

INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF NADEGE DORZEMA ET AL. v. DOMINICAN REPUBLIC
OFFICIAL SUMMARY ISSUED BY THE INTER-AMERICAN COURT
JUDGMENT OF OCTOBER 24, 2012
(Merits, reparations and costs)

On October 24, 2012 the Inter-American Court of Human Rights issued a Judgment on the case of *Nadege Dorzema et al v. Dominican Republic* and declared that the State is internationally responsible for the violation of the right to life, to personal integrity, to personal liberty, to judicial guarantees, to freedom of movement and to judicial protection, as well as for its failure to comply with the obligation to adapt its domestic law and to not discriminate. The Court also declared that the State was not responsible for the alleged violation of the rights to juridical personality and equal protection before the law.

This case relates to the excessive use of force by Dominican soldiers against a group of Haitians, in which seven persons lost their life and several more were injured. Additionally, some Haitian immigrants involved in the events were expelled without receiving the proper guarantees. The facts of the case were submitted to the military justice system, which acquitted the soldiers involved, despite requests of the next of kin of the victims to have the case submitted to the ordinary jurisdiction.

The Court verified that on June 18, 2000, a yellow truck transporting approximately 30 Haitian nationals in Dominican territory, failed to stop at a checkpoint in Botoncillo. Dominican agents pursued the truck for several kilometers and fired shots at the vehicle, killing four people and injuring several more. Another person lost his life when the truck subsequently turned over, and several others ran for their lives; at that point the agents opened fire killing two more people. Due to this display of force, six Haitian nationals and a Dominican national died and at least 10 others were injured. Some of the survivors were taken to a hospital, without being registered or treated adequately, and the remaining survivors were detained and taken to the Border Intelligence Operations Base (DOIF) in Montecristi. Some hours later they were taken to the Dejabón military barracks, where soldiers threatened to take them to a prison, and told them that they could work in the fields or pay money to the agents to be returned to Haiti. The detainees paid the military agents, and were transported to Quanamthe, Haiti, during the afternoon of June 18, 2000. The corpses of the Haitians who died were buried in a mass grave, and have not been repatriated or returned to their next of kin.

The investigation was carried out by military officers and judges. The Court Martial of First Instance ruled on the military criminal proceedings in which two soldiers were found guilty of murder and sentenced to five years imprisonment. In the same decision, a third soldier was found guilty of murder; however, due to "extensive mitigating circumstances," he was sentenced to 30 days suspension from duty. Lastly, a fourth soldier involved was found "not guilty of the facts," and was absolved "of all criminal responsibility." Subsequently, the Joint Court Martial Appeals Court of the Armed Forces ruled on the appeal of the three soldiers and acquitted them from the first instance conviction. Lastly, the next of kin of the deceased filed a civil suit before the Court of First Instance of the Montecristi Judicial District and another action before the Supreme Court of Justice of the Dominican Republic to have the case investigated and tried by the ordinary jurisdiction. However, both were rejected.

Regarding the rights to life and personal integrity, the Court considered that the State did not comply with its obligation to guarantee these rights by adequate legislation on the exceptional use of force, and did not prove that it had provided training and instruction on the matter to law enforcement officers, and specifically to the agents involved in the events of the case, in violation of the obligation to guarantee the rights contained in articles 4(1) and 5(1), in connection with article 1(1) and to adopt provisions of domestic law, established in Article 2 of the Convention.

The Court considered that in cases where the use of force becomes essential, it must be used in keeping with the principles of legality, absolute necessity and proportionality. In this case neither the legality nor the absolute necessity of the lethal use of force during the pursuit has been proved, because the State was not preventing an attack or imminent danger. Consequently, the serious situation that occurred was the result, at least by negligence, of the disproportionate use of force that can be attributed to the State owing to the acts of law enforcement officials. In addition, the Court observed that, in the context of discrimination against migrants, the use of excessive force in the case revealed the failure to implement reasonable and appropriate measures to deal with this situation to the detriment of this group of Haitians. Therefore, the Court concluded that the State violated the right to life established in Article 4(1) of the American Convention on Human Rights, in relation to article 1(1) of the same instrument in its dimension of respect, based on the arbitrary deprivation of life of the five victims that died during the pursuit. The Court also found the State responsible for the extrajudicial execution of two victims who ran after the vehicle turned over, in violation of the same articles.

Similarly, the Court found that at least five more survivors were wounded by bullets during the events, at least another five were injured by the truck accident, and two other persons survived the events. According to medical certificates the said victims also suffered harm to their mental and physical integrity due to what happened. Therefore, the Court finds the State responsible for the violation of the obligation to respect the right to personal integrity established in Article 5(1) of the Convention, in relation to Article 1(1) thereof. In addition, even though it was aware of the situation, the State did not individualize the injured persons in the investigation, so that these facts have remained unpunished, in violation of the obligation to guarantee the right to personal integrity.

