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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 3/94; Case No. 10.242
Session:	Eighty-Fifth Regular Session (31 January – 11 February 1994)
Title/Style of Cause:	Jurg Dieter Weis v. El Salvador
Doc. Type:	Report
Decided by:	Chairman: Professor W. Michael Reisman; First Vice-Chairman: Dr. Alvaro Tirado Mejía; Second Vice-Chairman: Dr. Leo Valladares Lanza; Members: Dr. Patrick Robinson; Dr. Oscar Luján Fappiano; Professor Claudio Grossman; Ambassador John Donaldson.
Dated:	01 February 1994
Citation:	Weis v. El Sal., Case 10.242, Inter-Am. C.H.R., Report No. 3/94, OEA/Ser.L/V.85, doc. 9 rev. (1993)
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BACKGROUND:

1. The Inter-American Commission on Human Rights received a petition on September 14, 1988, and additional information from the petitioner on August 30, 1989, alleging the following:

On August 22, 1988, in the village of Las Flores, "Cerro Colorado" canton in the jurisdiction of Ilobasco, department of Cabacas, El Salvador, agents of the National Police murdered Mr. JURG DIETER WEIS, a Swiss citizen and theologian.

A report from the Armed Forces Press Committee (COPREFA) said that Mr. Weis and two other Salvadorans died in an armed engagement with agents of the National Police. However, according to testimony submitted in evidence, Mr. Jurg Dieter Weis was first taken into custody and then murdered by members of the National Police.

There were nine high-caliber bullet wounds in the body and skin had been torn from the face and neck. According to the official version, these disfigurements were caused by birds of prey. The body also had lacerations approximately 10 cm long in the right chest region.

It was identified one day after the death, in other words on August 23, 1988, a local evening newspaper, El Mundo, reported the story which it obtained from military sources.

2. On October 5, 1988, the Commission instituted the processing of the case and requested that the Salvadoran Government provide the pertinent information concerning the material facts of the petition and any other information to apprise the Commission of the case history and enable it to determine whether the remedies under domestic law had been exhausted. The Government was given 90 days in which to reply.

3. Once that deadline had expired, the Commission, by note of January 26, 1989, again asked the Government of El Salvador to provide information and advised it that it had 30 days in which to reply.

4. On August 30, 1989, the Commission received extensive additional information from the petitioner, which summarized the findings of a mission of European delegates who were in El Salvador from September 18 to 25, 1988, to investigate the circumstances surrounding the death of JURG WEIS. The delegation's report was formally presented to the then President of the Republic of El Salvador, Jose Napoleyn Duarte, to the Attorney General and to the national and international public.

5. That delegation consisted of Norberto Arhens (journalist, RFA), Gaty Gottwald (Professor, former member of the German Parliament, RFA), Christian Locher (Swiss clergyman), Thomas Onken (town councillor, Switzerland), Bernard Rambert (Swiss lawyer), Jannies Sakellariou (member of the European parliament, RFA), Hermann Schmidt (scientific member of the Max Planck Institute of Astrophysics, RFA), Jean Theoleyre (Christian Action for the Abolishment of Torture, France), and Manuela Wolf (representative of the Central American Secretariat, Switzerland).

6. The following is a summary of the pertinent parts of the information provided by the petitioner based on the aforesaid delegation's report:

The forensic report by Professor Dirnhofer confirmed that Mr. WEIS was hit by nine high-caliber bullets, that he was wounded in the shoulder and thorax by blows inflicted with round objects. He had also sustained a deep wound in the heart area, inflicted with a bladed instrument. Although he was alive when he sustained these injuries it was impossible to determine which was the cause of death because of the condition of the body when it was delivered for the forensic study.

National Police Bulletin 234 stated that Mr. WEIS died in a violent engagement with a National Police patrol. The findings of the forensic report, however, do not indicate any "protection or defense wound" and show the presence of numerous wounds inflicted before he died. It also states that those wounds could only have been sustained at close range; to be specific, the bullet wounds were inflicted at very close range, anywhere from 20 centimeters to 2 meters, with a downward trajectory beginning in the upper part and moving downward. That angle could only have been produced if JURG WEIS was on the ground or, if standing, was lower than the position of the police.

