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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 2/91; Case No. 10.000
Session: Seventy-Ninth Session (11 – 22 February 1991)
Title/Style of Cause: Wilfredo Najarro Vivas v. El Salvador
Doc. Type: Report
Decided by: Chairman: Patrick L. Robinson;
First Vice Chairman: Marco Tulio Bruni Celli;
Second Vice Chairman: Oscar Lujan Fappiano;
Members: Gilda M.C.M. de Russomano; Oliver Jackman; Leo Valladares
Lanza; Michael Reisman
Dated: 13 February 1991
Citation: Najarro Vivas v. El Sal., Case 10.000, Inter-Am. C.H.R., Report No. 2/91,
OEA/Ser.L/V/II.79, doc. 12 rev. 1 (1990-1991)

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HAVING SEEN:

1. The denunciation received on May 7, 1987, which reads, "Wilfredo Najarro Vivas, 20 years of age, single, radio technician, captured at his residence at Colonia Quintu, Apopa, San Salvador, on November 9, 1986, by the Treasury Police. Whereabouts still unknown," and transmitted to the Government of El Salvador in a request for information.
2. The response from the Government of El Salvador, including a report from the Human Rights Commission (governmental), which was transmitted to the claimant on November 28, 1988, which reads: Case 10.000. Wilfredo Najarro Vivas. The CDH has undertaken procedures to determine the whereabouts of the aforementioned young man, filed under No. 1549-NV-88, who was 20 years of age, single, a radio technician, living at Colonia Chintu No. 2, Pasaje Nejapa, Access N., House No. 13, Apopa, who was apprehended on November 9, 1986, at his residence during the early morning by two heavily armed subjects dressed in olive green clothing, who "identified themselves" as members of the armed force, and who led him off to some unknown place; to this time, the whereabouts of the young man are unknown. Even though the necessary efforts have been made by this agency to locate him, no positive results have been produced.
3. The additional information and observations by the claimant to the response from the government according to which:

Wilfredo Najarro Rivas, 20 years of age, radio technician, was captured on November 9, 1986, at one in the morning, in his residence at Colonia Chintu, No. 2, Apopa, department of El Salvador. According to sworn testimony from his mother, given at our offices on April 30, 1987, the capture was carried out by several soldiers, who identified themselves as elements of the First Infantry Brigade of the armed force, who took him to some unknown place. In January 1987, several neighbors of the mother of the captured man told her that they had seen him in a camouflaged army truck; some 15 days later, a brother of Najarro

Vivas saw him in another neighborhood, in the custody of members of the Treasury Police riding in a Cherokee vehicle. This testimony is consistent with that of other witnesses in the related cases of Jose Walter Chavez Palacios (Case 10.001) and Miguel Alfaro Carmona (Case 9999). However, the Treasury Police and the First Infantry Brigade deny that they are holding the young man. To date, his whereabouts are unknown.

Even though it has information clearly indicating the First Infantry Brigade and the Treasury Police as the parties responsible for these events, the Government of El Salvador has not taken worthwhile steps to clarify the whereabouts of the young man. In its response to this case, the government only says that, "even though the necessary steps have been taken by this agency to locate him, no positive results have been obtained." It does not specify what specific steps were taken.

We believe that it is important to view the lack of action by the government in this case within the framework of the cases of more than 7,000 disappeared Salvadorans during the nine year course of the war. The lack of protection of the rights covered in the American Convention, specifically Articles 4, 5, 7, and 8, in not bringing to justice the elements of the armed force and security forces indicated as the perpetrators of the crimes, has created an environment in which the permanent practice of this vile crime of disappearance can grow; accordingly, we believe that the Government of El Salvador is clearly violating its obligations under Article 1 of the American Convention, as well as the other articles mentioned above.

In view of this, we request the Inter-American Commission on Human Rights to continue its investigation of this case and to condemn the Government of El Salvador for its culpability in these events.

4. That on May 11, 1990, the Governmental Human Rights Commission of El Salvador advised that:

This office, has registered under Reference Number 1549-NV-86, attempts to determine the whereabouts of the youth, Wilfredo Najarro Vivas, 16 years of age, single, radio technician, resident of Colonia Chintuc, No. 2, of Apopa, who, on November 9, 1986 at about one in the morning was apprehended by a group of uniformed subjects wearing olive green and heavily armed, who took him away to parts unknown. To date his whereabouts continue to be unknown in spite of all search efforts that have been conducted by the Security Corps.

5. That the Commission adopted a Report N 6/90 on this case at its 77th Regular Meeting which was sent to the Government of El Salvador as well as to the claimant to allow both to make their respective observations if they so wished, in a period of sixty days commencing on May 29, 1990, the date of mailing, indicating that if observations were not made, the Report would be published in the Commission's Annual Report to the General Assembly.

CONSIDERING:

1. That the name of the victim, place and date of his arrest, and the parties who would appear to be responsible for having carried out this act are sufficiently specified, and thus the denunciation meets the formal requirements of admissibility.

2. That this matter, owing to its nature, is not susceptible to friendly solution.

3. That the statements provided by the claimant reveal that the young man, Wilfredo Najarro Vivas, was detained by a large group of military personnel who identified themselves as members of the First Infantry Brigade, and that he was later seen in the hands of the Treasury Police and that since his detention on November 9, 1986, no further information as to his whereabouts has been produced.

4. That numerous efforts have been made to find the affected person, without any of them having

produced positive results.

5. That the response from the Human Rights Commission (governmental) of El Salvador limits itself to indicating that the young man Wilfredo Najarro Vivas is not detained, but does not report that efforts have been made that would be helpful in clarifying the circumstances of such a notorious event as the raid of houses at the Colonia Quintu, Apopa, by a large group of soldiers, in order to proceed to identify them and to ascertain the whereabouts of the detained person.

6. That it is the obligation of the Salvadoran state to investigate exhaustively such a serious denunciation as the arrest and later disappearance of a 20 year old young man in order to protect his freedom and personal integrity and his right to life.

7. That the insufficiency of the response provided by the government to the Commission lends support to the truth of the denunciation of the claimant and demonstrates that it has not proceeded to investigate the denunciation formulated with the energy that this case demands.

8. That the Government of El Salvador has made no observation on the Report sent to it on May 29, 1990.

9. That the event denounced constitutes a violation of the rights to personal liberty, personal integrity and life, recognized by Articles 7, 5 and 4, respectively, of the American Convention on Human Rights, as well as a failure of duty to guarantee the free and full exercise of such rights as prescribed in Article 1.1 of the Convention, of which El Salvador is a party state.

10. That the General Assembly of the Organization of American States declared in its resolution AG/RES. 666 (XIII-0/83) that the forced disappearance of persons is an affront to the conscience of the hemisphere and constitutes a crime against humanity.

In view of which,

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
RESOLVES:**

1. To declare that the Government of El Salvador is responsible for violating the right to personal liberty and the life of Wilfredo Najarro Vivas, 20 years of age, through the acts of its agents who detained him at his domicile on November 9, 1986, since which time no information as to his whereabouts has been produced, all of which constitutes a violation of Articles 4 and 7 of the American Convention on Human Rights, of which El Salvador is a party state.

2. To ask the Government to accept the jurisdiction of the Inter-American Court of Human Rights in the specific case referred to in this report.

3. To recommend to the Government of El Salvador that it undertake an exhaustive investigation into the events in order to clarify the circumstances, in particular the whereabouts of Wilfredo Najarro Vivas, to identify those responsible and to bring them to justice.

4. To publish this report in its annual report to the General Assembly in accordance with Article 18 e. of the Commission's Statute.