

**INTER-AMERICAN HUMAN RIGHTS
MOOT COURT COMPETITION**

MICHELL HENDERSON ET. AL

(Petitioner)

V

THE REPUBLIC OF ATHLIMA

(Respondent)

MEMORIAL FOR THE RESPONDENT

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STATEMENT OF THE FACTS

Factual Background

The Republic of Athlima is a relatively poor state with a GDP of only US \$18,000, and attempted to remedy this through their tourism industry.¹ Athlima sought to do this by hosting international sporting events in their capital city of Kefelaio. Kefelaio hosted the Junior International Rugby Federation Finals in 2010 as their first major effort to expand the tourist industry, and it was a success. The event went on for two weeks and drew in 75,000 tourists that engaged in the local businesses, thus the economic venture of hosting a sporting event was a success.² The success of hosting the 2010 event paved the way for Kefelaio to be awarded the right to host the 2018 International Rugby Federation Finals.³ The event was a success for local businesses, however the businesses did lose profit due to the 50% rise in the homeless population. The large amount of vagrants deterred tourists from indulging in their businesses. This led to the creation, and passing of the Restoration of Community Act in January of 2013.⁴

The Restoration of Community Act outlawed public vagrancy and panhandling, however it also allowed for first time offenders to enroll in the Homeless to Work Program instead of going through the Athlimian prosecution system. The Homeless to Work Program provided an

¹ Hypothetical Case Par. 2

² Hypothetical Case Par. 4

³ Hypothetical Case Par. 5

⁴ Hypothetical Case Par. 6

alternative to prosecution and served as a means for the homeless community to receive training for a job. The program enrolled participants in one of two training programs, hospitality service or a public works training.⁵ The program would train an individual for 120 days, and those that did not comply with the rules of the program or failed to engage adequately were dismissed from the program and subject to prosecution.⁶ Once the program was completed (It had a 95% completion rate), the individual would be provided six months of housing and job counseling so that they might find a job⁷ (94% of those that completed the program found a job⁸). Mitchell Henderson was admitted into the program in June 2014 due to panhandling.

Mitchell Henderson was a farm laborer who had to exit his career because he was involved in a traumatic accident in the summer of 2012, which resulted in a broken left leg and the loss of three fingers. Henderson was provided modest compensation for his work-related accident, and also had the ability to receive government sponsored social security due to his disabilities.⁹ In June 2014 Mitchell Henderson was arrested for panhandling, and elected to enroll in the Homeless to Work Program rather than face prosecution.¹⁰ Henderson entered the program and was also diagnosed as having mild Post Traumatic Stress Disorder (PTSD) due to his accident. Henderson was enrolled in the public works training program rather than the hospitality services due to his skills and conditions. Henderson was displeased with the public works training because it required physical activity more than 70% of the time and requested to be moved to the other program. Henderson's request was denied because he still would've had to engage in physical activity 50% of the time and also cope with his PTSD (the officials of the

⁵ Hypothetical Case Par. 8

⁶ Hypothetical Case Par. 10 & 11

⁷ Hypothetical Case Par. 12 & 13

⁸ Clarification Questions

⁹ Hypothetical Case Par. 13

¹⁰ Hypothetical Case Par. 15

program believed this condition would inhibit his ability to provide direct customer service).¹¹

Henderson made the decision to leave the program and live with his brother, however this was a violation of the program which put him under grounds for dismissal. Henderson was dismissed from the Homeless to Work Program, the Kefalaio court was notified, and Henderson was to be prosecuted.¹²

Henderson was charged for violating the Restoration of Community Act as a result of his panhandling. Henderson was afforded the right to have legal counsel, however he waived the right and plead guilty to his crime. Henderson was sentenced to one week of imprisonment because of his crime of violating the act; his sentence began on September 14, 2015.¹³

Henderson's brother contacted the Human Rights Kefalaio (HRK), a human rights organization, to appeal the case to the Athlima Supreme Court. The Supreme Court denied the appeal due to

