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Title/Style of Cause:	Camilo Garcia Luis, Marta Odilia Raxjal Sisimit and Maria Esteban Sisimit v. Guatemala
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:	15 February 1991
Citation:	Garcia Luis v. Guat., Case 9858, Inter-Am. C.H.R., Report No. 4/91, OEA/Ser.L/V/II.79, doc. 12 rev. 1 (1990-1991)
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BACKGROUND:

1. On January 30, 1987, the Inter-American Commission on Human Rights received the following claim:

On January 25, 1987, at 11:40 a.m., in the vicinity of Zone 11 in the capital city of Guatemala, Camilo Garcia Luis, 18 years of age, payroll clerk at "La Providencia" Farm in Acatenango, Chimaltenango Department, was seized by heavily armed plainclothes men who took him away in a blue panel truck, license plate No. 46330. The abduction was witnessed by a member of his family.

On the afternoon of the same day, January 25, MARTA ODILIA RAXJAL SISIMIT, 22 years of age, wife of Camilo García Luis, reported the disappearance of her husband to the Fifth Police Brigade. On the following day, January 26, she made her report public by speaking to the news media and the "Grupo de Apoyo Mutuo", or GAM (Mutual Support Group). In the early hours of January 27, two days after the disappearance of her husband, she received an urgent telegram signed by the Fifth Police Brigade requesting that she report immediately for questioning or be fined Q.150.00. Therefore, at 5:00 a.m. on Tuesday the 27, she left her house and headed for the Fifth Brigade of the National Police. To date, her whereabouts are unknown.

At 7:30 a.m. on January 27, the same day on which Marta Odilia Raxjal Sisimit disappeared, MARIA ESTEBAN SISIMIT, 53 years of age, mother of Marta Odilia, was abducted 30 meters from her house by a group of men driving a vehicle with tinted one way glass, in the vicinity of 33rd Ave. and 27th Street, Zone 5, Guatemala City.

Mariano Raxjal Sisimit, son, brother, and brother-in-law of the detained/disappeared persons, has reported the occurrences to the GAM, the security forces, and the media, and was allegedly threatened for this reason by the F-2 (Military Intelligence Service) of Chimaltenango.

On the afternoon of January 30, 1987, the bodies of CAMILO GARCIA LUIS, MARTA ODILIA RAXJAL SISIMIT, and MARIA ESTEBAN SISIMIT, each of whom had been separately detained in

some way between January 25 and 27 by the Special Operations Command of the National Police of Guatemala, were found in Chimaltenango Department. According to the information available, immediately after these individuals were detained, the Mutual Support Group made persistent and repeated appeals to President Vinicio Cerezo, to the Fifth Brigade of the National Police of Chimaltenango, and to the Minister of the Interior, all of which proved fruitless.

All of the disappeared persons belong to a family of very limited means. They leave behind seven orphaned and homeless minor children.

It is also known that the Guatemalan authorities deny both that the individuals were detained and that the telegram was sent by the Fifth Brigade.

In light of these selectively targeted abductions, disappearances, and murders that fill an entire Guatemalan family with pain and anguish, we request the immediate intervention of the Inter-American Commission on Human Rights.

2. On January 30, 1987, the IACHR transmitted to the Government of Guatemala the pertinent portions of that statement.

3. On July 2, 1987, the Government of Guatemala responded to the request from the Commission by forwarding to it a copy of the investigation report prepared by the Ninth Judge of the First Penal Instructions Court, Executor of Personal Appearance in the Republic of Guatemala, Olegario Labbe Morales. That document stated that Camilo Garcia Luis had not been kidnapped, for a man with the same first name and last names testified that he was Camilo Garcia Luis, the object of the investigation. He stated that he did not know Marta Odilia Raxjal Sisimit, the wife of the victim, (who became a victim as well when she attempted to determine the whereabouts of her husband), the mother of Marta, and also did not know the other members of that family. A transcript of the summary report prepared by Magistrate Labbe appears below:

A. This court began its proceedings on February 9 of this year, on the basis of investigations conducted by agents of the Fifth Brigade of the National Police. That police department submitted a detailed written report thereon and attached a photocopy of the report submitted to it by MARTA ODILIA RAXJAL SISIMIT with a photograph of CAMILO GARCIA LUIS. In her statement MARTA ODILIA RAXJAL SISIMIT says that her husband CAMILO GARCIA LUIS disappeared on January 25 of this year and that he had worked as a payroll clerk at "La Providencia" Farm in the Municipality of Acatenango, Chimaltenango Department for three years.

