.

The following questions are not relevant to the analysis of the particular case.

-Are the 2,000 Choclo casualties whites or a mixture of both?

-On what legal/social grounds did the State of Ithaka undertake the Agrarian Reform? And what were the objectives?

-What mechanisms of control (legal) are there for the agrarian reform?

-How and when was the congress formed that elected President Ortiz; under which system and through which means was he elected in 1990, and how was succession of power to Asdrúbal Menéndez accomplished?

C. Questions relating to the Truth Commission

6. What were the reasons given by the Ithaka Congress for initiating an independent investigation on the Truth Commission's report?

Answer: The reasons were based on the revelations made in the articles published by the Estrada brothers.

D. Questions relating to the measure of prior censorship

7. What does the complete text of Article 8 of the Ithakan Constitution say?

Answer: The complete text of the Article 8 of the Ithaka Constitution is not important. What is relevant is that pursuant to Article 8 the President has the power to guarantee the country's internal security.

8. When and how did Law 2001 become effective?

Answer: The national Congress passed Law 2001 and it came into effect on December 4, 1985.

9. The Government invoked Law 2001 to prevent the publication of the new article. This law was created, based on Article 8 of the Constitution, to grant the President the authority to maintain public order. Does this constitutional provision and the mentioned law refer to the ordinary powers of the President, or does it refer to emergency situations and the suspension of rights?

Answer: The Law 2001 refers to the ordinary powers of the President.

10. Once the writ of Amparo has been filed in the First Federal Court of Ithaka, is the Supreme Court prevented from judicial review of the measure? Or, is it obligatory *a posteriori*?

Answer: The law establishes that the measures taken in accordance with Article 8 can be challenged through a writ of amparo [a private action to enforce constitutional rights]. Only when the amparo action is not filed does the Supreme Court have automatic jurisdiction to review the legality of the measure. On the other hand, if the amparo action is filed by the complainants, the Supreme Court can take the case on appeal of the lower court decision.

11. In reference to the the amparo against the measures executed by State authorities; if it is not presented in 30 days, does it automatically pass to the Supreme Court for review, or does the Supreme Court have 30 days to decide?

Answer: If the amparo is not presented within 30 days of the execution of the measure, the Supreme Court has automatic jurisdiction to review its legality.

12. With respect to the judicial review of the measures, does the Supreme Court only review the challenged measure in relation to the law, or also in relation to the rights protected by the Constitution?

Answer: See the facts of the hypothetical case.

E. Questions relating to the Press Association

13. What is the text of the statute that creates the Ithakian Press Association?

Answer: The complete text of the law is not relevant to the analysis of the case. However, it is important to point out that, as indicated in the hypothetical, the Association was charged with supervising compliance with the Press Code of Ethics through a tribunal constituted for that purpose.

14. What is the legal nature of the Press Association's decisions?

Answer: The tribunal's decisions do not have official consequences, they only serve to suspend or expel an associate from the Press Association

15. Did the Estrada brothers request that one of the members of the Press Association Panel be recused?

Answer: Even though the facts of the case do not raise this particular point, one can deduce that neither the brothers nor their attorney asked that a member of the Ethic's Panel be recused.

16. Can the parties in the Press Association's panel be recused? And, what was the result of the vote?

Answer: The members of the tribunal can be recused. See answer 15 for the second part of the question.

17. Was just the Ithakian Press Association created by law or were the procedures for the Tribunal also created by law?

Answer: The Tribunal's procedures were also created by law.

18. Does any recourse exist against the decisions made by the Press Association of Ithaka?

Answer: No.

F. Questions relating to the defamation case

19. How and when did the provision on defamation in the Ithaka Penal Code come into effect?

Answer: The provision on defamation in the Ithaka Penal Code came into effect in July of 1985 through an act of Congress.

20. What is meant by "Former President Ortiz initiated criminal proceedings against the Estrada brothers for defamation?" Is President Ortiz the civilian complainant or the actual prosecutor? If the President is acting as the prosecutor, how has he obtained this power by his own initiative--by common law or by statute?

Answer: It means that ex-President Ortiz pressed criminal charges with the prosecutors office against the Estrada brothers for defamation.

21. Why did the Supreme Court reject the recourse the petitioners asserted in relation to the Ortiz case for defamation?

Answer: The Supreme Court has discretion to render decisions in those cases they decide to hear.

G. Questions relating to Rémulo Estrada's death and the criminal proceedings

22. Was the weapon used to kill Rémulo Estrada confiscated and identified?

Answer: Yes. Ramón Angenor disclosed the location of the gun.

23. What were the results of the expert technical tests for the following:

- a. ballistics (weapons and projectiles);
- b. examinations of the vehicles mentioned in the case (the dark vehicle mentioned by the indigent, the victim's vehicle and the security guard's vehicles);
- c. autopsy of Remulo Estrada
- d. fingerprint analysis.

Answer: a. The gun and bullets used were of the type authorized for private use.

b. Only the automobile driven by Ramón Angenor was inspected. No important evidence was found in the car since, according to Angenor's confession, he had removed and destroyed the evidence. With respect to the dark colored car mentioned by the homeless men, it was not identified because the homeless could not provide any additional details. The other automobiles are not important to the facts of the case.

c. The autopsy results revealed that the victim's death was the consequence of bullet wounds to various parts of the body.

d. Inspection of the gun revealed Rémulo Estrada's fingerprints.

