

INTER-AMERICAN HUMAN RIGHTS

MOOT COURT COMPETITION

MITCHELL HENDERSON ET. AL

(Victims)

V

THE REPUBLIC OF ATHLIMA

(Respondent)

MEMORIAL FOR THE VICTIMS

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STATEMENT OF FACTS

Factual Background

In the Republic of Athlima, half of the population is found to be within the capital city of Kefalaio,¹ A majority of Athlima's wealth, 60%, is possessed by an alarming sole 1% of the population. Over time, Athlima has cultivated the production of tourism to the benefit of its economy.² Its governmental structure is consolidated alike to that of the United States, with Kefalio sharing likeness with Washington D.C..³ A majority of citizens who are homeless were attracted to the area by the flourishing tourism developments, such as the 2010 Junior International Rugby Federation Finals. The homelessness population increased to 50% during the year of 2010 citing an annual census.

Local businesses accused the people who were homeless of harming the output of storefronts due to their presence, appearance, and panhandling.⁴ The businesses of Kefalaio, for their economic benefit, prescribed a law which would punish the act of requesting money. The mayor of Kefalaio vetoed the proposed city council ordinance because he felt a non-judicial alternative was necessary. The National Assembly, advised by local non-governmental organizations and businesses, created the Restoration of Community Act which made the practice of homelessness and requesting money illegal. Those who violated the law for the first time could participate in Kefalaio's Homeless to Work program instead of prosecution.⁵

The Homeless to Work program began with a mandatory medical evaluation for both mental and physical impairments.⁶ The prescribed treatment plan was required for all

¹ Hypothetical para. 1

² Hypothetical para. 2

³ Hypothetical para. 3

⁴ Hypothetical para. 5

⁵ Hypothetical para. 6

⁶ Hypothetical para. 7

participants. Participants were placed into either hospitality service or public works programs, lasting for 120 days.⁷ Participants were prohibited from exiting the site of the program during the 120 days.⁸ Dismissal would occur if participants did not follow the rules or were observed to be disengaged within the program.⁹ Such releases would leave participants to face the original Restoration of Community Act.¹⁰ Completion of the program granted participants vocational training and housing for six months.¹¹

Mitchell Henderson was a farm laborer who suffered from a broken left leg and the loss of three fingers on his dominant hand due to a traumatic accident.¹² Using his worker's compensation to relocate to Kefalio, for his best chance at gainful employment, Mitchell found the employment conditions unfavorable and became homeless in October 2013.¹³ In June 2014, Henderson was arrested for breaking the Restoration of Community Act.

Mitchell Henderson joined the Homeless to Work program, under the impression that he had no other choice but to do so.¹⁴ During his medical evaluation, Mitchell was observed to possess a left leg injury, the loss of three fingers on his dominant hand, and PTSD.¹⁵ Mitchell Henderson was to receive physical and mental therapy along with prescribed anti-psychotic medication, and was instructed that if he did not take his medication daily then he would no longer be allowed to continue within the program.¹⁶ Henderson was chosen to partake in the public works program.¹⁷ Once the symptoms of his PTSD were explained to him, Mitchell

⁷ Hypothetical para. 8

⁸ Hypothetical para. 9

⁹ Hypothetical para. 10

¹⁰ Hypothetical para. 11

¹¹ Hypothetical para. 12

¹² Hypothetical para. 13

¹³ Hypothetical para. 14

¹⁴ Hypothetical para. 15

¹⁵ Hypothetical para. 16

¹⁶ Hypothetical para. 17

¹⁷ Hypothetical para. 18

Henderson came to the understanding, through his therapy, that his PTSD was preventing him from maintaining gainful employment.

