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Title/Style of Cause:	Tomas Nativi and Fidel Martinez v. Honduras
Doc. Type:	Resolution
Decided by:	President, Dr. Gilda M.C.M. Russomano; First Vice President, Dr. Marco Tulio Bruni Celli; Second Vice President, Mr. Oliver T. Jackman. Members: Dr. Marco Gerardo Monroy Cabra; Dr. Bruce McColm; Ms. Elsa Kelly; Luis Adolfo Siles Salinas
Dated:	28 March 1987
Citation:	Nativi v. Hond., Case 7864, Inter-Am. C.H.R., Report No. 4/87, OEA/Ser.L/V/II.71, doc. 9 rev. 1 (1986-1987)
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BACKGROUND:

1. In a communication dated June 26, 1981, the Inter-American Commission on Human Rights received a denunciation whose pertinent parts state the following:

The Commission is hereby apprised of the present denunciation referring to the violation of the human rights of Professor Tomas Nativi and the engineer Fidel Martinez.

Attached is a sworn statement containing an account of the facts denounced, specifying the place and date of the alleged violations, the names of the victims and the public authorities that have taken note of the act denounced.

The state deemed guilty is the State of Honduras, for commission of violation of the human rights of the victims and for omission in executing petitions.

A writ of habeas corpus has been presented to the Surpeme Court, with the authorities having denied any such arrests.

We have made no denunciation of violation of human rights before any other international governmental organization. I hereby sign this statement addressed to the Inter-American Commission of Human Rights of the OAS, freely and spontaneously, swearing that the data and circumstances contained herein are true, as follows: In company of (...), with whom I was doing some administrative work, there appeared unexpectedly about 10:00 p.m. on June 10, 1981, Professor Tomas Nativi and the Engineer Fidel Martinez; they decided to stay over at the house. We continued our work, finishing it at 12:30 a.m. on June 11, 1981. Both (...) and I retired for the night in the same room and Professor Nativi and Mr. Fidel Martinez each retired to one of the other two bedrooms.

At about 3:00 a.m. three shots fired from a gun equipped with a silencer were clearly heard. Immediately after the first shot there was a cry from the room of Professor Nativi followed by two more shots.

A voice then ordered: "Take care of the other son of a bitch" and someone shouted "Open the door!", "Who is it?"; again the order came "Open up!", to which I replied: "Come in, then, the door's open", and again we heard "Open the door or I'll shoot". At this threat, fearing they would shoot, I got out of bed and

opened the door to find six men, five of them wearing hoods. At that same moment Professor Nativi came out of the room across the hall and said "Don't shoot; here I am." All of the men were armed with pistols equipped with silencers. The one without the hood was in charge. The five hooded men wore olive drab jackets with rolled up sleeves and an orange lining like the kind worn by soldiers in the Honduran army. The one in charge ordered two of the hooded men to take Professor Nativi outside the house to where a car with a diesel engine was waiting. It drove off with him. At the same time two of the men pushed me down on the bed and asked me about the door next to the bedroom. I told them it was a bathroom. Trying the door they found it locked. Just seconds before the shots were fired (...) had gotten up to go to the bathroom and, hearing the gunfire had locked the door. They ordered him to come out three times, the last time threatening to shoot, before he opened the door. Menacing him with a gun, they forced him down on the bed next to me and tied our hands behind us with a rope they had brought with them. Two other hooded men in the room of Mr. Martinez said: "We'll have to leave this son of a bitch here; we can't handle him," whereupon the chief ordered the two men who were just coming in to help take out the wounded body of the engineer, who was dragged outside the house wrapped in a sheet and curtains from the room. The same hooded men who had tied up (...) then tied me up too, at the orders of the chief. I could see when they took out the body of the engineer but they ordered me not to look or they'd shoot. They wrapped us up in sheets. I could hear another automobile with an engine that sounded like the first one. They locked us in the bedroom and the same voice ordered "Stay here for half an hour." After some time I was able to untie myself and to free (...) at 3:12 a.m. He left the bedroom at about 4:00 a.m. and went into Mr. Martinez's room to clean it up, ending up with half a bucket of clotted blood. He also found a flat fragment bone, I couldn't stand the sight and had to leave the room. The steady barking of a dog made us afraid that someone was watching the house, so I waited until 5:00 a.m. to call relatives. By this act I consider the right to life, liberty and personal security to have been violated, along with the right to inviolability of the home and to protection from arbitrary arrest. I believe the Honduran State to be guilty of those crimes by possible commission and by omission, since writ of habeas corpus was presented on that same day, Thursday, June 11, by a relative of Professor Nativi. The writ was not executed by the corresponding judge until Tuesday, June 16, before the National Bureau of Investigation (DNI), with negative results. Fear and suspicion kept me inside my own house until the attempt was publicly denounced by the President of the Federation of University students of Honduras (FEUH) at a public meeting in La Merced Plaza. On Saturday, the 13th, three DNI agents came to my house in the morning. I opened the door once they had identified themselves. I believe that the statements I made to the DNI at that time were given when I was in a very highly wrought emotional state. At 4:00 p.m. the same agents returned, accompanied by a photographer who took pictures of the several rooms and other parts of the house.