Henderson pleading guilty, however a petition for constitutional relief was granted for all citizens with disabilities. The petition was argued in the district court and it judged favorably upon the state (found the program non-discriminatory), but the HRK appealed the case to the Ahtlimian Supreme Court.¹⁴ The court ordered the program implement an extension to better accommodate those with disabilities, however it did not find the Restoration of Community Act to unjustly institutionalize those with disabilities.¹⁵ The state provided funding for a

supplemental training program, which allowed for the state to provide accommodated work training within the two existing programs. The HRK then went to the Inter-American

Commission on Human Rights (IACHR), and alleged that the state of Athlima violated articles 5, 7, 8, 24, and 25 of the American Convention on Human Right (ACHR). In September 2016, the

¹¹ Hypothetical Case Par. 20

¹² Hypothetical Case Par. 22

¹³ Hypothetical Case Par. 24

¹⁴ Hypothetical Case Par. 30

¹⁵ Hypothetical Case Par. 31

IACHR found violations in articles 7, 8, 24, and 25. The case of Mitchell Henderson et. al v. The Republic of Atlima was brought before the Inter-American Court on Human Rights in October 2016.

LEGAL ANALYSIS

1. Admissibility

1.1- Statement of Jurisdiction

As a party to the *American Convention on Human Rights*, the republic of Atlima has a clear mandate to conform to the rulings, mandates, and responsibilities of the convention and the resulting rulings of the Inter-American Court on Human Rights. Additionally, Atlima is treaty bound to respect the sovereignty of the court on matters of human rights violations and conform to the rulings and damages thereafter.

2. Validation of the Homeless to Work Program

2.1- The Program was not Discriminatory

The City of Kefelaio passed the Homeless to Work Program with the intention of equally aiding the homeless population, with and without disabilities, to give them an opportunity to find work and not face prosecution. Overall the program was widely successful among those with and without disabilities. The program, among all of those who participated in the program, had a 95% completion rate. In the program, 26% of the participants had a mental or physical disability, and 25% of them completed the program, which means that the program had a completion rate of 96% among those with a mental or physical disability.¹⁶ Therefore the program was not discriminatory to those with disabilities as it had a very high success rate with the population of

¹⁶ Clarification Questions

homeless with disabilities. Mitchell Henderson may not have been able to complete the program, but it was not due to discrimination on the part of the state.

2.2- The Program fulfilled the duty of care to the homeless population

The republic of Athlima had a duty of care to its homeless population, and the population of homeless citizens with disabilities. Athlima created a program that was able to attain a 95% completion rate among all those that participated and 96% among the participates with a physical or mental disability. Athlima was able to equally achieve its duty of care to all those that participated within the program. It is not reasonable for any program in any state to be perfect, especially when the program was a city ordinance within a relatively poor state (GDP of \$18,000 US dollars). Article 19 of the UN Convention on the Rights of Persons with Disabilities states that "Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community".¹⁷ The Homeless to Work program created an environment where people with disabilities were able to successfully participate without being isolated. The program's purpose was to create a way for those that had violated the Restoration of Community Act to re-enter society and be a productive member in the community in order to provide for themselves. Article 26 of the UN Convention on the Rights of Persons with Disabilities states that "States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services".¹⁸ The Homeless to Work Program had an overall 95% success rate in rehabilitating the general community of homeless that violated the Restoration of Community Act, and a 96% success rate among those that had a

¹⁷ UN Convention on the Rights of Persons with Disabilities

¹⁸ UN Convention on the Rights of Persons with Disabilities

physical or mental disability. The program not only had a high success rate in terms of graduation, 94% of those that graduated also found employment, which was the purpose of the program itself. The program was able to properly rehabilitate those with and without disabilities equally so that they could find employment. The Republic of Athlima was able to achieve a very high success rate to the best of its abilities for those with and without disabilities, and those that completed the program found work 94% of the time, therefore the Republic of Athlima fulfilled its duty of care to the entire homeless population.