Henderson appealed that his medication be reduced as it left him in what was considered to be a diminished mental state, but his request was ignored. He was told that if he did not continue to take the medication, he would be forced to leave.¹⁸ The public works program entailed physical activity such as standing or walking for 70% of the time. Mitchell's residual injury caused him pain and prevented him from full contribution, despite the therapy services offered. After six weeks of attempting to persevere, Henderson appealed to join the hospitality services program. This petition was also ignored, as it would have consisted of physical activity for 50% of the time and Henderson's PTSD allegedly prevented him from serving customers directly.¹⁹ After another two weeks, Mitchell Henderson felt that there were no grounds on which he could possibly physically continue in the program. His brother communicated that he was willing to bring Mitchell home to Notios.²⁰ Mitchell gave the staff notice of his plans to leave, and he was informed that he would be discharged.²¹ This occurred and the court was notified on August 30, 2014.²²

Mitchell was charged with violating the law. He pled guilty with the understanding that he had violated the law and did not interact with legal counsel. He faced one week of imprisonment; the judge stated this was due to the "trouble he caused businesses".²³ Francis, Henderson's brother, asserted that his brother had not received the opportunity to avoid detainment because of his disability. Francis contacted HRK.²⁴ HRK filed for constitutional

¹⁸ Hypothetical para. 19

¹⁹ Hypothetical para. 20

²⁰ Hypothetical para. 21

²¹ Hypothetical para. 22

²² Hypothetical para. 23

²³ Hypothetical para. 24

²⁴ Hypothetical para. 25

relief for citizens with disabilities²⁵, and argued that the Restoration of Community Act was discriminatory and resulted in unfair detainment.²⁶ The State responded that the “law applied equally to those with or without disability” and that the detainment only occurred after due process.²⁷ The Supreme Court of Athlima found that the work program was discriminatory, and ordered that the program be changed to accommodate those living with disabilities.²⁸ The State created an accommodated work path which added thirty days to the program.²⁹

LEGAL ANALYSIS

1-ADMISSIBILITY

1.1 - STATEMENT OF JURISDICTION

As a party to the *American Convention on Human Rights*, the republic of Athlima 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.³⁰ Additionally, Athlima is treaty bound to respect the sovereignty of the court on matters of human rights violations and conform to the rulings and damages thereafter.

²⁵ Hypothetical para. 27

²⁶ Hypothetical para. 28

²⁷ Hypothetical para. 29

²⁸ Hypothetical para. 31

²⁹ Hypothetical para. 32

³⁰ American Convention of Human Rights 1978

2 - VIOLATIONS: AMERICAN CONVENTION ON HUMAN RIGHTS

The Petitioner asserts several violations of the *American Convention of Human Rights*, specifically violations of Articles 7, 8, 24, and 25.³¹ The Petitioner requests that the State of Atlhima facilitate a new vocational program which would more accurately serve citizens with disabilities and that compensatory measures be implemented for those citizens affected similarly by the program.

3 – RIGHT TO PERSONAL LIBERTY

Article 7.1 states, “No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.”³² Article 7.6 states, “In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.”³³

3.1 – HOMELESS TO WORK PROGRAM QUALIFIES AS DETAINMENT.

The IACHR Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas defines a deprivation of liberty as “Any form of detention, imprisonment, institutionalization, or custody of a person in a public or private institution which that person is not permitted to leave at will, by order of or under de facto control of a judicial,

³¹ Hypothetical para. 35

³² American Convention on Human Rights 1978 Article 7.1

³³ American Convention on Human Rights 1978 Article 7.6

administrative or any other authority, for reasons of humanitarian assistance, treatment, guardianship, protection, or because of crimes or legal offenses.”³⁴ It additionally cites that a deprivation of liberty cannot solely occur in a judicial setting due to non-compliance with the law. Instead, it also arises in environments such as establishments which seek to serve people with mental and physical disabilities.³⁵

It was established in the European Court of Human Rights case *De Wilde, Ooms and Versyp v. Belgium* that governmental work programs for transient people qualify as custodial detainment. Such detention, therefore, was found to violate their rights to liberty. The case amplifies that even if someone agrees to the program, such as Mitchell Henderson, that deprivation of liberty is still a viable violation. De Wilde argued that the Belgian work program kept him from the employment process, alongside producing disciplinary sanctions. In the case of Ooms, his request for release in order to stay with family was denied. In the case of Versyp, the work program disregarded his tuberculosis and prevented him from changing to a work path he could physically perform. Instead, he was forced to perform the physically strenuous job of picking potatoes. Overall, it was made clear that vagrancy alone did not equate to a just deprivation of liberty. Additional due process was also discovered to be necessary when such detainment occurs.³⁶

Additionally, in the ECHR case of *H.L. vs. United Kingdom*, the autistic petitioner was transferred as an “informal patient” to a hospital’s behavioral unit. The court ruled that the hospital staff assumed control over the patient’s liberty unlawfully, due to a lack of regulations to prevent such a situation from occurring. While the hospital may have exercised in their best

³⁴ Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas 2008

³⁵ Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas 2008 Principle II

³⁶ *De Wilde, Ooms, and Versyp v. Belgium* [1971] (European Court H.R.)

interest, such as the Homeless to Work program did, the court ruled that it was still considered detainment.³⁷

3.2 – ADDITIONAL THIRTY DAYS IS UNCONSTITUTIONAL.