This version does not square with the version given by the National Police, which states that during the engagement Mr. WEIS was in a corn field, above the sugarcane field where the police were said to be located.

The European Delegation also reports that during its interviews, the National Police stated that there was no "man-to-man fighting at any time wherein there would have been bodily contact between the two sides". This version of the events leaves no logical explanation for the blows and cuts that Mr. Weis sustained.

According to the final forensic report of Dr. Dirnhofer, subsequent to death the body of JURG WEIS was skinned on the face and neck through human intervention, using a sharp cutting instrument. The cuts on the skin and the extraction of the cerebral material were done by human hand, contrary to what surgeon Dr. Matute Castro reported, which was that "soft tissue had been torn away... by animals of prey..."

7. On October 4, 1989, the Commission again asked the Salvadoran Government to supply the pertinent information on the case in question, giving it another 60 days in which to reply. This request also carried a warning concerning Article 42 of the Commission's Regulations.

8. On February 12, 1990, the Commission again asked the Government of El Salvador for information on the investigations conducted into this case, and warned of application of Article 42 of the Regulations if, by the expiration of 30 days, no response on the matter had been sent.

9. On May 11, 1990, the Government of El Salvador, through its Human Rights Commission, sent the following note to the Inter-American Commission on Human Rights:

JURG DIETER WEIS or WEIS JURG DIETER, a Swiss national, died on August 22, 1988, at 2:30 p.m., in the village of Las Flores, Cerro Colorado, Ilobasco. On the day of the events, this Swiss national was a member of a FMLN terrorist column that engaged agents of the National Police at around noon or 1:00 p.m. As a result, the Swiss national and two Salvadoran terrorists were killed. The terrorists gravely wounded policeman Rodolfo Escobar Perez. The National Police took their wounded agent and left the three bodies for two hours; when they returned at around 4:00 p.m., the body of the Swiss national had lesions on the face. According to some versions, the FMLN terrorists used a blade to disfigure the face of the Swiss man to make him unrecognizable, because the FMLN denies that it has mercenaries. The body of the Swiss man was identified by the Ilobasco Justice of the Peace and his remains were turned over to the Swiss Vice Counsel, Hans Ruedy Simon. The body in question had various wounds as birds of prey had torn away pieces of soft tissue and viscera in the lumbar region. The body was identified one day after the engagement.

10. On November 9, 1990, the Commission sent the petitioner the pertinent parts of the Government's reply so that said petitioner might make whatever observations he deemed necessary concerning its content.

11. On January 29, 1991, the Commission received the petitioner's observations on the information supplied by the Government of El Salvador. In this submission, the petitioner stated, in short, that the Government of El Salvador had not given a clear reply on the case in question and that "the allegations were made without offering any concrete and objective proof to substantiate them"; the Government did not specify the source when it offered "information based on accounts of what transpired."

12. On March 2, 1992, the Commission sent the Government of El Salvador the petitioner's observations on the information that the Government had supplied in connection with the case.

13. On August 12, 1992, the Commission sent additional information to the Government of El Salvador and asked that it inform the Commission what investigations were being conducted by the authorities.

14. On January 15, 1993, new and additional information was received from the petitioner, summarizing the history of the proceedings conducted by the Ilobasco Court of First Instance. This report states that "the domestic judicial process has not made any progress since 1989."

15. On January 26, 1993, the Commission again called upon the Government of El Salvador to provide the information that it deemed appropriate on the case in question. In that same communication, the Commission advised the Government that Article 42 of the Commission's Regulations might be applied if no reply was received within thirty days.

16. On March 1, 1993, the Commission received a communication from the Government of El Salvador in connection with the case under investigation. This reply summarizes the measures taken; the pertinent parts are transcribed below:

The Ilobasco Court of First Instance conducted the inquiry into the deaths of one unidentified person, a Mr. Carlos Mauricio Linares Magaca, a Swiss citizen by the name of Weis Jurg Dieter (sic) and an agent of the National Police Rodolfo Escobar Perez.

