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Title/Style of Cause:	Erik Felipe Romero Canales v. El Salvador
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Decided by:	Chairman: Marco Túlio 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:	Romero Canales v. El Sal., Case 10.571, Inter-Am. C.H.R., Report No. 15/92, 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 May 10, 1990 and June 14, 1990, whereby:

At 4:00 p.m. on November 18 of last year (1989), in the La Ermita I Development, Apopa, uniformed soldiers from the First Infantry Brigade arrested Erik Felipe Romero Canales, a 17-year-old student, when he was some two blocks from his home at First Avenue North, Block C22 in that development, in the jurisdiction of Apopa, Department of San Salvador.

That same day, the young man who had been arrested was seen by three youths as they were on their way to the store that is on Main Street in the Ermita Development. According to one of the witnesses, "... near the store, in a trench down the middle of the street, were soldiers from the First Brigade; Erik Felipe Romero Canales was with them and told the woman at the store to go tell his mother that he had been arrested; this woman didn't want to go, perhaps because she was afraid; we went to tell Erik's mother, ...[I] am certain they were soldiers from the First Brigade because I saw the insignia that said First Brigade."

From what Erik's mother, Silvia Elizabeth Canales de Romero, was able to ascertain, her son was taken by Lieutenant Oscar Sanabria Pena, on orders from Captain Erick Samayos Leiva of the First Infantry Brigade. When she learned that her son had been apprehended, Mrs. Canales de Romero went to the place where Erik Felipe was being held. The lieutenant told her that a Mrs. Palomo had supplied "information" against Erik Felipe, accusing him of being a guerrilla. Mrs. Canales Romero was able to speak with her son, who also said that someone "had fingered" him. Lieutenant Sanabria allowed Mrs. Canales de Romero to bring her son food that night and the next morning at 7:00 a.m.

At 9:00 a.m. on November 19, Mrs. Canales de Romero went to Apopa Headquarters "to ask why my son had been arrested; a soldier at the gate ...told me that Captain Leiva was unable to receive me because he was very busy."

At around 10:30 on the morning of the 19th, Erik Felipe was taken away, blindfolded and with his hands

ties; he was put in a military jeep from First Brigade headquarters, accompanied by a number of soldiers and other unidentified individuals. Presumably he was taken to the First Brigade. To date, he is still "disappeared."

On Monday, November 20, 1989, a photograph of a group of prisoners appeared in the Diario de Hoy. One of the faces in the photo appeared to be that of Erik Felipe Romero Canales. The caption said only the following: "TERRORISTS. This is the group of terrorists implicated in last week's events. They have confessed everything." We have been unable to find out from the Diario de Hoy who took the photograph and the caption did not indicate where the picture was taken.

Three days after the soldiers took Erik Felipe, Mrs. Canales de Romero inquired about him at the First Brigade. They told her that they did not have him. The National Police, National Guard and Treasury Police told her the same. Mrs. Palomo's brother, Lieutenant Agustin Palomo, high up in the Central Headquarters of the National Guard, told Mrs. Canales de Romero "that he had already heard about the case but did not know where the young man was being held." He threatened her and her family if she said anything to Nora Palomo in connection with the case for having "fingered" Erik Felipe.

Ten days after he was taken, the victim's mother saw Lieutenant Sanabria Pena, who went up to her and told her that it was his Captain Erik Samayoa Leiva "who gave me the order to kill him .... and I told him that we ought to give the kid a chance, because we don't know whether or not he is."

#### A description of the "disappeared" young man

A general description of the "disappeared" young man is as follows: dark skin, dark eyes, wavy dark brown hair, delicate complexion, height 1.65-1.70 meters; he was dressed in faded blue jeans, a dark blue sport shirt with an insignia, and sneakers.

#### Measures taken

On January 29, our institution sent a formal letter to the Commandant of the First Infantry Brigade, Colonel Francisco Helena Fuentes, asking for information on the legal situation of the young Romero Canales. On February 19, when we called First Infantry Headquarters, we were told that Erik Felipe's name did not appear in the log. In letter No. 0226 D-II, dated March 29, 1990, Colonel Helena Fuentes replied that "the prisoners" log kept at this Command Post was reviewed and the names of the individuals in question did not appear there; nor have they been held at this Brigade Command Post ..."