B. On that same day (February 9 of this year) CAMILO GARCIA LUIS, who presented his identity card, series C-3, number 14663, issued by the Mayor of the Municipality of Acatenango, Chimaltenango Department, appeared before this court to testify.

C. In his statement, CAMILO GARCIA LUIS said he was reporting to the court because some agents from the Fifth Brigade of the National Police had gone to look for him at "La Providencia" Farm and told him that in the capital he had been reported missing and that the court was aware of this. In his statement he said he did not know Marta ODILIA RAXJAL SISIMIT, MARIANO RAXJAL SISIMIT, or MARIA ESTEBAN SISIMIT; that this was the first time he had come to the capital; that he had worked at "La Providencia" Farm in the Municipality of Acatenango, Chimaltenango Department, for about a year; that he had never been detained or missing; and that the photograph on the photocopy of the report was not of him.

D. On February 16 of this year, a statement was received from MARIANO RAXJAL SISIMIT, who said he was the son of MARIA ESTEBAN SISIMIT CUTZAL and brother of MARTA ODILIA RAXJAL SISIMIT and that he had never met CAMILO GARCIA LUIS or heard that name.

E. I state for the record that on the day on which CAMILO GARCIA LUIS appeared before the court, at his request I personally took him to "La Providencia" Farm and delivered him to the foreman, Juan Jerez Castellanos. To date I am continuing to investigate this case and awaiting the death certificates of MARTA ODILIA RAXJAL SISIMIT and MARIA ESTEBAN SISIMIT CUTZAL.

The Government of Guatemala's letter also included the aforementioned testimony of Mariano Raxjal Sisimit. According to the letter, he stated that he was not aware that his sister was married and did not know of her relationship with Camilo Garcia Luis. But he then clarified that one of his brothers, named Carlos Rudy, did know the spouse or living companion of Marta Odilia by the name of Camilo Garcia, and that through him he knew that Camilo Garcia Luis had slept in the house of his sister Marta Odilia the night before being kidnapped.

4. On July 29, 1987, a copy of the Government's reply with a photocopy of the appendices was sent to the petitioner.

5. On the same date, without prejudicing the submission of observations by the claimant, the Commission noted that the reply from the government made reference to the presumed clarification of the situation of only one person (Camilo Garcia Luis) but not to the other murdered persons. After explaining the contradictions noted in the reply, and in particular that the person of Camilo Garcia Luis, kidnapped and later found murdered, was not the same person to which the investigation of Judge Labbe referred, the Commission attempted through a variety of official channels to secure additional supplementary information in relation to the case in question.

6. Despite the Commission's clarifications to the Government of Guatemala about the latter's confusion of the identity of the murdered man Camilo Garcia Luis, the IACHR received additional communication on April 4, 1989, from that government reiterating statements by the judicial body and testimonial evidence signed by Mr. Camilo Garcia Luis to Judge Olegario Labbe, to the effect that Garcia Luis "had never been kidnapped." The Government's response also failed to provide anything new in connection with the murders of the Raxjal Sisimit family. The response stated again that the investigation surrounding Camilo Garcia Luis and the family of his wife had been exhausted, on the basis of the testimony of the man of the same name.

7. On April 7, 1989, during its 75th meeting, the Chairman of the Advisory Commission to the President of the Republic for Human Rights Affairs (COPADEH) made a presentation to a plenary session of the Commission. In view of the status of the case and the confusion regarding it, she offered to seek to renew the investigation upon her return to Guatemala. On the 12th of the same month, she remitted to the Commission a copy of the letter that COPADEH had sent to the Attorney General of the Nation and the Chief of Public Ministry of Guatemala, in which she stated the following:

I have the pleasure to present for your consideration the case of CAMILO GARCIA LUIS, MARTA ODILIA RAXJAL SISIMIT, and MARIA ESTEBAN SISIMIT, which has been brought before the Ninth Examining Magistrate of the Criminal Court of First Instance. This Commission has been able to determine that this is a case of different individuals sharing the same name. That is, because CAMILO GARCIA LUIS appeared before the court, the court determined that the alleged victim had shown up alive. But a comparison of the photograph of the body of CAMILO GARCIA LUIS and the photograph of the person who appeared in court giving the same name as the allegedly deceased man demonstrated that the two are separate individuals. Hence we consider it essential that the Ministry under your direction continue proceedings in this case until all remedies are exhausted, so as to thoroughly define the circumstances surrounding the events under investigation.

