

IV Inter-American Human Rights Moot Court Competition 1999 Hypothetical Case Problem

Alejandro Pérez (Alejandro Mayta) v. the Republic of Miranda

History and General Background

1. The Republic of Miranda is one of the original 21 member states of the Organization of American States (OAS), and it became a party to the American Convention on Human Rights on June 3, 1989 when it ratified the treaty without reservation. In its instrument of ratification, it declared that it recognized the jurisdiction of the Inter-American Court over those cases regarding the interpretation and application of the Convention. Miranda is also a party to the United Nations International Covenant on Civil and Political Rights, as well as to the first Optional Protocol, both of which it ratified on June 15, 1989.
2. Miranda was liberated from Spain in 1815 by the legendary South American hero, Simón Bolívar, who renamed the territory "Miranda," which had been known as "Nuevo Leon" under the Spaniards. During the last decade of the 18th Century, London had become the hub of Spanish American revolutionaries. Simón Bolívar, an admirer of Francisco de Miranda, the great Precursor, attended many political meetings organized by Miranda in London, and was motivated to return to the Americas to lead the independence struggle of Nuevo Leon against the Spaniards. Once having declared independence, Bolívar proclaimed a Bill of Rights for the inhabitants of this new country. The French Revolution and the French *Declaration of the Rights of Man* had imbued the Spanish American revolutionaries with new ideas about popular sovereignty and natural rights. One idea was that the dignity of the citizens lay in political activity and the other was that if the citizens of a state no longer approved of the existing political arrangement, they could alter or replace it. In order to prepare the inhabitants of this new country for their role as citizens, the Bill of Rights of Miranda was the first document in the Americas to enshrine the right to free primary, secondary and university education and the right of all citizens to free health care.
3. The history of Miranda, like that of its neighbors, is a history of democratic governments interrupted by military coups. In 1972, the military overthrew the democratically-elected, radical socialist government of the Nobel Prize-winning author-turned-president, Gabriel Pérez Casanova. President Pérez had been elected president in October 1969, although he had never before held an elected office, because he was the best-known and most popular figure in the country, and the populace was fed up with the corruption of the Christian Republicans, historically, the dominant political party in the country.
4. Miranda is an underpopulated country of approximately 30 million inhabitants. During the past half century, Miranda's economy has been based on tin and petroleum. At its peak, Miranda produced over 30 percent of the world's supply of tin which accounted for 70 percent of its export earnings. The tin barons of Miranda were among the richest men in South America. Families such as Nariño and de la Puente were as famous as

Rothschild for their immense fortunes.

5. President Pérez Casanova had been elected president of Miranda in October 1969 on a socialist/nationalist platform that called for the nationalization of the tin mines and the petroleum industry, the initiation of a sweeping agrarian reform program and a generalized redistribution of wealth. Upon assuming office in January 1970, he expropriated the tin mines and, in lieu of compensating the owners, he charged them with having made "excess profits." He claimed that the mines were part of the national patrimony and should benefit all the inhabitants of Miranda. The owners of the tin mines began to conspire with the military to have President Pérez Casanova removed from office. However, the working class, and especially the miners, who considered him their authentic president and certain supporters of the President began to fear that a military coup was imminent. President Pérez' attempt to redistribute wealth in Miranda led to ever increasing social confrontation and a sense of incipient class warfare. The military was concerned that certain sectors of the population that the militant students and the miners were arming themselves. Evidence that the population was being armed was never produced; nevertheless, the military, in a preemptive action, staged a coup on June 22, 1972.

6. The Presidential Palace was bombed at 8 a.m. the morning of the coup, while President Pérez Casanova was in his office. He was killed instantly, as were the 53 people who

months. In announcing the state of emergency, the President stated that the country could not afford another 14-year war and that the crisis must be brought to an end quickly. For this reason, the President delegated certain powers regarding the restoration of internal order to the military. The conduct of the "war" was turned over to General César Alvarez, who quickly brought in the 50,000-man military. The "war" lasted only four months. The cities and production facilities were militarized, tanks were brought into the cities and troops were everywhere to be seen. A curfew was in force between 10 p.m. and 6 a.m. daily. On May 1, 1997, the state of emergency was renewed for another six months. The population was relieved that the President had managed to bring an end to the crisis.