The family has reported the case to the International Committee of the Red Cross, Christian Legal Aid, the Center for the Protection of Minors, the government's Human Rights Commission, the Legal Aid Service of the Archdiocese, and the Lutheran Church, as well as the Human Rights Commission of El Salvador (CDHES). On December 13, a petition of habeas corpus was filed with the Supreme Court of Justice, but no reply has been received. A brief on the case was presented to the Attorney General of the Republic and to the Justice of the Peace of Apopa on April 5, 1990. A copy was sent to the American Embassy in El Salvador, to the Deputy Minister of Public Security, Colonel Inocente Orlando Montano, and to the Criminal Investigating Commission. Thus far none of these measures has produced any results. With no response whatever at the internal level and because the justice system in our country is notorious for its inability to function, we believe that Article 37.2.b should be applied in this case, to obviate the need to exhaust the remedies under internal law.

#### The violations

In this case, there is overwhelming evidence that the First Infantry Brigade was responsible for the capture and subsequent disappearance of Erik Felipe Romero Canales.

This case, like the other cases of disappearances in our country, involves a number of violations of the American Convention on Human Rights, including Articles 4 (right to life), 5 (right to humane treatment), 7 (personal liberty), 8 (the right to a fair trial), and 25 (judicial protection). Moreover, because of these violations by its Armed Force and/or Security Forces, and its lack of action to ascertain the whereabouts of the young man in question, the State has violated Article 1.1.

#### Petition

We respectfully ask that the IACRH:

1. Admit this case, demanding a swift and exhaustive investigation on the part of the State to determine the whereabouts of Erik Felipe Romero Canales.

2. Ask the Government of El Salvador specifically to identify the place shown in the photograph, to name all those prisoners who appear therein, and to investigate the Lieutenant and Captain named in this denunciation, in order to establish the whereabouts of the young man and determine those responsible for this case.

3. Condemn the State of El Salvador for the violations committed and recommend that said Government take the necessary steps to punish the guilty parties and compensate the victims.

4. Consider conducting an on-site observation on the case and any other measure necessary to shed light on the whereabouts of the "disappeared" young man, to guarantee his physical safety and that of his relatives and the witnesses in the case.

Additional information (June 14, 1990)

In a letter dated May 14 of this year, we presented to the IACtHR our petition in connection with the arrest and subsequent disappearance of the young Erik Felipe Romero Canales on November 18, 1989. On November 21, Erik Felipe's mother brought us up to date on the measures she had taken to ascertain the whereabouts of her son.

Mrs. Canales de Romero said that the petition of habeas corpus filed with the Supreme Court in March had produced no positive result. She also said that "eight days after filing the petition of habeas corpus, the magistrate came to my house to ask for my statement on my son's capture and told me to appear at the Supreme Court in 15 days. I went there, but the receptionist told me that my son was listed as missing and that there was nothing else to do."

In our petition of May 10, we failed to mention that our institution conveyed information on this case to the Head of the Joint Chiefs of Staff of the Armed Force, Col. Rene Emilio Ponce, at a meeting held on March 1°. On May 9, Major Lic. Roberto Molina Rodriguez, Chief of the Office of Human Rights of the Staff of the Armed Force, sent us a letter in which he says that "the Human Rights Office has been instructed to conduct an inquiry. Findings will be sent shortly."

Mrs. Canales de Romero now informs us that two detectives from the Joint Chiefs of Staff came to her home on May 17 and asked for information about Erik Felipe's capture. The daughter of Mrs. Canales de Romero gave them a statement about what had happened. The detectives then called the mother at work and asked her for a photograph of her son and a copy of the photograph that appeared in the newspaper. According to Mrs. Canales de Romero, she left the photographs with her daughter and on May 19 "they came to pick them up; my daughter said that when one of them saw my son's photograph, he said that we have seen this boy alive at headquarters, but I don't remember which one. But he is alive." Mrs. Canales de Romero added that "on Saturday, May 19, a women who is a religious sister told me that another brother of the church had told her that he had seen Erik Felipe, my son, at the Bracamonte Battalion 15 days ago. That battalion is part of the First Infantry Brigade."

