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Title/Style of Cause:	Francisco Hernandez Quintanilla, Juan Armando Martinez, and Jose Antonio Zarpate Juarez 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:	Hernandez Quintanilla v. El Sal., Case 10.103, Inter-Am. C.H.R., Report No. 4/92, OEA/Ser.L/V/II.81, doc. 6 rev. 1 (1991)
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HAVING SEEN:

1. The petition received by the Inter-American Commission on Human Rights, dated September 9, 1987, to the effect that:

On June 29, 1987, three persons working for the Bella Vista Ranch, Guadalupe canton, Apopa, El Salvador, were taken by soldiers attached to the First Infantry Brigade stationed at San Carlos Base, San Salvador. The cases are as follows:

Francisco Hernandez Quintanilla, 31 years of age, married, a hired hand on the ranch in question, whose habitual domicile was in Las Delicias Canton in the jurisdiction of Apopa. His mother, Estebana Hernandez, was a witness when he was seized; in a sworn statement made before the non governmental Commission on Human Rights of El Salvador, she stated that at the San Carlos Base, there were conflicting reports on his seizure.

One soldier, a family acquaintance, hinted that he was there. Letters were sent to Colonel Oscar Campos Anaya, Commandant of the Headquarters of the First Infantry Brigade, to inquire about Hernandez Quintanilla's seizure, but without result.

On July 1 and July 9, petitions of habeas corpus were filed, but without result.

The most notable fact is that on July 2, COPREFA (Salvadoran Armed Service Press Committee) issued a press release reporting that Hernandez Quintanilla and two others taken at that same place on that same date, had been kidnapped by guerrillas.

Juan Armando Martinez, age 52, who was living with someone and working on the Bella Vista ranch, was taken away by the same soldiers who had taken Hernandez Quintanilla on June 29. Numerous witnesses and other workers on the ranch watched as he was taken away. A number of military bases and political organizations denied that he was being held. A petition of habeas corpus was filed on July 9, but without result. A COPREFA press release dated July 2 reported that he was taken by guerrillas.

Jose Antonio Zarpate Juarez, age 45, who was living with someone and working at the ranch as a clerk,

was seized on June 29 by armed elements in civilian attire, who later joined up with the soldiers from the First Infantry Brigade.

All those working on the ranch witnessed his being taken. In a sworn statement, his longtime companion gave the details of his seizure and of her futile inquiries with military posts and political organizations in El Salvador. On July 9, a petition of habeas corpus was filed with the Supreme Court of Justice, as in the previous cases. The Armed Service says that Zarpate Juarez was kidnapped by guerrillas (...);

2. That in a note dated October 21, 1987, the Commission began processing this case and asked the Government of El Salvador to supply the pertinent information on the facts reported in that communication and any other information that would show that the remedies under domestic law had been exhausted in the case in question; the Commission told the Government that it had 90 days in which to answer that request;

3. That on July 11, 1988, the Commission again asked the Government of El Salvador for information on the investigations being conducted into the instant case, and set a 30-day period for the Government's response;

4. That in November 1988, the Government of El Salvador replied, reporting that:

Under No. 1631-Mc-87, the CDH has on record the measures taken to investigate the apprehension of Juan Armando Martinez Cano, Jose Antonio Zarpate Juarez, and Francisco Hernandez (...) who, at around 9:30 a.m. on June 29, 1987, were apprehended at the Bella Vista Ranch by a group of approximately eight, heavily armed individuals in civilian dress. They took them away on foot, headed for the road from Ayutuxtepeque to Mejicanos. Miss Blanca Estela Morales Martinez, the daughter of Mr. Martinez Cano, reported what had happened. She had heard the news reports put out by the Armed Service Press Committee (COPREFA) to the effect that the individuals in question had been kidnapped by terrorists, which she said was false. On the day the men were taken, she saw a large number of Army troops in the lower reaches of the ranch; some were changing out of their camouflage fatigues into civilian clothing. This Commission made inquiries to ascertain the whereabouts of the men, but thus far has found nothing.

5. That on May 3, 1989, the petitioner sent additional information and observations on the Government's reply, which were forwarded to the authorities of El Salvador on June 21, 1989, with 30 days in which to send in its observations. The pertinent parts of the information supplied by the petitioner read as follows:

All of the evidence points to the fact that troopers from the First Infantry Brigade of the Armed Force, in civilian dress and backed up by troopers in uniform, kidnapped the three men; around the time the first two were taken, the workers on the Bella Vista Ranch saw members of the First Infantry Brigade of the National Army in the vicinity of the coffee groves; one witness said that when the men in civilian dress took the kidnapped men away, they were followed by uniformed soldiers; people in the vicinity say that the First Infantry Brigade frequents that particular spot. Moreover, when relatives of Francisco Hernandez Quintanilla went to the headquarters of the First Infantry Brigade asking for information about Mr. Hernandez Quintanilla's legal situation, they were told that their relative was being held there; later that same day, however, another soldier contradicted this report, and denied that he was being held there. The three men have not appeared to date; various inquiries to ascertain his whereabouts have turned up nothing.