2.3- Mitchell Henderson was not illegally wronged in the program

Mitchell Henderson was part of the 1% of the 26% participants that did not complete the program, however he did not fail in the program because he was discriminated against while he was in the program. No program can reasonably be expected to achieve a 100% completion rate. Under Article 4 of the UN Convention on the Rights of Persons with Disabilities, there is a clause about "Universal Design" which states that a program should "require the minimum possible adaptation and the least cost to meet the specific needs of a person with disabilities, to promote their availability and use".¹⁹ Athlima created a program that successfully (95% completion rate), and cost effectively created a program that was able to be successful equally for those with and without disabilities. The state could not account for every circumstance that would occur among those that were admitted into the program, and was able to create the most successful and cost effective program to help all homeless citizens. Athlima is a poor country with a GDP of just \$18,000 US dollars, thus it created the most successful and cost effective program that it possibly could have. Mitchell Henderson fell through the cracks because he had

¹⁹ UN Convention on the Rights of Persons with Disabilities.

both a physical and mental disability, however the program was changed to better accommodate those with disabilities past what it was already achieving.

3. Due Process and Good Faith followed with Mitchell Henderson

3.1- Mitchell Henderson broke the law and admitted guilt

Mitchell Henderson is not due any compensatory damages because he admitted guilt of his crime and because the state was not exploiting him in any way in the program. The doctrine of Unjust Enrichment, as stipulated in the "Intellectual Property and Anti-trust UNECE Seminar on Enforcement of intellectual Property Rights", states that Unjust Enrichment is when one party is enriched while the other is impoverished, there is no justification for the enrichment, and that there is no judicial remedy for the impoverished party.²⁰ Athlima was not exploiting Mitchell Henderson or gaining any enrichment from Henderson due to him being in the program. Therefore Henderson is not due any compensatory damages from his time in the program. Henderson is also not due any compensatory damages due to his time in prison following his prosecution because all due process was followed and he admitted guilt to his crime. The state afforded him the right to legal counsel and also didn't waive his right to defend himself personally as stipulated in Article 8 of the American Convention on Human Rights (ACHR).²¹ Furthermore, for these reasons Mitchell Henderson is not due any compensatory damages due to the lack of unjust enrichment and because he admitted guilt to his crime.²²

3.2- No Class Action due to lack of discrimination

²⁰ Intellectual Property and Anti-trust UNECE Seminar on Enforcement of intellectual Property Rights (September 2012)

²¹ American Convention on Human Rights

²² Vohryzek-Griest, Ana T., "Unjust Enrichment Unjustly Ignored: Opportunities and Pitfalls in Bringing Unjust Enrichment Claims Under ICSID" (2008). Student Scholarship Papers. Paper 72

The Homeless to Work Program is validated as non-discriminatory because of the high rate of success among those with and without disabilities, therefore there is no justification for a class action lawsuit. The doctrine of Actio Populares dictates when the use of class action is justified in international cases, however in the cases of Ethiopia v. South Africa and Liberia v. South Africa a precedent was set of when Actio Populares is not appropriate in international law.²³ The International Court of Justice (ICJ) ruled that Actio Populares is not viable when the court cannot "presume what the wishes and intentions of those concerned would have been in anticipation of events that were neither foreseen nor foreseeable".²⁴ In the joint cases of Ethiopia v. South Africa and Liberia v. South Africa, the two petitioners wanted the mandate for South West Africa to be made invalid, but the court ruled in favor of South Africa as it had proved that it had "promoted to the utmost the material and moral well-being and the social progress of the inhabitants of the territory". The Republic of Athlima did everything it could within its reasonable limits to promote the well being for the homeless community and provide them an opportunity to find employment. The International Court of Human Rights (IACHR) should not presume to know the people with disabilities' assumptions about what they would think of the program if Mitchell Henderson were to win this case. The Homeless to Work program currently has a 96% completion rate among those with a physical or mental disability, therefore bringing this case to a class action level could have detrimental consequences as those with disabilities would look to this case rather than participating and going through the non-discriminatory program.

²³ Aceves, William J. () "Actio Popularis - The Class Action in International Law," University of Chicago Legal Forum: Vol. 2003: Iss. 1, Article 9.