The Court observed that, according to the Principles on the Use of Force, if anyone is injured owing to the use of force, assistance and medical aid should be ensured and rendered, and relatives or close friends should be notified at the earliest possible moment. In addition, the incident should be reported promptly, and reports should be subject to review by administrative and prosecutorial authorities. Similarly, the facts should be investigated in order to determine the level and means of participation of all those who intervened, either directly or indirectly, thereby establishing the corresponding responsibilities. In this case, it has been proved that nine people were transferred to the José María Cabral Báez Regional University Hospital, and at least five were hospitalized; however, the failure to register the entry into and exit from the health center, the lack of medical care for five seriously injured victims, and the failure to diagnose their condition and prescribe treatment, denote omissions in the attention that should have been provided to the injured in order to respect and ensure their right to personal integrity, in violation of Article 5(1) in relation to Article 1(1) of the Convention. Lastly, this Court considered that the treatment given to the bodies of the deceased following the incident, by burial in mass graves without being clearly identified or returned to their families, reveals a demeaning treatment in violation of Article 5(1) in relation to Article 1(1) of the Convention, to the detriment of the deceased and their next of kin.

Regarding the right to personal liberty, the Court determined that at no time during the deprivation of liberty were these persons informed of the reasons and grounds for their detention, either verbally or in writing. In addition, there is no document to prove that the detainees were informed in writing of the existence of any kind of charge against them. Moreover, regarding the arbitrary nature of the detention, the Court noted that the authorities did not keep them detained with the intention of bringing them before a judge or other officer authorized by law to exercise judicial power or to formulate charges against them in keeping

with the domestic norms. Thus, the Court considered that the arrests were not made in order to carry out a procedure capable of determining the circumstances and legal status of the detainees, or even to conduct a formal immigration procedure for their deportation or expulsion, which means that they were unlawfully and arbitrarily detained. Also, the Court considered that although the detentions were less than the 48 hour constitutionally-based time frame established by the Dominican legal system for bringing a detainee before a competent judicial authority. Additionally, the migrants were not released in Dominican Republic; the military agents unilaterally applied the punishment of expulsion, without the victims having been brought before a competent authority, who, as appropriate, would determine their release. Lastly the Court found that owing to their rapid expulsion, the migrant victims had no opportunity to exercise an appropriate remedy that would control the lawfulness of the detention. Consequently, the Court concluded that the State violated Article 7, and its sections 7(1), 7(2), 7(3), 7(4), 7(5) and 7(6) of the Convention to the detriment of the detained victims.

Regarding the judicial guarantees, the Court considered that the expulsion of the Haitian immigrants was not in line with international standards on the matter or the procedures established in domestic law. The Haitian immigrants were not guaranteed any of the minimum guarantees due to them as aliens. Therefore, the Court considered that the Dominican Republic violated the right to due process and to judicial guarantees established in Article 8(1) of the American Convention, to the detriment of the expelled victims.

Regarding the freedom of movement and the prohibition to carry out collective expulsions, the Court found that a proceeding that may result in expulsion or deportation of an alien must be individualized, so as to evaluate the personal circumstances of each subject and comply with the prohibition of collective expulsions. Furthermore, this proceeding must adhere to the following minimum guarantees in relation to the alien: a) be expressly and formally informed of the charges against him or her and of the reasons for the expulsion or deportation; b) in case of an unfavorable decision, the alien must be entitled to have his or her case reviewed by the competent authority and appear before this authority for that purpose, and c) the eventual expulsion may only take effect following a reasoned decision in keeping with the law that is duly notified. From the foregoing, the Court concluded that the State treated the immigrants as a group, without individualizing them or providing them with differential treatment as human beings and taking into consideration their eventual needs for protection. This represented a collective expulsion in violation of Article 22(9) of the American Convention.

Regarding the rights to judicial guarantees and to judicial protection, in this case, the intervention of the military jurisdiction in the investigation of the facts contravened the parameters of exceptionality and restriction that characterize it and signified the application of a personal jurisdiction that functioned without taking into account the nature of the acts involved. The foregoing violated the demands of justice and the rights of the victims, and implied that the decision of the Court Martial Appeals Court, through which the accused were acquitted, cannot be considered a legal obstacle to the institution of criminal proceedings, or a final judgment. From the evidence in the case file, the Court notes that the laws in force at the time of the events and their application by domestic courts did not exclude the facts of the case from the military jurisdiction. Moreover, both the First Instance Court of the Montecristi Judicial District and the Supreme Court of Justice rejected two appeals filed by the next of kin of the deceased victims for the case to be investigated and tried by the ordinary jurisdiction. Similarly, the Court emphasized that the military criminal proceeding did not permit the participation of the victims' next of kin. In addition, the Court noted that the injuries suffered by the Haitian survivors were not investigated or prosecuted by the State and that, more than 12 years after the events occurred, no one has been convicted and the facts remain in total impunity. All the above implied the State's violation of the right to judicial guarantees and judicial protection established in Articles 8(1) and 25(1) of the American Convention, to the detriment of the surviving victims and the next of kin of the deceased victims.

