

7-31-2008

Costa Rica Grants Asylum To U.S. Citizen Fleeing Persecution And Denial Of Human Rights

LADB Staff

Follow this and additional works at: <https://digitalrepository.unm.edu/noticen>

Recommended Citation

LADB Staff. "Costa Rica Grants Asylum To U.S. Citizen Fleeing Persecution And Denial Of Human Rights." (2008).
<https://digitalrepository.unm.edu/noticen/9630>

This Article is brought to you for free and open access by the Latin America Digital Beat (LADB) at UNM Digital Repository. It has been accepted for inclusion in NotiCen by an authorized administrator of UNM Digital Repository. For more information, please contact amywinter@unm.edu.

Costa Rica Grants Asylum To U.S. Citizen Fleeing Persecution And Denial Of Human Rights

by LADB Staff

Category/Department: Costa Rica

Published: 2008-07-31

Standing up to threats of reprisal, Costa Rica has refused to allow the extradition of a woman the US has been seeking to prosecute for more than a decade. It was an especially bitter defeat for the US. Officials had been expecting her return to face charges of international parental kidnapping of her child, but a series of interventions led to a last-minute reprieve for Chere Lyn Tomayko. Tomayko had been in jail, with extradition a near-certainty, but on July 17, the Sala Constitucional of Costa Rica's Corte Suprema de Justicia (CSJ) nixed the project. Now legally a Costa Rican citizen with a family and two more kids, she stays in her adopted country.

Tomayko came to Costa Rica in 1997 with her daughter, 7-year-old Alexandria. Their exodus from the north was the result of a custody fight that had flared and smoldered on and off between her and the child's father, Roger Cyprian, since Alexandria's birth in 1989. In December 1996 they were awarded joint custody with the condition that Alexandria would live in Tarrant County, Texas. Tomayko subsequently charged Cyprian with domestic violence and left the US, she said, because she was afraid of him. From Costa Rica, Alexandria alleged that Cyprian had abused her and that she continued to have nightmares about the abuse. Cyprian denied abusing her, admitting only to slapping her.

Cyprian acknowledges that Alexandria wants nothing to do with him, but the impetus for extradition has motivated him all these years, just as it has motivated a Justice Department that has been criticized for doing little to help those left behind by a fleeing parent and child. Even Tarrant County wanted in on a prosecution; a warrant issued in 1999 charging Tomayko with interfering with child custody is still on the books. Said assistant district attorney Sherry Whelchel, "The important thing is in some cases you need to follow through so there is some justice. We don't want to send a message that, just because you abscond, the case is going to go away." It was not going to go away.

Costa Rican authorities arrested Chere Lyn Tomayko in September 2007 in San Isidro de Heredia, north of the capital San Jose, where she had been living and teaching English. Reports at the time said Costa Rican authorities had been working with Interpol on the case. Tomayko married a Tico [Costa Rican] veterinarian, Javier Montero, with whom she had two daughters, Ana Sofia, now eight years old, and Ariana Nicole, now five.

She had come into the country legally a decade ago with Alexandria and another daughter, so, from the Costa Rican point of view, she had an unbroken period of legal residence. Ever since the arrest, she has been jailed at El Buen Pastor prison in San Jose. It was not supposed to go away, but, on the authority of Costa Rica's Minister of Security Janina del Vecchio, the CSJ, and the prior ongoing support of the Instituto Nacional de las Mujeres (INAMU), the case began to vanish.

On July 23, five days after Tomayko was set to board a plane to face prosecution in the US, del Vecchio granted her refugee status, agreeing that she had fled as a victim of domestic violence. Tomayko was supposed to have been extradited on July 17, but the order for that was suspended while habeas corpus requests were being sorted out. As minister of security, del Vecchio is also in a position to overrule the Direccion General de Migracion y Extranjeria, and it was in this capacity that she extended refuge. Migracion had previously denied refugee status, but del Vecchio overturned that, noting, "To ignore domestic violence as a cause for granting refuge implies ignoring the basic doctrine of the international rights of refugees."

In her decision, del Vecchio said that, in a case like this, the authorities had to strike a balance between strict legalities and the welfare of the person seeking asylum. In her view, "Her (Tomayko's) fears were well founded and went beyond the alternatives she had. There is no doubt that domestic violence constitutes one of the acts that occasions great suffering and fear, provoking mental and physical harm, and that has been used as a mechanism of persecution."

A cliffhanger to the last

The refugee decision did not result in immediate freedom for Tomayko. Despite her new legal status, a judge refused to let her out of El Buen Pastor. INAMU president Jeanette Carrillo explained that the judge denied having jurisdiction to order release, and so all concerned were frozen in place waiting for the CSJ to rule on habeas corpus. Carrillo called the judge's action "arbitrary and [showing] a lack of respect for legal procedures and the rights of this woman."

The decision was a very important one for women's rights. Carrillo called the minister's action historic and without precedent in Costa Rica. "Violence against women really is a worldwide problem that must be seen from the point of view of human rights. Today Costa Rica reaffirms that it is a country respectful of human rights." The delay was a disappointment. Outside the prison, husband Javier Montero, Alexandria, and Alexandria's two half-sisters waited for Tomayko to appear. There was a fearful undertone to the wait. The habeas corpus attempt could fail, and Tomayko could still find herself northbound.

