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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 62/90; Case No. 9961
Session:	Seventy-Ninth Session (11 – 22 February 1991)
Title/Style of Cause:	Jose Maria Garcia Portillo 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:	22 February 1991
Citation:	Garcia Portillo v. Guat., Case 9961, Inter-Am. C.H.R., Report No. 62/90, OEA/Ser.L/V/II.79, doc. 12 rev. 1 (1990-1991)
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BACKGROUND:

1. On March 17, 1987, the Inter-American Commission on Human Rights received the following complaint:

Jose Maria Garcia Portillo, the Mayor of Chiquimula, was illegally and arbitrarily detained by security forces as he rode in his vehicle to Guatemala City, on August 10, 1986, since which date his whereabouts are unknown.

At this time, he is considered disappeared.

Writs of habeas corpus have been filed unsuccessfully on his behalf with the head of the judicial branch.

2. In a letter dated April 24, 1987, the pertinent parts of this charge were transmitted to the Government of Guatemala. The government was requested to provide pertinent information on the material events of that letter and to provide any other background information that would make it possible to determine whether in the case of this petition the remedies of domestic jurisdiction had been exhausted. The government was given a term of 90 days to reply to the request for information from the Commission.

3. No reply was received and the legal term for the reply had lapsed despite informal personal efforts with officials of the Guatemalan mission to the OAS and the Advisory Commission of the President of the Republic (COPADEF). Therefore, the Inter-American Commission on Human Rights reiterated, on August 17, 1987, March 4, 1988, and February 17, 1989, appropriate notes of request for information to the Government of Guatemala.

4. Nor did the Commission receive any response to its prior notes and therefore on July 6, 1990, the Commission sent another letter to the Government of Guatemala reiterating its request for information and warning that if such information were not received within a period of 30 days it would consider the

application of Article 42 of the Commission's Regulations which presumes as true the allegations contained in the complaint, as long as other evidence does not lend to a different conclusion.

5. In addition, the Commission has made a number of direct efforts to resolve this case, without success, with the President's Advisory Commission on Human Rights (COPADEH) in July of 1989 and February 1990, as well as with members of the Permanent Mission of Guatemala to the OAS in Washington, whose officials in April, 1989 and finally in May, 1990 appeared at the Commission's headquarters to discuss pending cases in which the IACHR had protested the Government of Guatemala's lack of cooperation. On this last occasion the Government was again provided with copies of the relevant correspondence on this case. On an earlier occasion the Commission had sent the same files to the Foreign Ministry by facsimile.

CONSIDERING:

1. That the petition meets the formal requirements of admissibility contained in the American Convention on Human Rights and in the Regulations of the Inter-American Commission on Human Rights.

2. That in this case it is obvious that the petitioner has not been able to achieve effective protection from the courts and thus the requirements relating to exhaustion of remedies under internal jurisdiction do not apply.

3. That the procedure of friendly settlement to which Articles 48 clause f) and 45 of the American Convention and the Regulations of the Commission, respectively, does not apply to this case.

4. That the petition is not pending any other procedure under international arrangement nor is it a duplication of an earlier petition already examined by the Commission.

5. That all efforts have been made in this case to obtain from the Government of Guatemala adequate information in relation to the disappearance of the mentioned person and all the legal and regulatory provisions, as established in the Convention and Regulations of the Commission, have been exhausted.

6. Having provided no response the Government of Guatemala has failed to fulfill its international obligation to provide information to the Commission within a reasonable time frame as provided for in Article 48 of the American Convention.

7. That the General Assembly of the Organization of American States declared in Resolution 666 (XIII-0/83) and Resolution 742 (XIV-0/84) that "the forced disappearance of persons is an affront to the conscience of the hemisphere and constitutes a crime against humanity."

8. That the Commission has not found any information that allows it to reach a different conclusion.

9. That the Commission, in its report to the General Assembly for 1987, discussed the excesses that were being committed by means of the practice of kidnapping and forced disappearance of persons, of which the statistical information provided by the very National Police of Guatemala was incontrovertible proof.

10. That Article 42 of the Regulations of the Commission established the following:

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,

In exercise of the powers invested in it,

RESOLVES:

1. To presume true the facts reported in the petition relating the illegal detention by security forces of the Government of Guatemala and the later disappearance of Jose Maria Garcia Portillo.
2. To declare that the Government of Guatemala has failed to fulfill its obligations to respect the human rights and guarantees contemplated in Article 1 of the American Convention on Human Rights to which Guatemala is a party.
3. To declare that the Government of Guatemala has violated Articles 4 (right to life) and 7 (right to personal liberty).
4. To recommend to the Government of Guatemala that it undertake a full and impartial investigation to determine the responsibility for the crimes denounced and, in accordance with Guatemalan law, punish those responsible for them and pay just compensation to the family members of the victims.
5. To communicate this report to the Government of Guatemala and to the petitioner with the request that they do not publish it.
6. If within a period of 90 days, the Government of Guatemala fails to implement the recommendations contained in operative paragraph number 4 above, the Commission shall publish this report in its Annual Report to the General Assembly of the Organization of American States pursuant to Article 63 g. of its Regulations.