The case file contains the medical examination performed on the corpse of the Swiss citizen, which stated that soft tissue had been pulled away from the cranium, the face and the front neck by birds of prey and that there was bone damage to the cranium and the frontal and orbital lobes; there was a bullet entry wound in the right deltoid 2 centimeters in diameter, with no exit wound; soft tissue had been torn away

in the lumbar region and right flank by birds of prey, around 30 centimeters long and 20 centimeters wide; there were 9 high-caliber bullet wounds, with the entry wound in the infrascapular and right lumbar region, with no exit wounds; there were multiple lacerations around 10 centimeters long in the right pectoral region; the immediate cause of death were the injuries described above.

The witnesses who testified during the proceedings were agents of the National Police. They said that on August 22, 1988, they were on patrol from the Ilobasco National Police headquarters, for routine highway duty from 7:00 a.m. to 6:00 p.m.. The area they covered included the Ilobasco road. At around 1:00 p.m., they decided to check whether what they had been told was true, i.e., that in the village of Las Flores, in Cerro Colorado Canton, there was a bomb on the property of a family by the name of Abarca; that when they arrived on the scene, they began to fire at them, whereupon they returned fire. The exchange of fire lasted between thirty and forty minutes. When the shooting stopped, they found the body of an unknown man clutching an Ar-15 rifle; agent Rodolfo Escobar Perez was also wounded, and two people were killed. Their two M-16 rifles and cartridges were removed from them.

The testimony was that at the time guerrillas would bury any casualties sustained in confrontations in order to avoid desertion in the ranks; if they were unable to bury them, they disfigured the face so that the individuals could not be identified.

The matter of the Swiss citizen is regrettable, but he died in an engagement. For all these reasons, the Government of El Salvador is asking that this case be closed.

17. By note dated April 1, 1993, the Commission transmitted the pertinent parts of the Government's reply to the petitioner and gave the petitioner 45 days in which to present observations.

18. In a submission dated May 11, 1993, the petitioner made observations on the Salvadoran Government's reply, stating that "the information needed to establish the facts in this case has not been supplied [and] the Government had simply repeated its original assertions, which have been completely discredited by our observations thereon.

19. On October 5, 1993, the Inter-American Commission on Human Rights, sitting at its 84th Regular Meeting considered this case and issued Report No. 15/93, pursuant to Article 50 of the American Convention on Human Rights.

20. The Inter-American Commission on Human Rights resolved to send the Report, on a confidential basis, to the Government of El Salvador, granting it three months to implement the recommendations contained therein.

21. The Government of El Salvador failed to answer the Commission's request of October 18, 1993.

ANALYSIS

1. Of the question of admissibility:

a. The petition satisfies the formal requirements for admissibility contained in the American Convention on Human Rights and in the Regulations of the Commission.

b. The petition is not pending settlement in another international proceeding and is not substantially the same as a previous petition already examined by the Commission.

2. Of the competence of the Commission:

a. The Commission is competent in the instant case because it concerns violations of rights recognized in the American Convention on Human Rights, chiefly Article 4 on the right to life; Article 5 on the right to humane treatment; Articles 8 and 25 on the right to a fair trial and the right to judicial

protection, respectively, as provided in Article 44 of that Convention, to which El Salvador is a State Party.

b. Article 1.1 of the American Convention, which is binding upon El Salvador, states that: The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

3. Of the content of the petition:

a. Despite the fact that nearly five years have passed since the events occurred and despite the egregious nature of the charges, the Government of El Salvador has not satisfactorily responded to the facts submitted by the petitioner as to the material findings of the judicial investigation concerning the time, manner and place in which Mr. JURG WEIS died or who bears the responsibility.

b. The first reply that the Government sent to the Commission, wherein it states that "The National Police took their wounded agent and left the three bodies for two hours; when they returned at around 4:00 p.m., the body of the Swiss national had lesions on the face. According to some versions, the FMLN terrorists used a blade to disfigure the face of the Swiss man to make him unrecognizable, because the FMLN denies that it has mercenaries", not sufficiently proved, because it was based on versions whose source and credibility are unknown and the short amount of time that elapsed makes this possibility highly unlikely.

