

WorldCourts™

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 10/92; Case No. 10.257
Session: Eighty-First (3 – 14 February 1992)
Title/Style of Cause: Rosa Marta Cerna Alfaro and Ismael Hernandez Flores v. El Salvador
Doc. Type: Report
Decided by: Chairman: Marco Tulio Bruni Celli;
First Vice Chairman: Oscar Luján Fappiano;
Second Vice Chairman: Michael Reisman;
Members: Oliver H. Jackman; Leo Valladares Lanza; Patrick L. Robinson;
Alvaro Tirado Mejía.
Dated: 04 February 1992
Citation: Cerna Alfaro v. El Sal, Case 10.257, Inter-Am. C.H.R., Report No. 10/92,
OEA/Ser.L/V/II.81, doc. 6 rev. 1 (1991)

Terms of Use: Your use of this document constitutes your consent to the Terms and
Conditions found at www.worldcourts.com/index/eng/terms.htm

HAVING SEEN:

1. The petition received by the Inter-American Commission on Human Rights in October 1988, to the effect that:

Rosa Marta Cerna Alfaro, a single woman 38 years of age who works as a domestic, domiciled in Tres Ceibas district in the Apopa jurisdiction, personal identification number 11.08.63.20, issued in El Salvador, was captured at 1:30 p.m. on January 13 of this year, while at home at the aforementioned address.

Also seized was Ismael Hernandez Flores, a former political prisoner. Both were taken away by uniformed soldiers from the Atlacatl Battalion, who did not tell them why they were being apprehended, only that they had to accompany them. They took them away in the direction of the mountain. The soldiers then told the two to sit down there and asked them if they knew who had hidden two valises that the soldiers said they found that appeared to contain medicine. Specifically, they spoke to Rosa Marta Cerna, who said she knew nothing. They then took her to the First Brigade to make a statement about who had taken that medicine. They continued to walk in the direction of the mountain, until they reached the place called La Ponderosa, near La Chintu, in the jurisdiction of Apopa. The soldiers radioed someone and shortly thereafter a red pick-up appeared. The soldiers put the two people inside, covering them with sacks so that no one could see them. They took them to the Apopa Command Post, where they remained until 5:00 p.m. that day, which was the same day they were captured. There, no one asked them anything; they simply blindfolded them and radioed to say they had found two valises. The two were put into the pick-up again, which headed for the San Carlos Headquarters (First Infantry Brigade). They arrived at about 7:30 p.m., whereupon they were blindfolded again. Upon arrival the soldiers said that the valises had been confiscated from the two, which Cerna denied, saying that she did not know where the soldiers got the valises.

They were then locked up in separate rooms and the next day Rosa Marta Cerna was taken out to make a statement. They began to interrogate her, asking her if it was true that she worked for the guerrilla

movement. She told them she did not, but they insisted that she knew certain people. They began to mentioned names, and she told them that she really did not know the names at all.

In the interrogation they told her that she was the woman of one of the rebel commanders, which she denied. At no time did she admit to the false charges leveled against her in the interrogation. On Thursday the interrogations became more intimidating. The interrogator ordered Rosa Marta Cerna to take off her clothes, leaving her completely nude. Then he began to touch her, asking her if she wasn't ashamed; even so, she did not want to say anything, this was part of the psychological threats.

That same night a uniformed soldier told her he would give her some medicine that they had at the clinic at the post, since she had a fever. In fact they did give her the medicine. A few hours later she heard soldiers' voices and the sound of the padlock on the room where she was being held. They were saying: "Okay, either you go in or I go in." Moments later a uniformed soldier came in and sexually assaulted her.

She was then subjected to physical torture. She was kept blindfolded day and night, with the electric light and the air conditioning on the entire time. On Monday, January 18, someone came to her and told her that she had to cooperate with them and that if she agreed she would have to stay in contact with the Apopa Command Post; he said that she could leave her information there. If she didn't want to do it that way, they would give her a contact, one of their people either in Apopa or in San Salvador. If not, she could give them the information by phone. They would give her money in exchange for information and cover her children's needs. She refused all of this. At noon that same day, she was released, turned over to people from the government Human Rights Commission.

2. In a note dated November 1, 1988, the Commission began its processing of the case and, therefore, requested the Government of El Salvador to furnish the pertinent information on the facts reported in that communication and any other information that would make it possible to determine whether the remedies under domestic law had been exhausted in the instant case; the Government was given 90 days in which to reply.

3. On January 24, 1989, the petitioner sent additional information, the pertinent parts of which are as follows:

That the former was taken on January 13, 1988, in the "Tres Ceibas" district of the Jurisdiction of Apopa, by soldiers from the Atlacatl Battalion of the Armed Force. She was first taken to the Headquarters of the First Infantry Brigade, in San Salvador. According to her testimony, she was subjected to long periods of interrogation for the tacit purpose of breaking her will. She was even sexually assaulted on one occasion.

On January 15 she was taken to the Central Headquarters of the National Police in San Salvador, where she was subjected to the same interrogation via the same methods of torture that we reported earlier. She was released on January 18, past the 72-hour limit that the law allows the apprehending authorities to hold someone in custody. By law the person apprehended must be either released or brought before the competent courts, depending on the evidence.

With respect to the second one, he was captured on the same date and in the same place as the preceding one, and by the same soldiers. He was released on February 21, after lengthy interrogation and nine days of detention, clearly in excess of the 72 hours period we alluded to previously.