16. By January 15, 1997, the war ended, the FPFM was destroyed. Its members were either dead, in hiding or in custody. Although public opinion speculated that the FPFM comprised thousands of combatants, in fact there were only 200 to 300 armed militants who identified themselves as FPFM members and an unknown number of sympathizers. Most observers stated that the level of violence, which resulted in 2,500 deaths during the war, was greater than could ever have been produced by a group so few people. However, no proof ever materialized to implicate either the government or other entities.

The facts of the case

17. On December 1, 1996 while residing in a safe house in downtown Florencia, Arturo González and Alejandro Pérez, with 15 other suspected leaders of the FPFM were attacked by a military commando raid. Alejandro Pérez was unarmed and shot in the back of the leg during the attack and Arturo González, also unarmed, received a bullet wound which entered the back of his neck and exited at the throat. González died of his injuries during his second day in custody. Pérez and the other 15 suspected leaders managed to escape. The day after the raid, the **police** held a press conference at the safe house in Florencia and made public the arsenal of weapons (300 machine guns, 50 pistols, 2,000 rounds of ammunition, grenades, dynamite, etc.) it claimed to have uncovered. Pérez and the others went into hiding only to be captured three months later on March 1 and charged with "Treason to the Democratic State."
18. Decree Law No. 100 provides that the crime of "Treason to the Democratic State" is committed by: a) anyone who belongs to the leadership of a terrorist organization be it as

military court-appointed lawyer if he did not have his own counsel. The defense attorney would only be permitted to consult the file (but not copy it) in order to apprise himself of the charges and evidence against his client. The court would apply civilian rules of criminal procedure and evidentiary rules, except where the rule is contrary to procedural provisions of Decree Law No. 101. The three judges are to sit behind a colored glass window so that the accused and his lawyer could not identify them. This provision was designed to guarantee the security and safety of the judges, many of whom, in the past, had received death threats and feared for their lives. In the interest of a speedy trial, the government could take no more than two weeks to present its case, and the defense also was granted an equal amount of time. The judges may, in the interest of protecting the well-being of individuals, strike names and other sensitive information from documents on file, and mandate video depositions of witness. As to the weight of the evidence any reasonable doubt will be resolved in light of the democratic ideals of the new Miranda. A decision can be appealed to the Supreme Court of Miranda, which would be able to review issues of law, but not facts.

20. During the trial, information was published in the press that Alejandro Pérez had renounced his Mirandan nationality while a student in England and had become a British national. His lawyer, Mario Mendoza, argued before the press that a foreigner could not be tried for the crime of "Treason to the Democratic State." The President of Miranda made declarations to the press to the effect that someone born in Miranda could lose his "title of nationality" but never his nationality. The President still considered Pérez to be a national of Miranda even though he had renounced his passport and citizenship.
21. After five days in the detention, Mario Mendoza brought a writ of *habeas corpus* before the Criminal Court of First Instance of Florencia for illegal detention, arguing that a military court did not have competence over a civilian and Pérez and the other detainees had been tortured. The Court of First Instance dismissed the writ, reasoning that Decree Law No. 100 prohibited the presentation of a writ of *habeas corpus* for persons detained under this law, and that Decree Law No. 101 gave adequate protection under the circumstances. On March 30, 1997, after a month in the police detention center, during which time they had limited access to their families, legal counsel, or consular officers, Alejandro Pérez and the 15 other arrested leaders of the FPFM were tried for the crime of

28. On October 10, 1998, the Commission adopted its preliminary report in accordance with article 50 of the American Convention and, on October 15, referred the report to the Government of Miranda. The 60-day period given to the Government of Miranda to adopt the Commission's recommendations lapsed without action. The Commission decided to refer the case to the Inter-