

# WorldCourts™

---

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 94/00; Case 11.439
Session:	Hundred and Eighth Regular Session (2 – 20 October 2000)
Title/Style of Cause:	Byron Roberto Canaveral v. Ecuador
Doc. Type:	Decision
Decided by:	Chairman: Helio Bicudo; First Vice-Chairman: Claudio Grossman; Second Vice-Chairman: Juan Mendez; Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie Dr. Julio Prado Vallejo, an Ecuadorian national, did not participate in the discussion of the case, pursuant to Article 19 of the Commission's Regulations.
Dated:	5 October 2000
Citation:	Roberto Canaveral v. Ecuador, Case 11.439, Inter-Am. C.H.R., Report No. 94/00, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)
Represented by:	APPLICANT: Comision Ecumenica de Derechos Humanos del Ecuador
Terms of Use:	Your use of this document constitutes your consent to the Terms and Conditions found at <a href="http://www.worldcourts.com/index/eng/terms.htm">www.worldcourts.com/index/eng/terms.htm</a>

---

## I. SUMMARY

1. On November 9, 1994, Byron Roberto Cañaveral, with the legal assistance of the Comisión Ecuménica de Derechos Humanos del Ecuador (CEDHU) (hereinafter “the Petitioner” or “CEDHU”) (Ecumenical Commission for Human Rights) submitted a petition to the Inter-American Commission on Human Rights (hereinafter “the Commission,” “the Inter-American Commission,” or “the IACHR”) against the Republic of Ecuador (hereinafter “the State,” the “Ecuadorian State,” or “Ecuador”), in which he alleged violations of the following rights protected by the American Convention on Human Rights (hereinafter “the American Convention” or the “Convention”): the right to humane treatment (Article 5), the right to personal liberty (Article 7), the right to a fair trial (Article 8), and the right the judicial protection (Article 25), and at the same time the general obligation of the Ecuadorian State to respect the rights contained in the American Convention, and to guarantee their free and full exercise (Article 1(1)), to the detriment of Mr. Byron Roberto Cañaveral.

2. The parties reached a friendly settlement agreement in this case on June 11, 1999. This report contains a brief presentation of the facts and the text of the agreement, in keeping with Article 49 of the Convention.

## II. THE FACTS

3. On May 26, 1993, Mr. Byron Roberto Cañaverl was detained by members of the National Police who were carrying out operations during a civic strike called by the Coordinadora Agraria and several grass-roots social organizations.

4. After finding a card indicating his membership in the Juventud Revolucionaria del Ecuador, the police accused him of setting a police car on fire, and detained and tortured him.

5. The medical certificate indicated excoriations on the eyelids, conjunctive irritation, and pain in the shoulders, all due to torture.

### III. PROCESSING BEFORE THE COMMISSION

6. On November 9, 1994, the Inter-American Commission on Human Rights received a petition submitted by the petitioner against the Ecuadorian State, which was opened on March 13, 1995. The case was then processed pursuant to the Commission's Regulations.

7. On February 9, 1999, the Commission placed itself at the disposal of the parties in order to initiate the procedure to reach a friendly settlement. On April 5, 1999, CEDHU, in its capacity as representative of Mr. Cañaverl Chiluisa, accepted the Commission's proposal, and on June 11, 1999, this friendly settlement agreement was signed in the city of Quito, in Ecuador, with the presence of Carlos Ayala Corao, member of the IACHR at the time, and rapporteur for Ecuador, who traveled to Quito to facilitate the agreement.

### IV. THE FRIENDLY SETTLEMENT AGREEMENT

8. The Friendly Settlement Agreement signed by the parties reads as follows:

#### FRIENDLY SETTLEMENT AGREEMENT

##### I. BACKGROUND

The Ecuadorian State, through the Office of the Attorney General, with a view to promoting and protecting human rights and given the great importance of the full observance of human rights at this time for the international image of our country, as the foundation of a just, dignified, democratic, and representative society, has decided to take a new course in the evolution of human rights in Ecuador.