A sister of Professor Nativi presented the corresponding denunciation to the DNI on the same day, Saturday, the 13th. Despite the fact that Professor Nativi had been kidnapped by several known agents of the DNI, including one called "La Cabara", and tortured from December 23 to 25 last year, 1980, the DNI had denied any participation even though on that occasion during presentation of the writ of habeas corpus, they said "They were not holding him, even though they knew that Professor Nativi was engaged in subversive activities." Now when the writ was again presented, they said, however, that "They did not know him and had never heard of him because he had no criminal record." I state that I have not lodged any petition with any other international governmental organization to which the Honduran State belongs and I urge the OAS Inter-American Commission on Human Rights to intervene with the proper authority in order to clarify this abominable and bloody act and not allow it to go unpunished.

2. In a note dated August 5, 1981, the Commission transmitted the pertinent parts of the denunciation to the Honduran Government, requesting that it supply the corresponding information, pursuant to Article 34,1, c of its Regulations.

3. The Government of Honduras, in a note dated September 11, 1981 (Official Communication No. 30-74), responded to the request made by the Commission. The data furnished by that government, in its

pertinent parts, pursuant to Article 34,7 of the Regulations, were reported to the petitioner. The text reads as follows:

a) Neither the National Bureau of Investigation, as one of the units comprising this force, or any other dependency thereof has had any direct or indirect participation in the acts specified in the denunciation concerning the alleged illegal arrest of Professor Tomas Naviti Galvez and the Engineer Fidel Martinez.

b) According to the statement, dwelling where Prof. Naviti and Mr. Martinez were staying was broken into violently and without warning by six men, five of them wearing hoods, bearing firearms equipped with silencers at about 3:00 a.m. on June 11, 1981, and that the five hooded men wore olive drab jackets with pushed up sleeves and an orange lining of the kind worn by soldiers of the Honduran Army. The men took them away to an undisclosed location.

c) Following this episode, a sister of Professor Nativi, as stated in the denunciation, did not appear before the National Bureau of Investigations until Saturday, June 13th, that is, two days after the alleged events to report them. We do not know why these acts which damaged her interests were kept a secret or mystery. Immediately thereafter, all police units under the command of this office were alerted and instructed to investigate those criminal acts and to ascertain the whereabouts of the victims and the persons responsible.

d) The General Command of the Public Safety Force, in an effort to comply faithfully with the law and its duties, which is the preservation of public order, safety and protection of persons and property and execution of resolutions, orders and provisions issued by the competent authorities, has never violated the rights and guarantees set forth in our Constitution and in the Declaration and Principles of Human Rights. Our police units have never attempted an offense against human life, personal security, freedoms, the right to protection or free movement, property, etc. We have never apprehended persons inside their homes except under legal order and in strict observance of our judicial organization, which requires that in such cases houses be entered during the day between 6:00 a.m. and 6:00 p.m.

e) The fact that the criminals wore "olive drab jackets" does not mean they were members of our institution; on the contrary, in order to commit their abuses the criminals disguise themselves so as to create confusion and chaos.

4. The claimant, in a communication dated November 20, 1981, took note of the information provided by the Government of Honduras, adding, in turn, new data or additional information concerning the complaint.