The Defensa Publica, which brought the habeas action appeal to the court, based its argument on a law that states, "The foreign woman, upon contracting matrimony with a Costa Rican, loses her nationality." Having done that, Tomayko ceased to be a US citizen under that law and became a Costa Rican, subject to Article 32 of the Constitution, which states, "No Costa Rican can be compelled to abandon the national territory." The attempt did not fail. After years of running and hiding, Chere Lyn Tomayko was free to rejoin her family. She walked out of the jail in a red T-shirt emblazoned, "Tica de Corazon (Tica at Heart)."

Her release was historic, putting Costa Rica ahead of all Latin American countries regarding extradition and domestic violence. In Europe, the Spanish media observed that Spain has had a law on the books since 2007 that authorizes asylum "where a founded fear of suffering persecution for reasons of gender," which includes domestic violence, but the law has never been applied. Costa Rica won.

US loses it

The US lost. US officials in Costa Rica reacted with anger, disbelief, and threats. Besides an effort to dissuade parental international kidnapping, analysts viewed this case, which has played widely, as another defeat for US officials trying to recover authority or legitimacy in human rights. The country had been portrayed as a place where domestic abuse is abetted by law enforcement. As Security Minister del Vecchio put it, "It is important to remember that those who abandon their countries to seek protection abroad do it, precisely, because in such countries their human rights are at risk."

President Oscar Arias greeted the outcome by narrowing the perspective. "This is such a little thing that it's not going to distance the two countries," he said. "This is a sovereign country, and we have the right and obligation to make decisions we think are fitting. In this case, we tried to protect human rights." But the US would have no part of attempts at minimization.

This was a major affront. A ceremonial presentation of a little airplane for the Seccion de Vigilancia Aerea de Seguridad Publica, scheduled at the same time as the release, was immediately canceled, with a US Embassy statement saying, "Even though we respect the sovereign right of any nation to make such decisions, we are concerned that this could establish a very harmful precedent, in conformity with well-established international norms, to future cases of extradition, whether with the United States, or with other countries."

Del Vecchio encouraged the US to get over it, saying that the incident had no potential for diplomatic damage. "There will not be problems in our bilateral relations," she said. "There are many security issues of mutual interest to the two governments." But the US really needed to get its anger out. "We are very concerned for the implications that this decision will have over the international treaty obligations for Costa Rica and in virtue of bilateral judicial cooperation with the United States," read a communique from the US Embassy.

The US showed no sign of getting over it. Its abrupt cancellation of the donation of a single small airplane to the security force resembled nothing so much as a child picking up its toys and going home. If the ceremony had gone as scheduled, the keys to the craft would have been handed to del Vecchio, an ignominy perhaps too bitter to bear. Added to its already mounting human rights issues Guantanamo, Abu Ghraib, extraordinary renditions around the world the one time paragon of rights rectitude now must count one of its own citizens being granted refugee status.

President Arias, a Nobel Peace Prize laureate, sought to calm, but not to appease, the US. The case provided him with a platform from which to press long-smoldering issues with the administration of US President George W. Bush. "There are things I could demand of the United States, important things: that it has not signed the Kyoto protocol, that it is not part of the International Criminal Court (ICC). These are major things....Next to those," said Arias, "this was a very small thing." In speaking his mind, Arias, rather than leave the issues at the ministerial level, raised them to the diplomatic. The situation has gone beyond del Vecchio. "This statement [from the US Embassy] is now the business of the diplomatic line. It is not a matter that has anything to do with my ministry any more," she said.

Reclaiming lost ground on human rights .

Arias also succeeded in framing the events as a leap forward for human rights in Costa Rica. It could use the boost as the country's commitment has come under question regarding pending approval of the Central America Free Trade Agreement (CAFTA) and relations with indigenous communities. But the human rights community had already endorsed the handling of this case. Said Marta Iris Munoz, chief public defender, who carried the case for Tomayko, "I would like us to recognize the resolution of the Sala Constitucional because it blazes a trail and makes history in a democratic country in recognizing and vindicating fundamental rights that have been violated." Munoz added that the court still has more to do on this case. She has filed allegations of violation of the extradition law and violation of Tomayko's right to a defense. "Dona Chere did not have the right during the whole process to be heard.

All the evidence that was offered was not accepted by the court," but Munoz explained that the court ruled on the basis of constitutionality and not on the legality of the extradition law. INAMU's Carrillo approved as well. "It is a great satisfaction for us because it shows women of this country and the world that no matter how difficult it may seem, it is possible to escape violence, and that governments and states have a responsibility in this area," she said. A recent check shows that Tomayko remains on the FBI's 10-most-wanted list of accused parental kidnapers, and Alexandria is listed as a child victim, even though she is a grown woman now and has supported her mother's case throughout. But in Costa Rica, legally, this case is over.

The CSJ was specific and definitive on this point. "Recognition of the condition of refugee or asylum will have the effect of terminating any procedure of extradition initiated against the person refuged or asyumed on petition of the government of the country where the supposed crime might have been committed," it said.

-- End --