The Office of the Attorney General has initiated conversations with all persons who have been victims of human rights violations, aimed at reaching friendly settlement agreements to provide reparations for the damages caused.

The Ecuadorian State, in strict compliance with the obligations it acquired upon signing the American Convention on Human Rights and other international human rights law instruments, is aware that any violation of an international obligation that has caused damages triggers the duty to make adequate reparations--monetary reparations and criminal punishment of the perpetrators being the most just and equitable form. Therefore the Office of the Attorney General and Mr.

Byron Roberto Cañaverl Chiluisa, each of their own right, have reached a friendly settlement, pursuant to the provisions of Articles 48(1)(f) and 49 of the American Convention on Human Rights and Article 45 of the Regulations of the Inter-American Commission on Human Rights.

## II. THE PARTIES

The following persons were present at the signing of this Friendly Settlement Agreement:

- a. Dr. Ramón Jiménez Carbo, Attorney General of the State, as indicated in his appointment and certificate of office, which are attached as qualifying documents;
- b. Mr. Byron Roberto Cañaverl Chiluisa, citizenship document number 171021838-7; a copy of that document is also attached as a qualifying document.

## III. STATE RESPONSIBILITY AND ACCEPTANCE

The Ecuadorian State acknowledges its international responsibility for having violated the human rights of Mr. Byron Roberto Cañaverl Chiluisa, enshrined in Article 5 (right to humane treatment), Article 7 (personal liberty), Article 8 (a fair trial), Article 25 (judicial protection), and the general obligation set forth in Article 1(1) of the American Convention on Human Rights and other international instruments, since the violations were committed by State agents, which could not be disproved by the State, giving rise to State responsibility.

Given the above, the Ecuadorian State accepts the facts in case No. 11.439 before the Inter-American Commission on Human Rights and undertakes the necessary reparative steps to compensate the victims, or their successors, for the damages caused by those violations.

## IV. COMPENSATION

In view of the foregoing, the Ecuadorian State, through the Attorney General, as the sole judicial representative of the Ecuadorian State, pursuant to Article 215 of the Constitution of Ecuador, enacted in Official Register No. 1 and in force since August 11, 1998, is awarding Byron Roberto Cañaverl Chiluisa a one-time compensatory payment in the amount of seven thousand US dollars (US\$ 7,000) or the equivalent in local currency, calculated at the exchange rate in effect at the time the payment is made, to be paid from the National Budget.

This compensation covers the consequential damages, loss of income, and moral damages suffered by Mr. Byron Roberto Cañaverl Chiluisa and his family members, as well as any other claims of the family members of Mr. Byron Roberto Cañaverl Chiluisa regarding the subject of this agreement, under domestic and international law, and is chargeable to the National Budget. To this end, the Office of the Attorney General will notify the Ministry of Finance, for it to carry out this obligation within 90 days of the signing of this document.

## V. PUNISHMENT OF THE PERSONS RESPONSIBLE

The Ecuadorian State pledges to bring civil and criminal proceedings and pursue administrative sanctions against those persons who are alleged to have participated in the violation in the performance of State functions or under the color of public authority.

The Office of the Attorney General pledges to encourage the State Attorney General, the competent judicial organs, and public agencies or private institutions to contribute legal evidence to determine the liability of those persons. If admissible, the prosecution will be subject to the constitution and laws of the Ecuadorian State.

#### VI. RIGHT TO SEEK INDEMNITY

The Ecuadorian State reserves the right to seek indemnity, pursuant to Article 22 of the Constitution of the Republic of Ecuador, from those persons found responsible for human rights violations through a final and firm judgment handed down by the country's courts or when administrative liability is found, in keeping with Article 8 of the American Convention on Human Rights.

#### VII. TAX EXEMPTION AND DELAY IN COMPLIANCE

The payment made by the Ecuadorian State to the other party to this agreement is not subject to any current or future taxes, except for the 1% tax on capital flows.