The fact that the program constitutes as detainment is also evident through the fact that participants have their right to movement deprived and they are not allowed to leave the campus during the time enrolled within the Homeless to Work Program.³⁸

The changes the federal district of Kefalio made to the program are unconstitutional because they add an additional thirty days to the program for citizens with disabilities who require accommodation.³⁹ Article 14 of the UN Convention on the Rights of Persons with Disabilities, which is ratified into the Athlimian Constitution, purports that the existence of a disability does not justify any deprivation of liberty.⁴⁰

3.3 – DURESS: NO NON-JUDICIAL ALTERNATIVE OR MEANS TO SUCCEED

Henderson approached the Homeless to Work program from a position of duress, joining with the feeling “that there was no real option for him”.⁴¹ There was no non-judicial alternative with the purpose of specifically assisting homeless people with disabilities, who had broken the Restoration of Community Act. Henderson agreed to the program, specifically the treatment plan, under the threat that he would face prosecution otherwise. Mitchell Henderson did not matriculate into the program with the intention of not being able to physically continue. The

³⁷ *H.L. v. United Kingdom* [2004] (European Court H.R.)

³⁸ Hypothetical para. 9

³⁹ Hypothetical para. 32

⁴⁰ UN Convention on the Rights of Persons with Disabilities 2006 Article 14

⁴¹ Hypothetical para. 15

program and its staff did not provide a means for Mitchell Henderson to effectively finish the program.

Mitchell Henderson was wrongfully detained and deserves compensatory damages for his time spent in the program. The Homeless to Work Program detained citizens with disabilities, and post-change has continued to do so. The need for a new program, to specifically benefit citizens with disabilities who have violated the Restoration of Community Act, has become a necessity.

4 – RIGHT TO A FAIR TRIAL

Article 8.2 appropriates “the right not to be compelled to be a witness against himself or to plead guilty; and the right to appeal the judgment to a higher court”.⁴² 8.3 adds, “A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.”⁴³

4.1 – NO DUTY OF CARE TO MITCHELL HENDERSON DURING PROCESS.

The District of Kefalio diagnosed Mitchell Henderson with PTSD before he was discharged from the program.⁴⁴ They had an established duty of care to ensure that Henderson came to full awareness of his rights and complete understanding of the legal system during due process, as well as receiving legal counsel. While Henderson was aware that he broke the law, he may not have possessed enough legal sophistication to understand his right to counsel and to appeal the unconstitutionality of the law. The common man may not naturally come to that understanding; Henderson had an additional burden on his behalf due to his disability. His symptoms such as increased distraction, lack of impulse control, and lack of focus may have

⁴² American Convention on Human Rights 1978 Article 8.2

⁴³ American Convention on Human Rights 1978 Article 8.3

⁴⁴ Hypothetical para. 16

truly affected his ability to properly waive his right to counsel.⁴⁵ As well, he had recently been dismissed from the program and may have still been under the influence of the side effects consequential to his medication which reduced him to a foggy state of mind.

This diminished legal sophistication can be evident through Mitchell Henderson's brother taking the case on Henderson's behalf. The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment allows for, under Principle 33, a petitioner's family member to supplicate for recourse on behalf of a petitioner who cannot appeal or have legal counsel appeal for his own benefit.⁴⁶

Article 13 of the UN Convention on the Rights of Persons with Disabilities ascertains the duty of care to persons with disabilities in legal circumstances, i.e. "States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages."⁴⁷

5 – RIGHT TO EQUAL PROTECTION

Article 24 ratifies that "All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law."⁴⁸

⁴⁵ Clarification Question 9.