5. The Commission, in a note of February 1, 1982, addressed to the Government of Honduras, forwarded the pertinent parts of that additional information and requested that, within 30 days, the Government transmit, all data pertaining to the case. The text of the additional information is as follows:

We are hereby adding the following information on the case of the agronomist Fidel Martinez, who was kidnapped by paramilitary gangs on June 11, 1981, in the Colonia El Hogar, together with his friend Professor Tomas Nativi.

1. According to reliable reports, military forces were involved in this ugly and disgraceful incident, for example, we know that the DNI agent whose last name is OSORIO made the following statement: WE ARE HOLDING FIDEL AND TOMAS. THE OPERATION WAS CARRIED OUT BY MAJOR LAGOS AND THEY WERE TAKEN TO AN ANTI-GUERRILLA CAMP IN OLANCHO. THEY ARE GOING TO BE QUESTIONED TO FIND OUT EVERYTHING WE WANT TO KNOW ABOUT THE ACTIVITIES OF THE URP AND ITS POSSIBLE LINKS TO ARMS SMUGGLING TO EL SALVADOR. IF THAT'S WHAT THOSE SONS OF BITCHES WANT, SCREW THEM.

2. We later learned from persons well acquainted with Mr. Fidel Martinez and Professor Tomas Nativi that they saw the two of them put onto a small plane at an airport in Juticalpa and taken off to an

unknown destination. The persons (...) were close by the airport at the time.

3. It has also been learned that both Mr. Fidel Martinez and Professor Tomas Nativi have been shuttled from one battalion to another so that the habeas corpus writs presented would be null and void. Recently they were detained in Trujillo and transferred to the First Infantry Battalion where they are moved back and forth from Torrion One to Torrion Two.

Furthermore, with regard to the pertinent parts of the information forwarded by the Honduran Government in a note dated September 11, 1981, we should like to make the following comments:

1. That the Honduran military authorities have on many occasions violated and continue to violate the human rights of their fellow citizens, aided by the lack of poor communications with the provinces and by the fact that the poor are afraid to denounce these violations, and;

2. That recently the modus operandi of the authorities has changed. To cite one example, they use private houses outside the city, instead of authorized jails.

6. Since the deadline set elapsed without the Honduran Government having forwarded the information requested by the Commission, the notes of February 1, 1982 were sent again mentioning possible application of the provisions of Article 42 (formerly 39) of the Regulations accepting as fact the acts denounced based on the presumption of truth contained in that provision. A second note was remitted to the Government of Honduras on May 14, 1982. Notes to the Government along the same lines were sent on October 6, 1982 and on May 25 and August 9, 1983.

7. The Government of Honduras, in a note of December 2, 1983 (No. 1547) furnished the Commission with new information on Case 7864. Attached to those data were copies of the rulings issued by the competent juridical authorities of Honduras in the case, such as a writ of habeas corpus for Tomas Nativi and a stay of the arrest order presumably issued by the National Director of Investigations.

8. Likewise the Government of Honduras, in a note dated December 5, 1983 (No. 37/83/MPH/OEA) forwarded further information on the case which corroborated that already sent with the December 2 note.

9. The Commission, in a communication dated December 20, 1983, transmitted to the petitioner the pertinent parts of that additional information from the Government of Honduras, asking for comments or observations within a period of 45 days. The text of the pertinent parts sent with that note read as follows:

Department of Foreign Affairs of the Republic of Honduras, Official Communication 1547, Tegucigalpa, D.C., December 21, 1983, Ref. Case 7864. To the Executive Secretary: I am pleased to forward the pertinent information on the case cited:

In this connection I should inform you that on June 11, 1981, there was presented to the Supreme Court of my country a writ of habeas corpus for Mr. Tomas Nativi and a stay of the arrest order presumably issued by the National Director of Investigations; the recourse was admitted and attorney Maria Elvia Garcia de Martinez appointed as executory judge thereof. On June 16 of that year she reported that she made formal application to the offices of the National Office of Investigations and that Lt. Colonel Juan Lopez Grijalba, Director of that Office, had told her that Mr. Nativi was not detained at that unit.

On June 16 of the same year, the Supreme Court of my country handed down a ruling approving the action of the executory judge and ordering that the petitioner be given 48 hours to formalize her petition in writing since the deadline was allowed to expire, and the opportunity was therefore irrevocably lost. Consequently, the Supreme Court ordered, in strict compliance with the law, that the prosecutor issue his opinion within the following 48 hours. On August 5 of the year cited, the highest court in the land handed down a judgement disallowing the habeas corpus filed.