This proposal is of great importance to this Commission because the aforementioned case is one of those being handled by the Inter-American Commission on Human Rights of the OAS on a priority basis. The Inter-American Commission, therefore, trusts that the democratic regime of President Cerezo Arevalo will do its utmost to clarify the matter. In light of the above, I would be most appreciative if you would inform me of the action being taken by your Ministry in this regard, because it will determine to a great extent whether the distinguished institution mentioned above will refrain from issuing a resolution against

our country.

8. In view of the repeated requests from IACHR for information regarding the progress of the judicial inquiry, the Government of Guatemala, in a letter dated September 16, 1989, requested more time to submit to the Commission its reports on this case. Accordingly, the Commission decided in its 76th session to suspend consideration of the case until the following meeting. It instructed the Secretariat to renew requests for information from the Government of Guatemala.

9. After many discussions with the Permanent Mission of Guatemala to the OAS, and with the Advisory Commission to the President of the Republic for Human Rights Affairs (COPADEH), on May 11, 1990, the Government of Guatemala sent the Commission a letter containing summary information which is transcribed below.

Mr. Executive Secretary:

I have the pleasure to addressing you for the purpose of forwarding information on the kidnapping of Mr. CAMILO GARCIA LUIS and the murders of MARTA ODILIA RAXJAL and MARIA ESTEBAN SISIMIT.

In connection with this case, I take the liberty of informing you that the Supreme Court of Justice is drafting a detailed report on the status of that case:

Case NO. 9858 KIDNAPPING OF CAMILO GARCIA LUIS

January 25, 1987. Charge filed by Marta Odilia Raxjal Sisimit, before the Fifth Corps, sent to the Third Court of Criminal Peace in letter No. 762. The Third Court of Criminal Peace sent it to the Third Court, First Instruction Level, on January 29, 1987, as No. 674. Currently it is in the Third Court of First Instruction Level under the responsibility of the Third Officer, cause No. 914-87.

DOUBLE MURDER 1. Marta Odila Raxjal Sisimit and 2. Maria Esteban Sisimit.

Their bodies were found on January 30, 1987, at 9:00 a.m., at kilometer 90, Inter-American Highway, entry to Santa Apolonia, in the municipality of Chimaltenango. They showed signs of asphyxiation by obstruction of upper respiratory tracts. The Justice of the Peace of Tecpan prepared the required certificate. Taken up by the First Penal Sentence Hearing at Chimaltenango, cause 128-87, First Officer. The Ninth Court of the First Instruction Level prepared the act on the kidnapping on February 9, 1987. (Executing Judge, Personal Appearance, Olegario Labbe).

10. This obviously does not provide any additional information about the murders. The government's reply relies entirely on the original investigation of Magistrate Olegario Labbe. Since January-February 1987, no additional investigation has been carried out nor has there been any consideration given to the repeated efforts by the IACHR or the Advisory Commission to the President of the Republic for Human Rights Affairs (COPADEH).

11. Accordingly, the IACHR is left with the following bare facts. Three people were murdered in circumstances that could implicate the government. The petitioner alleged governmental responsibility and no facts available controvert the allegation. The government conducted a superficial and plainly irrelevant investigation for one of the victims and no investigation whatsoever for the other two. And this despite repeated requests and remonstrances by the IACHR.

CONSIDERING:

1. With regard to admissibility:

a. That the petition meets the formal requirements for admissibility contained in Article 46 (1) d) of the American Convention on Human Rights and Article 32 of the Regulations of the Inter-American Commission on Human Rights.

b. That despite repeated and unjustified delays, there has been no adequate investigation by the legal authorities. Under the circumstances the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. Moreover there has been unwarranted delay in rendering a final judgment.

c. That the charges are not pending in any other procedure under international arrangements and thus the case is not subject to the incompatibilities provided for in Article 46.(1) of the American Convention and Article 39.(1)(a) of the Regulations of the Commission.

d. That it is not a reproduction of an earlier petition already examined by the Commission or any other international agency and therefore, the requirements of Article 47.d of the Convention and Article 39.c) of the regulations of the Commission also do not apply.