In the event that the State is delinquent for over three months from the date the agreement is signed, it must pay interest on the amount owed, corresponding to the current bank rate of the three largest banks in Ecuador for the duration of its delinquency.

#### VIII. REPORTING

The Ecuadorian State, through the Office of the Attorney General, agrees to report every three months to the Inter-American Commission on Human Rights on compliance with the obligations assumed by the State in this friendly settlement agreement.

In keeping with its consistent practice and obligations under the American Convention, the Inter-American Commission on Human Rights will oversee compliance with this agreement.

#### IX. LEGAL BASIS

The compensatory damages that the Ecuadorian State is awarding to Mr. Byron Roberto Cañaverl are provided for in Articles 22 and 24 of the Constitution of the Republic of Ecuador, for violation of the Constitution, other national laws, and the norms in the American Convention on Human Rights and other international human rights instruments.

This friendly settlement is entered into based on respect for the human rights enshrined in the American Convention on Human Rights and other international human rights instruments and on the policy of the Government of Ecuador to respect and protect human rights.

## X. NOTIFICATION AND CONFIRMATION

Mr. Byron Roberto Cañaverl Chiluisa specifically authorizes the Attorney General to notify the Inter-American Commission on Human Rights of this Friendly Settlement Agreement, so that the Commission may confirm and ratify it in its entirety.

## XI. ACCEPTANCE

The parties to this agreement freely and voluntarily express their conformity with and their acceptance of the content of the preceding clauses and state for the record that they hereby end the dispute before the Inter-American Commission on Human Rights on the international responsibility of the State for violating the rights of Mr. Byron Roberto Cañaverl Chiluisa.

## V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

9. The Commission determined that the agreement is compatible with the provisions of Article 48(1)(f) of the American Convention.

10. On August 29, 2000, CEDHU informed the Commission that on August 11 of this year, the State, 14 months after the signing of the agreement, proceeded to make payment of the compensation agreed upon. Nonetheless, the State has yet to pay the interest accruing from the 14-month delinquency in payment of the compensation provided for in the friendly settlement agreement.

11. According to the petitioner, the State has not carried out its main commitment, which is to punish the persons responsible for the violations that were the subject of the complaint before the Commission.

## VI. CONCLUSIONS

12. The Commission reiterates its recognition of the Ecuadorian State for its decision to settle this case through reparative measures, including those necessary for bringing civil, criminal, and administrative proceedings against those who participated in the violations alleged in the performance of government functions.

13. The IACHR will continue to monitor compliance with the continuing commitments assumed by Ecuador to bring civil, criminal, and administrative proceedings against the persons who, in the performance of government functions, participated in the violations alleged, and the payment of interest for delinquency in payment.

14. The IACHR ratifies that the friendly settlement procedure in the American Convention make it possible to conclude individual cases in a non-contentious manner, and has proven, in cases from various countries, to offer an important vehicle for settling alleged violations that may be used by both parties (petitioners and the State).

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To recognize that the State has made payment of US\$ 7,000.00 as compensation, and that it has failed to carry out its commitment to punish the persons responsible for the violation alleged, or to pay interest for the delinquency in payment of the compensation.
2. To urge the State to take the measures needed to carry out the pending commitment to bring civil, criminal, and administrative proceedings against those persons who, in the performance of state functions, participated in the alleged violations, and to pay interest for the delinquency in payment of the compensation.
3. To continue to monitor and supervise implementation of the friendly settlement agreement, and in this context to remind the Ecuadorian State, through the Office of the Attorney General, of its commitment to report to the IACHR every three months on progress in carrying out the obligations assumed by the State under this friendly settlement.
4. To make this report public and to include in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., October 5, 2000. (Signed) Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Juan Méndez, Second Vice-Chairman; Commissioners: Marta Altolaguirre, Robert K. Goldman, and Peter Laurie.