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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 01/84; Case No. 8078
Session: Sixty-Second Session (11 – 18) May 1984
Title/Style of Cause: Carlos Rene Padilla Galvez v. Guatemala
Doc. Type: Resolution
Decided by: Chairman: Mr. Cesar Sepúlveda
First Vice Chairman: Mr. Luis Demetrio Tinoco Castro;
Members: Mr. Andrés Aguilar; Mr. Marco Gerardo Monroy Cabra; Mrs. Gilda Maciel Russomano; Mr. Luis Adolfo Siles Salinas; Mr. Bruce McCole.
Dated: 16 May 1984
Citation: Padilla Galvez v. Guat., Case 8078, Inter-Am. C.H.R., Report No. 01/84, OEA/Ser.L/V/II.63, doc. 10 (1983-1984)

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BACKGROUND:

On September 7, 1982, the Commission received a denunciation to the effect that on August 26, 1982, Dr. CARLOS PADILLA GALVEZ, Director of the "Juan de Dios Rodas" National Hospital of Solola had been kidnapped from his place of work on August 26, 1982, by a group of armed men; the denunciation went on to say that thereafter he was never located and that the Government had not admitted any role in the kidnapping, and had denied having detained him in any of its detention centers;

CONSIDERING:

1. That from the time the IACHR arrived in Guatemala on the occasion of its on-site visit to that country between September 21 and 26, 1982, the Commission heard the same denunciation repeated over and over by friends, relatives, and acquaintances of Dr. Padilla Galvez, who at the time had "disappeared";
2. That on September 22--the day following the Commission's arrival--a large, paid notice appeared in the Guatemala City newspapers, which read as follows:

Guatemala, 22 September 1982
COMMISSION ON HUMAN RIGHTS

Aware that you have our government's approval to visit our country, we would ask that you use your good offices to clarify the whereabouts of DR. CARLOS RENE PADILLA GALVEZ, who was kidnapped from the Solola Hospital on August 26, 1982.
Family, colleagues, and friends.

3. That in the course of its activities during its on-site visit, in the meeting that it had with the then

President of Guatemala, General Efraim Rios Montt, the Commission in full conveyed to him, among other points, the substance of the denunciation that it had received in connection with the kidnapping and subsequent disappearance of Dr. Padilla Galvez; it expressed deep concern over the matter and asked that he intercede so that every means available to investigate his whereabouts would be exhausted so that he might be released; General Rios Montt took note of the request, and recommended to the Commission that it discuss the matter in its next meeting, which was with the then Minister of Defense, General Oscar Humberto Mejia Victores;

4. That during the meeting it held in the Office of the Minister of Defense, the Commission again expressed its concern over the predicament of Dr. Padilla Galvez. General Mejia Victores, who was accompanied by the Chief of Staff Major General Jorge Mario Lopez Fuentes, told the members of the Commission that he had no knowledge of the situation; he took note of the Commission's interest in the matter and gave repeated assurances that the individual in question must have been kidnapped by guerrillas, but that he had never been arrested by security forces under his orders and was not being held prisoner in any government detention center.

5. That two days later, the Commission was again invited to hold another meeting with the Minister of Defense in his office; there, General Oscar Humberto Mejia Victores told the Commission that Dr. Carlos Rene Padilla Galvez was being held at the Second Police Station; that he had gone into hiding, had requested State Security Forces to take him into custody, isolate him, and hold him incommunicado so as to protect his life, which was threatened by subversives who were following him to kill him; he also told the Commission that with the proper security precautions, a small group from the Commission could speak with him.

6. That during the visit the Commission made personally with Dr. Padilla Galvez at the Second Police Station, it heard him personally and directly deny what the Minister of Defense had said and confirmed everything contained in the denunciation that had originally been filed on his behalf; he confirmed that he indeed was being held against his will, and had not gone into hiding willingly.

7. That a little over a month after the Commission had concluded its on-site visit, Dr. Padilla Galvez was finally released on October 28, 1982; on November 16, 1982, the Government of Guatemala sent to the Commission a note in reply to the request for information that had originally been sent by the IACHR; that note of reply read as follows:

In this regard, allow me to inform you that Dr. Carlos Padilla Galvez was detained on August 26 last, and was investigated; once it was established that he was entirely innocent, he was released on October 28 last.

8. That the text of the note in question not only conflicts with the statements made to the Commission, but also fails to make reference to the fact that Dr. Padilla Galvez was kidnapped, or to his prolonged arbitrary detention--denied repeatedly by the government--that made him yet another of the hundreds who have disappeared in Guatemala; it made no reference to his unlawful isolation and incommunicado detention, or to the fact that during the two months that he was deprived of his freedom, he was not afforded legal protection or any of the guarantees of due process of law;

9. That Articles 7 and 8 of the American Convention on Human Rights provide the following:

Article 7. Right to Personal Liberty

1. Every person has the right to personal liberty and security.
2. 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.

3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. 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.
7. No one shall be detained for debt. This principle shall not limit the orders of a competent judicial authority issued for nonfulfillment of duties of support.

Article 8. Right to a Fair Trial

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.
 2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:
 - a) the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
 - b) prior notification in detail to the accused of the charges against him;
 - c) adequate time and means for the preparation of his defense;
 - d) the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
 - e) the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
 - f) the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
 - g) the right not to be compelled to be a witness against himself or to plead guilty; and
 - h) the right to appeal the judgment to a higher court.
 3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.
 4. An accused person acquitted by a non-appealable judgment shall not be subjected to a new trial for the same cause.
 5. Criminal proceedings shall be public, except insofar, as may be necessary to protect the interests of justice.
10. That in the present case, even though Guatemala is a party to the Convention, the rules contained in Articles 49, 50, and 51 of that instrument, which concern the suggestion of a friendly settlement, do not apply in the present case since at no time in the processing of this case have the necessary and essential conditions for application of those provisions been present;

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

In exercise of the mandate and powers with which it is invested:

RESOLVES:

1. To declare that the Government of Guatemala violated Articles 7 and 8 of the American Convention on Human Rights.
2. To recommend to the Government of Guatemala that it adopt the measures necessary to guarantee the effectiveness of the rights to personal freedom and to due process of law, and to prevent any reoccurrence of the government's practice of detaining individuals by means of armed kidnapping, only to then hold them incommunicado, to give the appearance that they have disappeared, while denying their detention to relatives;
3. To recommend to the Government of Guatemala: (a) that it punish, in accordance with Guatemalan law, those responsible for the acts denounced; and (b) that it inform the Commission of the measures taken within a maximum of 60 calendar days;
4. To forward this resolution to the Government of the Republic of Guatemala and to the claimants;
5. To include this resolution in the Annual Report to the General Assembly of the Organization of American States, should the Government of Guatemala fail to implement the recommendations made herein within the period stipulated for that purpose.