⁴⁶ UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment 1988 Principle 33

⁴⁷ UN Convention on the Rights of Persons with Disabilities 2008 Article 13

⁴⁸ American Convention on Human Rights 1978 Article 24

5.1 – SUPREME COURT ADMITTED FAULT: DISCRIMINATORY PROGRAM.

The State of Athlima itself, by nature of its Supreme Court, acknowledged that the program was discriminatory to people with disabilities and ordered that changes be made.⁴⁹ The State admitted culpability through this action. Therefore, the state must accept fault and pay compensatory damages to people such as Mitchell Henderson who endured the discriminatory program.

5.2 – REFUSAL OF ACCOMMODATION.

The State's defense of equal protection proclaiming that both disabled and non-disabled people were treated equally under the law itself is a proclamation of discrimination.⁵⁰ Article 2 of the UN Convention on the Rights of Persons with a Disability states, "Reasonable accommodation" means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms."⁵¹ Equality is not on par with equity.

In the case *Çam v. Turkey*, a blind student was denied as an applicant to the Turkish National Music Academy on account of her disability. Not only did the European Court of Human Rights rule that the petitioner had been discriminated against, but they also ruled that this refusal extended to a violated right to accommodation. The court found that the violated right of accommodation computed to a human rights breach.⁵²

⁴⁹ Hypothetical para. 31

⁵⁰ Hypothetical para. 29

⁵¹ UN Convention on the Rights of Persons with a Disability 2006 Article 2

⁵² *Çam v. Turkey* [2016] (European Court H.R.)

5.3 – *ATHLIMA HAD A DUTY OF CARE TO DISABLED CITIZENS.*

As well, the new requirement that citizens with disabilities stay in the program longer on account of receiving accommodation efforts is discriminatory. Accommodation is simply modification so non-disabled and disabled participants can participate on a similar scale. Accommodation is not a cop-out, instead it makes work environments more equitable for all personnel participating. Principle II of IACHR Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas actively prohibits the exclusion of enjoyment of the rights of people who have a disability, as would occur within the additional thirty days, because this is considered to be discrimination.⁵³

All governments have a duty of care to citizens with disabilities. The curriculum exercised in the Homeless to Work program was not enough to satisfy the duty of care which is required for disabled citizens. A new program must be created as to specifically engender assistance for transient citizens who host the existence of a disability. Additionally, Principle II enshrines the need for exclusive measures to protect the rights of people suffering from mental and physical disabilities.⁵⁴

The IACHR case *Chinchilla et al. vs. Guatemala* created the precedent that the state has a specific duty to guarantee one's right to life and personal integrity. As well, the Inter-American Court of Human Rights decided that there are special provisions burdensome upon the State to provide in cases where a person with disabilities is detained. It was also ruled that Chinchilla did not receive the level of judicial protection necessary given her situation.⁵⁵

⁵³ IACHR Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas 2008 Principle II

⁵⁴ Ibid.

⁵⁵ *Chinchilla et al. v. Guatemala* [2014] (I/A Court H.R.)

Article 4: General Obligations of the UN Convention on the Rights of Persons with Disabilities states that staff who interact with persons with disabilities must receive professional training which equips them to assist such persons with disabilities with services guaranteed by their Constitutional rights.⁵⁶

Overall, the Supreme Court’s admission of guilt regarding the program displayed that they did not meet their legal expectation of accommodation and duty of care to program participants with a disability.

6 – RIGHT TO JUDICIAL PROTECTION

Article 25.1 makes clear that “Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.”⁵⁷

6.1 – VIOLATED RIGHTS: REPEAL AND REPLACE PROGRAM.

While the Kefalio government had the best of intentions when creating the Homeless to Work program and may have been acting in their official capacity, the rights of Mitchell Henderson were still violated. A program created to assist people with disabilities and work-training can still be considered to be discriminatory, due to its inability to accommodate Mitchell’s physical and mental disabilities.

⁵⁶ UN Convention on the Rights of Persons with a Disability 2006 Article 4

⁵⁷ American Convention on Human Rights 1978 Article 25.1

When the original Restoration of Community Act was formulated, the mayor vetoed it as he expressed that a non-judicial alternative to the act was necessary.⁵⁸ The Homeless to Work program itself is still detainment. Therefore, a new program to simply assist those who are experiencing transience and more specifically experiencing a disability is still necessary under this act.