Indeed, the argument used by the National Police to the effect that members of the FMLN skinned the face and neck of Mr. WEIS was not very credible, because by the police's own account the bodies were left alone for only a short period, no more than two hours, during which time they contend the FMLN guerrillas disfigured Mr. WEIS' face supposedly in order to prevent him from being identified. First, the face is not the only means to identify an individual; second, it is senseless to disfigure a face to prevent identification only to leave behind a passport that proves the individual's identity and nationality.

c. The autopsy conducted in Switzerland on the body of JURG WEIS confirmed that judging from their location, trajectory and the width of the entry wounds, the bullets that hit the deceased were undoubtedly fired at very short range: "The firing distance indicates that they were likely what is known as 'burn shots' (20 to 60 centimeters) up to two meters". This does not square with the official version of the death, as told by members of the National Police and not disputed by the authorities, i.e. that the individual died in combat.

From the autopsy in question, there were serious signs that the violence was inflicted upon the body of Mr. WEIS while he was still alive. The report stated: "that the person was still alive when he sustained these injuries is shown by the fact that there was heavy hemorrhaging; in other words at the time the violence was inflicted and the blood vessels were destroyed, the heart was still pumping, forcing the blood into the surrounding tissue...". Although this argument was officially conveyed to the Government, there has been no reply.

d. The Government of El Salvador insists on the theory that "birds of prey had torn part of the tissue and viscera in the lumbar region...". This argument was also refuted by the forensic evidence which states that the removal of skin from the face and from part of the neck was undoubtedly done by a blade wielded by a human hand subsequent to death. The forensic report ends by saying that "any possibility that these lesions in the lumbar region were caused by animals of prey has to be discarded".

Indeed, it is strange that birds of prey would attack a body within hours of its death, and stranger still that these animals would attack only one body when there were two other dead bodies at the same site. There is also the fact that in the course of the investigation, no one mentioned having seen these birds of prey in the vicinity of the place where the dead bodies were located.

4. Of other aspects related to processing:

a. The facts prompting this petition are not such that they can be resolved through recourse to the friendly settlement procedure and neither the Government nor the petitioners asked the Commission to use this procedure, provided for in Article 48.1.f of the Convention and Article 45 of the Commission's Regulations.

b. Because the friendly settlement procedure does not apply, the Commission must comply with the provisions of Article 50.1 of the Convention, issuing its opinion and conclusions on the matter placed before it for consideration.

c. All legal and statutory procedures set forth in the Convention and in the Commission's Regulations have been exhausted, and beyond the stipulated extension deadlines have been allowed.

5. Of the exhaustion of remedies under domestic law:

a. In the instant case, the petitioner has been unable to secure effective protection from bodies having jurisdiction, since the criminal proceedings to investigate the circumstances under which Mr. WEIS died did not achieve any results and the State, according to the reply it sent to the Commission, believes that the case was now closed on the theory that Mr. Weis died in an engagement. Hence, the remedies have been exhausted in accordance with Article 46 of the Convention, as described below.

b. In effect, the first proceeding conducted by the Justice of the Peace of Ilobasco was the identification of the body of JURG WEIS on August 23, 1988, i.e., one day after his death. Then, the body was turned over to the Honorary Council of Switzerland in El Salvador, Mr. H. Simon. The case file was then sent to the Ilobasco Court of First Instance.

c. The Court has done little to investigate the case in question. In the initial proceedings, the Judge received the reports from the National Police concerning the identification of the deceased persons, the alleged encounter during which they died and information from the Chief of the Technical Assistance Department concerning the immigration papers of Mr. WEIS.

d. On October 27, 1988, the Special Prosecutor, Sotero Consuett Diaz, asked the Judge of First Instance, Dr. Edgar Gutierrez Morón, for a list of the police officers who had taken part in the operation; exhumation of the bodies of Mr. LINARES MAGACA and the unknown deceased person, who were accompanying Mr. WEIS; an investigation into the caliber of the shells found at the scene of the events; a statement from Mr. Abarca, owner of the property where the events occurred; the clinical report on National Police Agent Rodolfo Escobar Perez, who allegedly died as a result of wounds sustained in the engagement; and information from the Commission of Criminal Investigation of the National Police concerning the extrajudicial steps taken to ascertain the facts in the death of JURG WEIS.