In its brief reply on this case, the Government alludes to a report put out by the Armed Force Press Committee (COPREFA) that states that the three were "kidnapped by terrorists," a version that relatives dismiss. According to the government Human Rights Commission, it "made inquiries to ascertain the whereabouts of the men, but thus far has found nothing." It does not specify the nature of the inquiries conducted (...);

6. That in communications dated February 12, 1990, March 22, 1990, November 13, 1990, and finally, January 17, 1991, the Commission repeatedly asked the Government of El Salvador to forward its observations, but has yet to receive any reply.

7. At its 79th session, the Commission adopted Report N° 13/91, which was dispatched to the Government of El Salvador so that it might formulate whatever observations its 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.

CONSIDERING:

1. That the Commission is competent to hear the present case inasmuch as it involves violations of rights recognized in the American Convention on Human Rights--Article 4 on the right to life, Article 7 on the right to personal liberty, and Article 25 on the right to judicial protection--as provided under Article 44 of that Convention, of which El Salvador is a State Party.

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

3. That the petition is not pending settlement in any other international proceeding and is not a restatement of a previous petition that the Commission has already examined.

4. That in the instant case, the petitioner has not been given effective protection by the competent organs, as evidenced by a number of facts, among them the following: the petitions of habeas corpus filed with the Supreme Court of Justice of El Salvador produced no results; and in its reply of November 1988, the Government itself, through its Human Rights Commission, stated that it "made inquiries to ascertain the whereabouts of the men, but thus far has found nothing." Therefore, the requirements concerning exhaustion of remedies under domestic law, contained in Article 46 of the Convention, do not apply.

5. That the note that the Government sent in reply in November 1988 provides no information whatever concerning the situation of the men who disappeared, nor does it take issue with the facts as the petitioners reported them to the Commission. To the contrary, it makes specific reference to the statements made by the daughter of Mr. Martinez Cano to the effect that they were not kidnapped by terrorists: "on the day the men were taken, she saw a large number of Army troops in the lower reaches of the ranch; some were changing out of their camouflage fatigues into civilian clothing." Further, despite the time that has passed and the repeated overtures made by the Commission, the Government of El Salvador has not forwarded any further response to the facts denounced in this case.

6. That according to the text of the petition and the information supplied by eyewitnesses to the events, Mr. Hernandez Martinez and Mr. Zarpate were taken away by members of the Army who were seen while they were changing out of uniform and putting on civilian clothes, thereby revealing the technique used by members of the Armed Service to conceal their actions and avoid the blame that they deserve for their part in committing acts that were a deliberate violation of the victims' human rights.

7. That the Commission has repeatedly expressed its categorical repudiation of the grave phenomenon of forced disappearance, stating in various documents that:

... this practice is cruel and inhuman... forced disappearance not only constitutes an arbitrary deprivation of liberty, but also a very severe threat to the personal integrity, security and the very life of the victim.

[FN1]

[FN1] Cf. Annual Report 1978, 1980-1981, 1982-83, 1985-86, 1986-87.

8. That for its part, the General Assembly of the Organization of American States has adopted numerous resolutions wherein it has underscored the fact that countries where forced disappearances have occurred must put an immediate end to this practice, and has urged the governments to take the measures necessary to ascertain the situation of these people. The General Assembly has also declared that the forced disappearance of persons in the Americas is a crime against humanity. [FN2]

[FN2] Cf. AG/RES. 443 (IX-0/79), AG/RES.510 (X-0/80), AG/RES.543 (XI-0/81), AG/RES. 618 (XII-0/82), AG/RES. 666 (XIII-0/83), and AG/RES. 742 (XIV-0/84).

9. That in a judgment of July 29, 1988, in the Velasquez Rodriguez case, the Inter-American Court of Human Rights stated the following:

The practice of disappearances, in addition to directly violating many provisions of the Convention (...), constitutes a radical breach of the treaty in that it shows a crass abandonment of the values which emanate from the concept of human dignity and of the most basic principles of the inter-American system and the Convention (...). [FN3]

[FN3] Cf. Inter-American Court of Human Rights, Velasquez Rodriguez Case, Judgment of July 29, 1988, Series C. No. 4, paragraph 158.

10. That since the friendly settlement procedure provided for in Article 48.1.f. of the American Convention is not applicable because of the very nature of the facts denounced, the Commission must comply with the provisions of Article 50.1 of the Convention by issuing its conclusions and recommendations on the petition filed for its consideration,

11. That the Government of El Salvador has not submitted observations on Report N° 13/91.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
RESOLVES:

1. To declare that the Government of El Salvador is responsible for the violation of the right to life, the right to personal liberty and the right to judicial protection (articles 4, 7, and 25 of the Convention) of Mr. Francisco Hernandez Quintanilla, Mr. Juan Armando Martinez, and Mr. Jose Antonio Zarpate Juarez, who disappeared on June 29, 1987, after being seized at their place of work, the Bella Vista ranch, Guadalupe Canton, Apopa, El Salvador, by soldiers of the First Infantry Brigade, according to the communication received by the Commission on September 9, 1987.

2. To declare that the Government of El Salvador has not complied with its obligations to respect the human rights and fundamental guarantees, pursuant to Article 1 of the American Convention on Human Rights.

3. To make the following recommendations to the Government of El Salvador, pursuant to Article

3.3 of the Convention and Article 47 of the Commission's Regulations:

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

b. That it adopt the measures necessary to avoid a reoccurrence of such events in the future.

c. That it make reparations for the consequences of the violation of the aforementioned rights and pay the injured parties fair compensation.

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° 13/91.