²⁴ *South-West Africa Cases (Ethiopia v. South Africa; Liberia v. South Africa); Second Phase*, International Court of Justice (ICJ), 18 July 1966, available at: <http://www.refworld.org/cases,ICJ,4023a9414.html> [accessed 23 October 2017]

4. No Violations in the Human Rights Articles

4.1- Article 7: Right to Personal Liberty fulfilled

Article 7 of the American Convention of Human Rights stipulates the Rights to Personal Liberty.²⁵ The Homeless to Work Program provided a way for an individual to seek remedy for breaking the law and their situation of homelessness that was not prosecution. Mitchell Henderson chose to leave the program and under the law face prosecution. Henderson broke the law, therefore he faced being admitted into and completing the program or facing prosecution due to him violating the law. Henderson chose to leave the program fully knowing the consequences of his dismissal from the program, which was facing prosecution. Mitchell Henderson broke the law and admitted guilt to breaking the law, therefore his personal liberties were not illegally violated.

4.2- Article 8: Right to a Fair Trial fulfilled

Article 8 of the ACHR stipulates an individual's rights to a fair trial.²⁶ Mitchell Henderson was provided all the legal Due Process that he was due following his initial arrest for violating the Restoration of Community Act. Henderson was provided an avenue other than prosecution in the Homeless to Work Program and was made fully aware of the conditions required to pass the program and the consequences for being dismissed from the program. Henderson was also provided all Due Process following his arrest after being dismissed from the program. Section 2. D of Article 8 states that the accused has the right to "defend himself personally or to be assisted by legal counsel of his own choosing", and the Republic of Athlima provided Henderson with his right to have legal counsel.²⁷ The state afforded Henderson the opportunity to have legal counsel, he waived his right to have legal counsel, and admitted guilt to

²⁵ American Convention on Human Rights

²⁶ American Convention on Human Rights

²⁷ American Convention on Human Rights

his crime. The state did not restrict Henderson's right to personally defend himself and he was given the opportunity to have legal counsel, therefore Mitchell Henderson's Right to a Fair Trial was fulfilled

4.3- Article 24: Right to Equal Protection fulfilled

Article 24 of the ACHR states the "all persons are equal before the law" and designates the rights of equal protection among individuals.²⁸ Mitchell Henderson and the Athlimian citizens with a physical or mental disability that participated in the Homeless to Work Program were equally protected under the Restoration of Community Act due to the lack of discrimination. The program fulfilled the duty of care the state had to create a program that successfully and cost effectively helped all those that had violated the law. The Homeless to Work Program equally provided avenues for those with and without disabilities and avenue to be able to participate in their community and freely live within their community once they had completed the program.²⁹ The Homeless to Work Program was also a means for citizens with or without disabilities to attain their maximum independence upon their completion of the program.³⁰ Therefore Mitchell Henderson, citizen with a physical or mental disability, and those that went through the program without a disability were treated equally.

4.4- Article 25: Right to Judicial Protection fulfilled

Mitchell Henderson was not wrongfully imprisoned for violating the Restoration of Community Act and the Homeless to Work Program. The Republic of Athlima provided Mitchell Henderson with the remedy of the Homeless to Work Program and was fully informed of the conditions of the program and how the state would proceed with his prosecution if he were

²⁸ American Convention on Human Rights

²⁹ UN Convention on the Rights of Persons with Disabilities.

³⁰ UN Convention on the Rights of Persons with Disabilities.

to be dismissed from the program. Mitchell Henderson knowingly violated the Homeless to Work Program, therefore he became subject to prosecution for violating the Restoration of Community Act. Henderson admitted guilt and was afforded all Due Process following his arrest, thus he was legally imprisoned. Mitchell Henderson was provided his Right to Judicial Protection.

5. Request for Relief

Therefore for these reasons:

- The program was valid.
- Due process was followed in good faith.
- The Human Rights articles were followed.
- The program is good and nobody benefits from its repeal.

The Republic of Athlima would request that Mitchell Henderson be rewarded no compensatory damages, the citizens of Athlima with disabilities be rewarded no compensatory damages, and that the program continue as is with the changes already made.