We believe that even though the victims were released, the case is still important for the Inter-American Commission on Human Rights, since it constitutes irrefutable proof of the unlawful arrests that the Armed Forces and, therefore, the Salvadoran Government are conducting. This shows that it is common practice here to hold a person for more than the 72-hour period, which is itself a form of torture since the unlawful detention is a means of physical coercion to force people to testify against themselves, which is a violation of Articles 5, 7 and 8 of the American Convention.

4. On March 7, 1989, the additional information the petitioner had supplied to the Commission was sent to the Government of El Salvador, which was given 30 days in which to respond.

5. Through notes dated July 10 and 18, 1989, the Government of El Salvador replied, reporting that:

Rosa Marta Cerna Alfaro and Ismael Hernandez Flores. In the case of Rosa Marta Cerna Alfaro, it has been learned that she was taken by soldiers from the First Infantry Brigade, in the canton of Tres Ceibas, Jurisdiction of Nejapa, in the Department of San Salvador, on January 13, 1988, for being an active collaborator of terrorist groups. On January 14, she was sent to the Central Headquarters of the National Police, where she was released on January 18 and turned over to delegates from this Commission. When they interviewed her, Ms. Cerna Alfaro told them that everywhere she had been held she had been treated well both by those who apprehended her and those who interrogated her.

As for Ismael Hernandez Flores, he was captured by members of the First Infantry Brigade on January 13, 1988, in the city of Apopa, kilometer 14 on the Main North Highway, for the crime of being an FPL terrorist. His pseudonym was "Orlando." He was released on January 21, 1988, and turned over to his family.

6. At its 79th session, the Commission adopted Report N° 19/91, which was dispatched to the Government of El Salvador so that it might formulate whatever observations it deemed appropriate, within three months of the date of dispatch. The report indicated that if the case was not settled by the Government, or submitted by it to the Court, the Commission would decide whether to publish the report.

WHEREAS:

1. The Commission is competent to hear the present case, as it involves violations of human rights recognized in the American Convention on Human Rights--Article 5 on the right to humane treatment and Article 7 on the right to personal liberty--as provided under Article 44 of that Convention, of which El Salvador is a State Party.

2. The petition satisfies the formal requirements for admissibility as stipulated in the American Convention on Human Rights and in the Regulations of the Commission.

3. The petition is not pending action in any other international arrangement and is not a restatement of a petition already examined by the Commission.

4. In the instant case, it is obvious that the aggrieved parties were unable to secure effective protection from the organs having jurisdiction, so that the requirements on exhaustion of the remedies under domestic law, contained in Article 46 of the Convention, do not apply.

5. This case shows that there is a practice in El Salvador whereby arrests are made without following the legal and constitutional formalities required to hold an individual in custody for a period longer than the law allows; during while persons are held in administrative custody, interrogations are conducted using physical and psychological torture to extract extrajudicial confessions.

6. Ms. Cerna and Mr. Hernandez were held considerably longer than the 72 hours allowed under Salvadoran law for administrative custody; before those 72 hours have expired, the individual being held in custody must be either released by the authorities or brought before the competent courts, according to the evidence alleged.

7. Despite the time that has passed and the Commission's overtures, the Government has not supplied a satisfactory reply concerning the facts in the instant case. In effect, the content of the note sent through the (government) Human Rights Commission admits that the arrests were made, but neither makes any reference to nor refutes the very serious assertions regarding the torture and other cruel,

inhuman and degrading treatment to which Ms. Cerna and Mr. Hernandez were subjected; it also fails to explain why they were held in custody so long.

8. The Salvadoran authorities never contacted either the International Committee of the Red Cross or any other humanitarian body to have the health of the prisoners checked, either at the time of their arrest, while they were in custody, or at the time they were released, to make an effective and reliable verification of their physical and psychological condition.

9. Since the friendly settlement procedure provided for in Article 48.1.f of the American Convention does not apply because of the nature of the facts denounced, the Commission must comply with Article 50 paragraph 1 of the Convention and so issue its conclusions and recommendations on the petition submitted to it for consideration.

10. That the Government of El Salvador has not submitted observations on Report N° 19/91.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
RESOLVES:

1. To declare that the Government of El Salvador is responsible for the violation of the rights to humane treatment and personal liberty (Articles 5 and 7 of the Convention) of Rosa Marta Cerna Alfaro and Ismael Hernandez Flores, according to the communication received at the Commission in October 1988.

2. To declare that the Government of El Salvador has failed to comply with its obligations under Article 1 of the American Convention on Human Rights, to respect human rights and fundamental guarantees.

3. To make the following recommendations to the Government of El Salvador, based on Article 50.3 of the American Convention and Article 47 of the Regulations of the Commission:

a. That it conduct a thorough, swift and impartial investigation into the facts denounced in order to identify those responsible and bring them to trial, so that they may receive the punishment that such grave conduct warrants.

b. That it adopt the measures necessary to avoid similar acts from being committed hereinafter.

c. That it make reparations for the consequences of the situation created by the transgression of the aforementioned rights and pay a fair compensation to the injured parties.

4. Request the Government of El Salvador to inform the Commission regarding the measures it is adopting in the present case, in accordance with the recommendations formulated in paragraph 3 of the operative part of this report.

5. Publish this report by including it in the Annual Report to be presented to the General Assembly, in accordance with Article 48 of the Regulations of the Commission; since the Government of El Salvador did not inform the Commission of the measures it has taken to remedy the situation, within the period prescribed in Report N° 19/91.