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Institution: Inter-American Commission on Human Rights
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Session: Eighty-First (3 – 14 February 1992)
Title/Style of Cause: Manuel de Jesus Munguia Choto 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: Munguia Choto v. El Sal., Case 10.284, Inter-Am. C.H.R., Report No. 11/92, OEA/Ser.L/V/II.81, doc. 6 rev. 1 (1991)
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HAVING SEEN:

1. The complaint received by the Inter-American Commission on Human Rights, dated October 27, 1988, to the following effect:

Manuel de Jesus Munguia Choto, 23 years of age, was wounded on June 11, 1988, by an individual by the name of Claudio Perez, who cut him on the head, arms and hands.

The incident occurred at a dance in Las Moritas, in the Colon jurisdiction of the Department of La Libertad, El Salvador. The victim was aided by persons who knew what had happened and took him to the San Rafael de Nueva San Salvador Hospital, in La Libertad, where he received the medical attention he required.

The assailant, Claudio Perez, not only inflicted physical and emotional injury upon Munguia Choto, but then went to the National Guard Station at Lourdes, in the Colon jurisdiction of the Department of La Libertad, to report that his victim was a "guerrilla," whereupon agents of that law enforcement body appeared in the operating room to "guard him."

In a related incident that occurred at 9:00 that same night, members of the National Guard searched the home of his longtime companion; they told her "they were going to search her house because they had been told that he had weapons and grenades there." When they failed to find what they were looking for, the same members of the National Guardsmen said: "Ah, that little bastard is going to die."

Munguia Choto was held in custody until June 14, when members of the National Guard demanded that the Hospital employees release him. Those same agents took the wounded man to the National Guard post at Lourdes in La Libertad.

When relatives of Munguia Choto went to the hospital to visit him, they were told what had happened, whereupon they went to the National Guard post at Lourdes; there they were told that their relative "had grabbed one of the National Guardsman's weapons and had killed himself."

The body of Munguia Choto had a wound in the occipital region where a bullet had entered, and another in the frontal region where the bullet had exited. The National Guardsmen who had him under guard were

transferred from that post (...).

2. Through a note dated January 24, 1989, the Commission began its processing of the case and requested the Government of El Salvador to supply the pertinent information on the facts denounced in that communication and any other information that would show whether the remedies under domestic law had been exhausted in the case in question; the Commission informed the Government that it had 90 days in which to reply.

3. On June 21, 1989, the Commission reiterated its request to the Government of El Salvador, noting that should no reply be received within 30 days, it would begin to consider the possibility of applying Article 42 of its Regulations whereby the facts reported in a petition would be presumed to be true should the government in question fail to supply the necessary information within the time period stipulated by the Commission. The Commission enclosed additional information supplied by the petitioner, the pertinent parts of which are as follows:

According to an eyewitness, Manuel de Jesus Munguia Choto was wounded by Claudio Perez on Saturday, June 11, 1988. (...)

The photograph shows that the body had an entry wound in the frontal region; his longtime companion states that the serious injuries on his arms and elsewhere on his body were such that he was unable to move on his own. Therefore, Mr. Munguia Choto did not have the physical strength to fight anyone, much less use a heavy weapon to kill himself.

Another witness states that he saw Claudio Perez wound Mr. Munguia Choto and, because he was a friend of the victim, the assailant accused him of being a member of a group called "Cerita," which was the victim's nickname.

From statements made by two witnesses, one concludes that Claudio Perez was being protected by the National Guard of Colon. (...)

Members of the National Guard deliberately demanded that Munguia Choto be released from the hospital, guarded him while he was receiving medical treatment and took him to the National Guard post, even though his health condition was delicate.

At the very time Mr. Munguia Choto was wounded and taken to the hospital, members of the National Guard or their supervisor deliberately searched his home and his longtime companion was threatened by National Guardsmen.

4. On November 13, 1990, the Commission again asked the Government of El Salvador to supply information on the investigations being conducted into the case of Mr. Manuel de Jesus Munguia Choto and, after pointing out its earlier requests, the Government was advised that it had 60 days in which to reply.

5. When no reply was forthcoming from the Government of El Salvador, the Commission sent it one last note on January 17, 1991, wherein it warned it of the application of Article 42 of the Regulations and gave it 30 days in which to reply.

6. At its 79th session, the Commission adopted Report N° 20/91, 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.

CONSIDERING:

1. That the Commission is competent to hear the present case inasmuch as it concerns violations of rights upheld in the American Convention on Human Rights--Article 4 on the right to life and Article 5

on the right to humane treatment--as provided under Article 44 of the 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 in the instant case, it is evident that the petitioner has not been able to secure effective protection from the competent agencies, so that the requirements concerning exhaustion of remedies under domestic law, contained in Article 46.2.b of the Convention, do not apply.

4. That the Government of El Salvador has not challenged the admissibility of the complaint because of the failure to exhaust local remedies in this case, by which it can be assumed that it has tacitly waived this challenge, according to the jurisprudence of the Inter-American Court of Human Rights.

5. That the subject of the communication is not pending settlement in another international proceeding and is not a restatement of a previous communication already examined by the Commission.

6. That despite the time that has passed and the repeated overtures made by the Commission, the Government of El Salvador has not responded to the facts denounced in the instant case.

7. That by not responding, the Government has failed to comply with its international obligation to supply the Commission with information within a reasonable time period, as provided in Article 48 of the Convention.

8. That Article 42 of the Regulations of the Commission provides 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.

9. That 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, and in the absence of any response from the Government, the Commission must comply with the provisions of Article 50, paragraph 1 of the Convention, by issuing its findings and recommendations on the petition presented to it for consideration.

10. That the Government of El Salvador has not submitted observations on Report N° 20/91.

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

1. To presume to be true the facts denounced in the petition of October 27, 1988, in connection with the extra judicial execution of Manuel de Jesus Munguia Choto, in Lourdes, Department of La Libertad, El Salvador, on July 14, 1988, while he was in the custody of the National Guard at that post.

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

3. To declare that such acts constitute violations of the right to life and the right to humane

treatment, recognized in Articles 4 and 5 of the American Convention.

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

- a. To conduct a thorough, rapid and impartial investigation into the facts denounced, in order to bring those responsible to justice so that they may receive the punishments warranted by such grave conduct.
- b. To adopt the necessary measures to prevent such crimes in the future.
- c. To make reparations for the consequences of the violation of said rights and to pay the next-of-kin a just indemnity.

5. 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 4 of the operative part of this report.

6. 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° 20/91.