On July 4, 1983, a group of citizens filed a new habeas corpus writ for, among others, Tomas Nativi and Fidel Martinez. That recourse was accepted, with law clerk Engels Zelaya appointed as executory judge.

On July 26 he reported that he had made formal application to the National Director of Investigations who told him that he did not know the whereabouts of the persons sought although every effort was being made to locate them.

On September 26 of the current year the Supreme Court issued an opinion ordering that evidence be taken for a period of eight working days; on October 10 the petitioners submitted by way of evidence an issue of the newspaper "El Tiempo". The high court admitted that proof and so informed the parties and added it to the case file, leaving pending the complainants' request that the period for presenting proofs be closed and the file placed at the disposition of the parties. In short, the habeas corpus writ referred to is pending processing. Therefore, the remedies provided under national jurisdiction as referred to in Article (46.1A) of the American Convention on Human Rights and Article 34 of the Regulations of the Inter-American Commission on Human Rights have not been exhausted.

I should also like to inform you that the State security authorities have undertaken a number of investigations without producing any specific data on the whereabouts of Professor Tomas Nativi and Mr. Fidel Martinez, who are recognized members of the People's Revolutionary Union (URP), a leftist terrorist faction operating in Honduras, according to a statement made by the National Director of Investigations.

Finally, I should add that Honduran police are still endeavoring at least to obtain information on the whereabouts of those persons, making maximum use of the services of information and cooperation established on a reciprocal basis in member countries of the International Police (INTERPOL).

In view of the foregoing, I am requesting the Inter-American Commission on Human Rights to accept the present information and to proceed pursuant to the stipulations of the juridical system in effect.

10. In a communication dated January 30, 1985, the Commission again requested that the claimant forward, within a period of 30 days, observations on the additional information made available by the Government of Honduras.

11. In a cable dated April 4, 1986 (No. 717), the Government of Honduras provided further information on the facts pertaining to this case, stating as follows:

Despite the efforts made by the investigating committee set up for the purpose by Agreement 232 of June 14, 1984, no new evidence has been uncovered. The information obtained and taken into account does not provide solid proof that would allow for a ruling on the presumed disappearances with absolute certainty. In view of the impossibility of identifying the persons allegedly responsible, the interested parties were publicly urged to employ such actions as might best suit them before the competent courts so that, through the procedures of law, they might there accuse the public or private persons they deem responsible. Particularly in regard to Case 7864, it should also be noted that the petitioner has not remitted the comments requested by the Commission in three consecutive years, which suggests that, pursuant to Article 32, c of the Regulations of this Commission the dossier should be filed without further action.

12. In a communication of April 28, 1986, the Commission forwarded to the claimant the pertinent parts of the new information received from the Government of Honduras.

13. The claimant, in a communication dated October 18, 1986, presented comments on the information from the Government to the effect that, having requested from the Office of the President of the Republic of Honduras (Dr. Roberto Suazo Cordoba) a certified copy of the report of the investigating committee set up by that administration clarify the status of individuals who have disappeared in Honduras the request had not been answered thus preventing the interested parties from taking any action whatsoever. The note was accompanied by a copy of the petition, which forms part of a civil process.

WHEREAS:

[1] The information supplied by the Government of Honduras in the note dated September 11, 1981 (Official Communication 3074) ignores the fact that on June 11, 1981, following the alleged acts, a relative of Professor Tomas Nativi presented a writ of habeas corpus which was not executed by the corresponding judge until June 16 before the National Office of Investigations (DNI) with negative results; therefore there is no basis for the statement made in that official communication to the effect that denunciation of the facts was not presented until Saturday, June 13, that is, two days after the alleged events.

In fact, as indicated in the records, another denunciation of the facts was submitted to the DNI itself on Saturday, June 13, 1981.

There is a contradiction between the statement made in Official Communication No. 3074 mentioned above and the information supplied by the Government of Honduras in the note dated December 2, 1983 (Official Communication No. 1547), which records the habeas corpus writ of June 11, 1981.

Likewise, according to Official Communication 3074, not until June 16, 1981, was the habeas corpus writ executed, representing a very long delay in such a serious case as the alleged disappearance of Professor Nativi, since five days had elapsed since the filing of the recourse and six since the date of the grave acts covered by the complaint.