e. However, with regard to the tests which the special prosecutor requested of the judge, only the exhumation of the bodies was conducted, and that was done on January 16, 1989. The official forensic report of Dr. Matute Castro revealed the presence of a 5.56 millimeter armed projectile in the upper left scapular of the unidentified body; in the body of Mr. LINARES MAGACA, a splinter from a projectile was found, but it was impossible to determine its caliber. In effect, the prosecutor's other requests did not produce any additional information on the investigation. No analysis was made of the shells found at the scene of the events. The response from the Commission of Criminal Investigations was negative, since it reported that it had not taken any steps in the case. There was no additional information on the clinical history of Police Agent Escobar Perez either. The only document concerning his death is the record filed by two national police detectives on September 10, 1988, to the effect that agent Escobar Perez died as a result of septic shock caused by bullet wounds, after having been wounded in the alleged encounter.

f. Because of the lack of investigatory activity in the criminal proceedings, the Commission would like to once again cite the finding of the Inter-American Court of Human Rights to the effect that "The State is obligated to investigate every situation involving a violation of the rights protected by the Convention. If the State apparatus acts in such a way that the violation goes unpunished and the victim's full enjoyment of such rights is not restored as soon as possible, the State has failed to comply with its duty to ensure the free and full exercise of those rights to the persons within its jurisdiction. The same is true when the State allows private persons or groups to act freely and with impunity to the detriment of

the rights recognized by the Convention." [FN1]

[FN1] Inter-American Court of Human Rights, Velasquez Rodriguez Judgment, July 29, 1988, paragraph 176.

g. As to the witnesses who testified in the judicial proceeding, the Commission is surprised that the only witnesses called were "police agents." According to the Inter-American Court of Human Rights, the obligation to investigate "must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the Government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties which violate the Convention are not seriously investigated, those parties are aided in a sense by the Government, thereby making the State responsible on the international plane." [FN2]

[FN2] Inter-American Court of Human Rights, Velasquez Rodriguez, Judgement, July 29, 1988, paragraph 177.

6. With regard to noncompliance of Report 15/93 of October 1993

The three-month deadline given the Government of El Salvador has elapsed and it has not complied with the Commission's recommendations in Report No. 15/93, nor has it answered the communication of October 18, 1993, notifying it that the report was adopted and sending it a text thereof.

CONCLUSIONS:

1. Based on the information and observations stated above, the Inter-American Commission on Human Rights concludes that the Government of El Salvador is responsible for the facts denounced in the petition of September 14, 1988, in the death of Mr. JURG DIETER WEIS by agents of the National Police, in the "Las Flores" hamlet of the "Cerro Colorado" Canton, in the jurisdiction of Ilobasco, department of Cabacas, El Salvador, on August 22, 1988.

2. It further finds that the Government of El Salvador has violated the rights to life, humane treatment, a fair trial and judicial protection, upheld in articles 4, 5, 8, and 25, respectively, of the American Convention on Human Rights, in relation to Article 1.1 of the Convention, of which El Salvador is a State Party.

3. It makes the following recommendations to the Government of El Salvador:

a. That it reopen the criminal proceedings and conduct a rapid, impartial and thorough investigation of the facts denounced so that the circumstances under which they occurred may be fully brought to light and those responsible identified and brought to trial to receive the punishments that such serious conduct demands.

b. That it make the necessary reparations for the violation of the aforementioned rights and pay a fair compensation to the aggrieved parties.

4. It invites the Government of El Salvador to accept the jurisdiction of the Inter-American Court of

Human Rights in this specific case which is the subject of this report.

5. To publish this report pursuant to Article 48 of the Commission's Regulations and Article 53.1 of the Convention, because the Government of El Salvador did not adopt measures to correct the situation denounced within the time period.