Mitchell Henderson deserves recourse for the discrimination and wrongful detainment he endured as a participant of the program. The Restoration of Community Act left people with disabilities defenseless to work in physically strenuous conditions for long periods of time.

6.2 – RIGHTS TO PHYSICAL AND MENTAL INTEGRITY.

Within the program, Mitchell Henderson made two appeal pleas to the staff regarding the treatment he received. His first petition requested that his PTSD medication be reduced as it left him in a “mental fog”.⁵⁹ His second petition requested for accommodation by way of a transfer to the hospitality program.⁶⁰ There was no avenue in the program to accommodate participants with both physical and mental disabilities. It was feasible, given the structure of the program at that time, that Henderson would have been successful within the hospitality program as it required 20% less physical activity⁶¹ and his PTSD medication was relieving his symptoms.⁶²

Article 17 of the UN Convention on the Rights of Persons with Disabilities reaffirms, “Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.”⁶³ Compelling Mitchell Henderson to consume medication which

⁵⁸ Hypothetical para. 6

⁵⁹ Hypothetical para. 19

⁶⁰ Hypothetical para. 20

⁶¹ Ibid

⁶² Hypothetical para. 19

⁶³ UN Convention on the Rights of Persons with a Disability 2006 Article 17

negatively affected his mental state while demanding that he work in an environment which caused him to physically exert in an exhausting manner for over 70% of the work-training period did not actively respect his physical and mental integrity as a person. Principle XIV of the IACHR Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas speaks to the allowance for work only if it is appropriate given a detainee's physical and mental capacity to fulfill those terms of the labor prescribed. As well, such work can never be of an afflictive nature.⁶⁴

Principle 8.2, entitled "Standards of Care" within the UN General Assembly as to The Protection of Persons with Mental Illness and the Improvement of Mental Health Care, acknowledges that any patient suffering from a mental illness deserves protection from any acts which result in physical discomfort or mental distress.⁶⁵

6.3 – RIGHT TO COMPENSATION.

Article 14.6 of the International Covenant on Civil and Political Rights, of which Athlima is a state party to, explicates the right of compensation for wrongful conviction i.e. a miscarriage of justice, "When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him."⁶⁶ The unknown fact exists purely because the facts

⁶⁴ IACHR Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas 2008 Principle XIV

⁶⁵ The Protection of Persons with Mental Illness and the Improvement of Mental Health Care 1991 Principle 8.2

⁶⁶ International Covenant on Civil and Political Rights 1978 Article 14.6

determined during Henderson's trial related to whether he failed to meet the requirements of the Restoration of Community Act, not whether the Homeless to Work program constituted as detainment. Article 9.5 further substantiates this by adding, "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."⁶⁷

It appears that there was no standardized means for Homeless to Work participants to appeal their inability to physically continue with their program, as it is applicable to infer that Mitchell Henderson's grievances were handled in an arbitrary manner. This program did not set up Mitchell Henderson for success, and his progress was determined through a subjective fashion.⁶⁸ Therefore, he deserves recourse through the court for the lack of accommodations he received.

6.4 – RIGHT TO BRING FORTH COLLECTIVE ACTION.

Principle VII, entitled "Petition and Response", of the IACHR Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas ratifies the right for collective action in cases of deprivation of liberty, activated by third party organizations such as the aforementioned Human Rights Kefalio organization or the Inter-American Commission on Human Rights.⁶⁹

7 - REQUEST FOR RELIEF

The program constituted detainment, the State did not ensure that Mitchell Henderson received legal counsel, the program admittedly discriminated against people with disabilities, and there is a bona fide right to compensation for the rights which were violated. Therefore, for

⁶⁷International Covenant on Civil and Political Rights 1978 Article 9.5

⁶⁸ Clarification Question 8

⁶⁹ IACHR Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas 2008 Principle VII

relief, the petitioner requests that the Inter-American Court of Human Rights order the State of Athlima to invalidate the Restoration of Community Act in favor of a new work program which would better accommodate people with disabilities. As well, petitioner asserts that compensatory measures be implemented for Mitchell Henderson and other Athlima citizens with disabilities who have been affected similarly by the Act and wish to bring forth the suit.