2. With regard to Guatemala's investigation:

a. That the investigation conducted by the Government of Guatemala and the legal agency of that country is insufficient by any reckoning since it is based on the manifestly irrelevant testimony of an individual with the same first name and last names as the murdered Camilo Garcia Luis, who is obviously a completely different person from the deceased. The Magistrate Labbe saw the photographs of the two persons and could see that they did not even resemble one another. The witness did not know even by name the murdered women, Marta Odilia Raxjal Sisimit and Maria Esteban Sisimit, the wife and mother-in-law of the first victim, Camilo Garcia Luis. Moreover, this fact was reported to the government by the full Commission to its representatives during the 75th meeting.

b. That, despite the extensions granted to the Government of Guatemala to allow it to conduct a serious investigation, no satisfactory response has been received in connection with clarification of the murder of Camilo Garcia Luis and no explanation whatsoever has been given in connection with the kidnapping, disappearance, and later murder of his wife, Marta Odilia Raxjal Sisimit, and the mother of his wife, Maria Esteban Sisimit. To the contrary, the report received from the Supreme Court transcribes judicial actions initiated two years earlier which provide neither relevant information nor a solution.

c. That nothing has been offered by Guatemala in connection with the police summons sent to the wife of Camilo Garcia Luis, Marta Odilia Raxjal Sisimit, who was summoned to report to the Fifth Police Corps--in a telegram which the entire family saw and discussed--to clarify the circumstances in which her husband had been kidnapped, to which place the victim went on February 27, 1987, at which time she disappeared until her body reappeared along with the cadavers of her mother and Camilo Garcia Luis. Apparently these authorities have not even taken statements from the officers and lower personnel of the Fifth Police Corps who were on duty during the days on which the events occurred, or from the heads of that police agency, and no exhaustive inquiries have been conducted to determine who was the registered owner of the blue panel vehicle in which Camilo Garcia Luis was kidnapped.

d. That, in particular, the grave fact of the disappearance of almost an entire family, about which abundant information and details exist, should have prompted greater attention within the judiciary and, once this international procedure had been started, the Government of Guatemala as well.

3. That such denial of the right of judicial protection constitutes a violation of the rules contained in Article 25 of the American Convention.

4. With regard to Government of Guatemala's complicity in the murders:

a. That Marta Odilia Raxjal Sisimit went to the Second Police Corps of Guatemala as a result of the telegram that summoned her and that that police station is the last place where she was known to be before disappearing and being murdered.

a. That the Guatemalan government has not furnished information relevant to, not to speak of refuting, the petitioner's allegation of Guatemala police complicity in the murders.

b. That because the information presented by the claimant created the presumption that police

authorities participated in the material facts of the complaint while the information provided by the government was not pertinent and did not disprove the background information provided by the claimant, the Commission in accord with Article 42 of its regulations must believe that the material facts of the complaint are true.

5. With regard to friendly settlement:

a. That the material facts of the claim are not, by their nature, likely to be resolved by means of application of the friendly settlement procedure provided for in Article 48, paragraph 1, letter f, of the American Convention on Human Rights and Article 45 of the Regulations of the Commission.

b. That since the friendly settlement procedure is not applicable, the Commission must comply with the provisions of Article 50, clause 1, of the American Convention on Human Rights and issue its opinion and conclusions on the matter submitted to it for consideration.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
In exercise of the powers invested in it,
RESOLVES:

1. To declare that the Government of Guatemala has violated Articles 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), and 25 (right to judicial protection), pursuant to Article 1.1, embodied in the American Convention on Human Rights, of which Guatemala is a State Party, in connection with the kidnapping and later murder of Camilo Garcia Luis, Marta Odilia Raxjal Sisimit, and Maria Esteban Sisimit.

2. That Guatemala must pay fair compensation to the families of the victims.

3. To recommend to the Government of Guatemala that it conduct an exhaustive and impartial investigation of the events denounced to determine the individuals responsible for the murder of the members of that family and to bring them to justice;

4. To recommend to the Government of Guatemala that it likewise investigate the behavior of the judicial magistrates who intervened in this process and to report on this matter to this Commission, and to also investigate the findings of the investigation into the murder of Camilo Garcia Luis, Marta Odilia Raxjal Sisimit, and Maria Esteban Sisimit, within a term of 90 days as from this report.

5. To request that the Government of Guatemala guarantee the safety and necessary protection to Mariano Raxjal Sisimit, son, brother, and brother-in-law of the persons detained, disappeared and murdered, and to the rest of this family, as well as to all those persons who served as witnesses or in any other way aided in the conduct of the investigation of this case.

6. To include this report in the next annual report to the General Assembly of the Organization of American States unless the aforementioned response is received within the term set.

7. To communicate this report to the Government of Guatemala and to the petitioners, who are not authorized to publish it.