In spite of reliable and concrete proof of the capture and detention of young Erik Felipe, the First Infantry Battalion continues to deny having had any hand in this event. On April 27, Col. Helena Fuentes, Commandant of the First Brigade, sent the Vice Minister of Public Security an official report informing him that "personnel from this Brigade Command and Capt. Erick Antonio Samayoa Leyva (the officer who witnesses say ordered Erik Felipe's arrest) never took Erik Felipe Romero Canales into custody." We received a copy of that official report on June 13.

In the face of this new evidence and in the hope of finding Erik Felipe still alive, we are asking the IACtHR to intervene immediately to follow this trail, since none of the measures taken internally have yielded any result.

2. Through a note dated July 2, 1990, the Commission began its processing of this case and requested the Government of El Salvador to supply information relevant to the facts reported in that communication and any other information that would make it possible to establish whether in the instant case the remedies under domestic law had been exhausted; the Government was told that it had 90 days in which to reply.

3. On November 9, 1990, the Commission again asked the Government of El Salvador to supply

information on the investigations conducted into the present case; thus far, despite the considerable pieces of evidence and the documentation sent, no response has been received from the government.

4. At its 79th session, the Commission adopted Report N° 24/91, 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 instant case inasmuch as it concerns 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 in Article 44 of that Convention, of which El Salvador is a State Party.

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

3. That the petition is not pending processing in any other international arrangement, and is not a copy of a previous petition that the Commission has already examined.

4. That in the instant case the petitioner has been unable to secure effective protection from the organs having jurisdiction, as evident by the fact that the petitions of habeas corpus filed with the Supreme Court and the petitions addressed to the Attorney General of the Republic and the Justice of the Peace of Apopa have failed to yield any results; hence, the requirements concerning the exhaustion of remedies under domestic law, contained in Article 46 of the Convention, do not apply.

5. That the procedure used in the abduction and forced disappearance of Mr. Romero Canales, the fact that the judicial system is unable to protect and safeguard his rights, the Salvadoran Armed Forces' own agencies are incapable of remedying situations such as the one denounced and the frequency with which forced disappearances occur in El Salvador, as the Inter-American Commission on Human Rights has repeatedly established, lead to the conclusion that the Government of that country, through its security forces, is engaging in the practice of forced disappearances, since facts such as those denounced here cannot be isolated incidents caused by the excesses of one individual; instead they are the modus operandi of the institutions in question.

6. That despite the time that has passed (since the detention of Romero Canales) 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 the Commission has repeatedly asserted its categorical rejection of the grave phenomenon of the forced disappearance of persons, stating in various documents that:

... this procedure is cruel and inhuman and disappearance not only constitutes an arbitrary privation of freedom but also a very grave threat to the victim's personal integrity, safety and even life itself. [FN1]

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[FN1] Cf. Annual Report 1978, 1980-81, 1982-83, 1985-86, 1986-87.

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10. That for its part, the General Assembly of the Organization of American States underscored the need for the countries where forced disappearances have occurred to put an immediate end to this practice, and has urged the governments to make the necessary efforts to ascertain the situation of these people. The General Assembly has also declared that the forced disappearance of persons in America is a crime against humanity. [FN2]

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[FN2] Cf. 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).

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11. That the Inter-American Court of Human rights, in a judgment of July 29, 1988, in the Velasquez Rodriguez case, 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]

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

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12. That in the instant case, the victim is a minor.

13. That as the friendly settlement procedure provided for in Article 48.1.f of the American Convention does not apply because of the very nature of the facts denounced, the Commission must comply with Article 50.1 of the Convention, issuing its conclusions and recommendations on the petition submitted to it for consideration.

14. That the Government of El Salvador has not submitted observations on Report N° 24/91.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,  
RESOLVES:

1. To presume as true the denounced incidents in the correspondences of May 10, and June 14, 1990, pertaining to the situation of Erik Felipe Romero Canales. He was captured on November 18, 1989, at 16:00, in the colony "La Ermita I", Apopa, by ununiformed soldiers of the First Infantry Brigade. Posteriorly, he disappeared.

2. 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).

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

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

a. That it conduct an exhaustive, rapid and impartial investigation of the facts denounced, so that young Erik Felipe Romero Canales will turn up alive and those responsible for his disappearance will be identified and brought to trial, so that they may receive the punishments that such grave conduct warrants.

b. That it adopt the measures necessary to prevent the commission of similar crimes in the future.

c. That it make reparations for the consequences of the situation that its violation of those human rights has created and pay the injured parties fair compensation.

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° 24/91.