Regarding the obligation to adopt domestic legal provisions, the Court held that the Supreme Court of Justice of the Dominican Republic, in its judgment of January 3, 2005, did not analyze the domestic norms and Article 3 of Law No. 3,483 in light of the American Convention and the consistent case law of the Inter-American Court regarding the lack of competence of the military

criminal jurisdiction to try human rights violations and the restrictive and exceptional scope that it must have in the States that still retain its jurisdiction. Based on the foregoing, the Court concluded that the legislation in force at the time of the facts, the actions of the military officials during the investigation and the prosecution of the case in the military jurisdiction, and those of the ordinary domestic courts, represented a clear failure to comply with the obligation to adopt domestic law provisions contained in Article 2 of the American Convention. However, the changes to the law in the Dominican Republic from 2002 to 2010 established the competence of the ordinary jurisdiction to try offenses committed by military personnel, and also established the exceptional nature of the military jurisdiction exclusively for disciplinary offenses and offenses that are strictly related to the armed forces. Therefore, the Court concluded that with the current Dominican legislation, the State has remedied its obligation to adopt domestic legal provisions.

Regarding the obligation to respect and guarantee rights without discrimination, the Court observed various situations of vulnerability of the Haitian victims, owing to their condition as irregular immigrants. In this regard, the situation of special vulnerability of the Haitian immigrants was due, *inter alia*, to: a) the absence of preventive measures to adequately address situations relating to migratory control on the land border with Haiti; b) the violence deployed by the illegal and disproportionate use of force against unarmed immigrants; c) the failure to investigate said violence, the absence of testimony by and the participation of the victims in the criminal proceedings, and the impunity of the events; d) the detentions and collective expulsion without the due guarantees; e) the lack of adequate medical attention and treatment to the injured victims, and e) the demeaning treatment of the corpses and the failure to return them to the next of kin.

All of the foregoing demonstrates that, in the instant case, there was de facto discrimination against the victims in the case owing to their condition as immigrants, which resulted in preventing them from enjoying the rights that the Court declared violated in this Judgment. Therefore, the Court concluded that the State did not respect or ensure the rights of the Haitian migrants without discrimination in violation of Article 1(1) of the American Convention in relation to Articles 2, 4, 5, 7, 8, 22(9) and 25 thereof.

Regarding the measures of integral reparation ordered in the Judgment, the Court established that its Judgment constitutes *per se* a form of reparation, and additionally ordered the State various measures, including: A) *In its obligation to investigate* the State shall re-open the investigation of all facts in order to identify, prosecute and, as appropriate, punish those responsible for the facts of the case, among other measures for the effective investigation and discovery of the facts, as well as determine the location of the bodies of the deceased persons, repatriate them and deliver them to their next of kin; B) *Measures of rehabilitation*: The State has the obligation to provide, free of charge and immediately, the medical and psychological treatment required by the victims, following their informed consent and for the time necessary, including the provision of medication free of charge; C) *Measures of satisfaction*: The State shall: i) publish the judgment or certain portions of it in the official gazette and the official website, as well as publish it in a newspaper with widespread distribution in the Dominican Republic. Additionally, it shall translate the official summary of the judgment to French and Creole and publish it once in a newspaper of widespread distribution in Haiti, and ii) make an acknowledgement of the State's international responsibility; D) *Guarantees of non-repetition*: The State shall conduct trainings for public officials on the following topics: i) the use of force by law enforcement agents; ii) the principle of equality and non-discrimination, applied especially to immigrants and with a gender and child protection focus, and iii) due process in the detention and deportation of irregular immigrants. Additionally, it should conduct a campaign in public media on the rights of regular and irregular immigrants in Dominican territory, and adapt its domestic legislation to the American Convention, incorporating international standards on the use of force by law enforcement officers, and E) *Compensation*: The State shall pay the amounts established as compensation for pecuniary and non-pecuniary damage, for reimbursement of costs and expenses and reimburse expenses to the Victims' Legal Assistance Fund.

The Court will monitor full compliance with this Judgment, in exercise of its powers and in accordance with its obligations under the American Convention on Human Rights, and will conclude this case when the State has complied fully with its provisions.

The full text of the Judgment can be accessed through the following link:

http://corteidh.or.cr/docs/casos/articulos/seriec_251_ing.pdf