The habeas corpus writ presented by various citizens on July 4, 1983, two years after occurrence of the events, also produced no positive results; the competent organs of Honduras having confined themselves to processing it on a strictly procedural basis, inasmuch as the taking of evidence also failed to lead to in-depth investigation of the facts.

In the case in question, citing of the prior exhaustion of internal recourses as a reason for declaring the case to be inadmissible, as presented by the Government of Honduras in Official Communication 1547, is invalid, since the tenor of the responses of the Honduran Government to requests for information by the Commission indicates that the parties interested in ascertaining the whereabouts or situation of Professor Tomas Nativi and Mr. Fidel Martinez have exhausted without result the legal remedies to which they have resorted because of the negligence of the authorities responsible for conducting the investigations. Such authorities have confined themselves to saying that the persons in question "are recognized members of the Peoples' Revolutionary Union (URP), a leftist terrorist faction operating in Honduras," according to a statement made by the National Director of Investigations.

According to additional information presented by the claimant, military forces were involved in the disappearance of the agronomist Fidel Martinez and Professor Tomas Nativi. In this connection the petitioner notes that a DNI agent whose last name is Osorio made the following statement: "We are holding Fidel and Tomas. The operation was carried out by Major Lagos and they were taken to an anti-guerrilla camp in Olancho. They are going to be questioned to find out everything we want to know about the activities of the URP and its possible links to arms smuggling to El Salvador. If that's what those sons of bitches want, screw them."

Likewise the claimants report "persons well acquainted with Mr. Fidel Martinez and Professor Tomas Nativi saw the two of them put onto a small plane at an airport in Juticalpa and take off to an unknown destination. The persons (...) were close to the airport at the time."

Furthermore, the records contain the additional data of the claimants that "both Mr. Fidel Martinez and Professor Tomas Nativi have been shuttled from one battalion to another so that the habeas corpus writs presented should be null and void. Recently they were detained in Trujillo and then transferred to the first Infantry Battalion where they are moved back and forth from Torrion One to Torrion Two."

[2] The information furnished by the Government of Honduras, remitted with the note dated April 7, 1987 (No. 13/86/MPH/OEA cited) offers no new evidence that could enable the Commission to deduce through other reliable means that the facts covered by the denunciation are not true. To the contrary, the ineffectiveness of the investigations by special ad-hoc committee set up (Agreement 232 of June 14, 1984) outside the juridical system reaffirms the view that the Honduran authorities, after a long and fruitless judicial process, decided to transfer the matter to agencies or institutes unconnected with the Government, like the above-mentioned ad-hoc committee, before which the interested parties do not enjoy the right of representation or of defense in order to continue investigations that might verify the whereabouts or status of agronomist Martinez and Professor Nativi.

The claimants were also not allowed to examine or observe the report presented by that ad-hoc committee, despite their request to do so, all of which serves to confirm the foregoing.

[3] Article 42. Presumption

The facts reported in the petition whose pertinent parts have been transmitted to the government of the State in reference shall be presumed to be true if, during the maximum period set by the Commission under the provisions of Article 34 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RESOLVES:

1. To presume to be true the facts reported in the communication dated June 26, 1981, concerning the acts affecting the agronomist Fidel Martinez and Professor Tomas Nativi and their subsequent disappearance.
2. To point out to the Government of Honduras that the acts covered by the complaint constitute serious violations of the rights to life (Art. 4), to personal integrity (Art. 5), to liberty, and to personal security (Art. 7) under the American Convention on Human Rights, to which Honduras is a State Party and which it is internationally bound to respect.
3. To declare that the Government of Honduras is responsible for the acts that have, through commission or omission, led to disappearance of the persons covered by this denunciation, since such acts involved persons or agents who, pursuant to the denunciation and the evidence available to the Commission, operated within or by the authority of that government or with its acquiescence.
4. To recommend to the Government of Honduras that it pay to the families or heirs of the individuals who have disappeared and are presumed dead adequate indemnization, in accordance with the law, and that it report to the Commission within a period of 60 days on the status of this recommendation.
5. If during the period stipulated, the Government of Honduras should make no observations on this resolution, the Commission will include it in the Annual Report to the General Assembly of the OAS, pursuant to Article 63 g of its Regulations.