24. What is the content of the homeless mens' statements in reference to the physical description of Estrada's suspected kidnapers and the kidnapper's vehicle? What value was given to these statements when the two ex-soldiers and two police officers were implicated?

Answer: The homeless men provided some description of the physical characteristics of the supposed kidnapers, but they were not able to identify them with certainty since the incident occurred at night. They identified the car as being a late model of a dark color with four doors. Look to the hypothetical for the answer to the third part of the question.

25. ¿Por qué razón y/o con qué fundamento legal la Fiscalía le negó valor probatorio a las declaraciones rendidas por los mendigos?

Respuesta: La Fiscalía tiene amplias facultades para valorar las pruebas en un proceso.

For what reason and/or legal foundation did the Prosecution deny probatory value to the statements given by the homeless men?

Answer: The Prosecution has ample power to weigh the evidence in a case.

26. ¿En qué se basa la fiscalía para descartar los testimonios de los mendigos y afirmar que no eran confiables?

Respuesta: Entre otros elementos, en el hecho de que tres de los testigos tenían antecedentes penales y el cuarto había padecido de alcoholismo.

On what grounds does the Prosecution discard the homeless mens' testimonies and decide that they were not reliable?

Answer: Among other things, the fact that three of the witnesses had criminal records and the fourth had suffered from alcoholism.

27. ¿Qué regulación específica existe en materia de portación de armas por agentes de seguridad privada y por ex policías, y qué medios de control o restricciones existen en esta materia?

Respuesta: Los agentes de seguridad privada, sean ex-policías o nó, pueden portar armas y su labor está estrictamente controlada por una Comisión Nacional de Vigilancia de Agentes Privados, Comisión que es un organismo oficial que depende del Ministerio del Interior.

What specific regulation exists relating to the bearing of weapons by private security agents and by ex-police officers? What methods of control or restrictions exist for this matter?

Answer: Private security guards, whether they be police agents or not, may bear arms and their work is strictly regulated by a National Vigilance Commission of Private Agents. The Commission is an office of the Interior Ministry.

28. ¿Qué medios de control o recursos existen para el abandono o negligencia por parte de la autoridad en el ejercicio de la función persecutora del delito, como configuración de una denegación de justicia?

Respuesta: Disciplinarias y penales si es el resultado de un delito.

What methods of control or recourse exist for negligence or omission to act on the part of the authorities in exercising their prosecutorial functions, like denying justice?

Answer: Disciplinary actions and, if found to be a criminal offense, criminal proceedings as well.

29. ¿Qué otras actuaciones tendientes a aclarar la muerte de Rémulo Estrada efectuó el juez que instruía el proceso ?

Respuesta: La investigación de los hechos estaba a cargo de la fiscalía. Esta realizó todas las actuaciones establecidas en el Código de Procedimientos Penal de Ithaka.

What other actions did the judge undertake to clarify the death of Remulo Estrada?

Answer: The prosecution was in charge of investigating the incident. They followed all the necessary procedures as established in Ithaka's Criminal Code of Procedure.

30. On the day of Remulo Estrada's death, did his brother inform the police?

Answer: Not relevant to the analysis of the facts.

31. The first detainees in the Estrada case were detained on what suspicion?

Answer: The statements of the homeless men.

32. What does “. . . suspended sentence . . .” mean in the Angenor case?

Answer: It means that Angenor will not serve the prison sentence.

33. Who appealed Ramon Angenor’s conviction? Ramon Angenor, the state or a private party?

Answer: Ramon Angenor.

34. Is Penal action exclusive to the prosecution? Or, did Estrada have a role in the matter?

Answer: The penal action may be initiated independently by the Prosecutor or through a citizen’s complaint. In this case, the Prosecutor initiated the criminal proceeding. It is irrelevant if Estrada could or could not intervene. It is worth noting that, he, like any person, could offer his testimony or give clues to the Prosecution. [In some countries it is possible for a victim and/or members of the victims family to participate as a private party to a criminal action.]

35. What was Ramon Angenor convicted of?

Answer: A crime defined in the Criminal Code of Ithaka.

36. Was Rémulo Estrada’s police escort in fact suspended, as he requested?

Answer: Yes.

H. Questions relating to the proceedings before the Inter-American Commission

37. What facts did the State qualify as “new facts” in its communication to the Commission on April 3, 1998?

Answer: A member of the Choclo community confessed that he was responsible for Rémulo Estrada’s death. Further investigations, however, revealed that he suffered from serious mental illness and was under psychiatric treatment.

38. How did the Commission rule on the petition?

Answer: The Commission found some violations of rights protected by the American Convention.

39. What recommendations were given in the Commission’s report?

Answer: Not relevant for the analysis of the facts.

II. CLARIFICATION

It is not clear from the facts of the hypothetical who filed the action of amparo against the confiscation measure ordered pursuant to Law 2001. The Estrada brothers are the ones who filed the action.