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Title/Style of Cause: COMADRES v. El Salvador
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Decided by: Chairman: Professor Claudio Grossman;
First Vice Chairman: Ambassador John S. Donaldson;
Second Vice Chairman: Professor Carlos Ayala Corao;
Members: Dr. Oscar Lujan Fappiano, Professor Robert Kogod Goldman, Dr. Jean Joseph Exume, Ambassador Alvaro Tirado Mejia.
Dated: 1 March 1996
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I. FACTS

1. Petitioners allege violation by the Salvadoran Government of rights guaranteed by the American Convention on Human Rights against several persons connected with COMADRES[FN1].

[FN1] The "Monseñor Oscar Arnulfo Romero" Mothers Committee (COMADRES) is a nongovernmental organization established in 1977 to support mothers and families of persons who disappeared or were killed for political reasons.

2. Petitioners submit the following particulars to support their claims:

1. In 1980 Salvadoran Government agents murdered Ana Delmi González, daughter of Sofía Escamilla, a member of COMADRES. The body showing evidence of torture and rape was found in a clandestine burial ground in Puerto Diablo, which is usually used by the Salvadoran Security Forces to get rid of cadavers.

2. In July 1980, a bomb damaged windows and doors of the institution's headquarters.

3. On June 12, 1985, government security forces entered the COMADRES headquarters and removed selected information on human rights violation cases, including photographs and names of persons connected with those cases.

4. On July 9, 1985, María Ester Grande was arrested in Colonia Morán - Santo Tomás, by National Police officers in civilian clothes, riding in a Cherokee jeep with license plate 4031. She was forced to watch her son, Héctor Javier Grande Arbel, a soldier in the Salvadoran army (San Carlos barracks), kicked and mistreated.
5. In 1986 the Police in Hacienda arrested and tortured Gloria Alicia Galán.
6. On May 6, 1986, police in civilian clothes kidnapped María Teresa Tula, who was seven months pregnant, and took her to an unknown place where she was tortured for three days, being cut with a sharp pointed weapon, beaten and raped by three men who questioned her on her activities in COMADRES. On May 8 of this year, she was released in the Cucatlán Park.
7. On May 28, 1986, María Teresa Tula was arrested by Treasury Police when she was pointed out by Luz Janet Alfaro as a member of the guerrilla group National Resistance. During her detention, she was beaten and deprived of sleep, and on condition that she "cooperate," she was offered money and protection by the Treasury Police, in whose facilities she was held for 12 days before being transferred to a prison.
8. On May 28, 1987, a bomb exploded in the interior of the COMADRES headquarters, wounding Angela López, a member of the organization, and her daughter Margarita López, and severely damaging the furnishings.
9. At 1 p.m., on September 3, 1987, Gloria Alicia Galán and Lucia Vázquez, the latter also a member of COMADRES, were kidnapped by heavily armed men in civilian clothes. Gloria Alicia was held for five days by the Treasury Police, during which time she was tortured and suffered a fractured skull. Lucía Vázquez was tortured psychologically, with threats to kill her children if she did not sign an extrajudicial confession.
10. On December 7, 1988, Marta Salmeron, a member of COMADRES, was kidnapped by members of the First Infantry Brigade.
11. At 7 a.m. on April 19, 1989, Gloria Alicia Galán, a member of COMADRES, was kidnapped by heavily armed members of the security forces in civilian clothes. At 9:30 a.m. on that same day, her sister Martha Ofelia Galán, who is not a member of COMADRES, was also arrested by the National Guard.
12. On October 31, 1989, most of the COMADRES offices were destroyed along with the organization's files in another attack with explosives. Three COMADRES members were wounded. Brenda Hubbard, a U.S. citizen wounded in the attack, accused the Salvadoran military forces of being responsible for it.
13. On November 15, 1989, Salvadoran security forces raided the offices of COMADRES. Nine members of COMADRES were arrested and forced to pose for a photograph with the FMLN guerrilla group flag. Each woman was blindfolded and handcuffed before being taken to the Treasury Police headquarters. Brenda Hubbard and Eugene Terrill, U.S. citizens, along with

the Salvadoran women arrested, were beaten. The U.S. citizens were released after 53 hours, while the Salvadoran women were illegally held for four months.

3. At a Commission hearing on January 31, 1992, América Sosa and María Teresa Tula, members of COMADRES and victims in this case, testified. The Commission obtained information directly on their version of the alleged facts, which complemented the written information previously submitted. Petitioners repeated their charges, indicating:

This NGO (COMADRES) is the target of attacks and harassment by the Government because of its activities. Likewise, its members are the target of constant persecution by the armed forces.

II. PETITIONERS ALLEGE VIOLATION

4. Their claims are based on various events from 1980 to 1989. In particular, petitioners allege violation of the right to life (Article 4), the right to humane treatment (Article 5), the right to personal liberty (Article 7), the right to privacy (Article 11), the right to freedom of thought and expression (Article 13), the right to property (Article 21), and the right to judicial protection (Article 25).

III. PROCEEDINGS AT THE COMMISSION

5. On June 1, 1991, the petition was submitted to the Inter-American Commission on Human Rights. On September 19, 1991, the pertinent portions of the petition were transmitted to the Salvadoran Government, asking it to furnish information in 90 days.

6. On January 31, 1992, América Sosa and María Teresa Tula, as members of COMADRES and victims of the acts reported, testified at a Commission hearing. On December 1, 1992, petitioners urged the Commission to decide on the case. On December 12, 1992, the Commission reiterated its request for information from the Salvadoran Government within 30 days, warning that article 42 of the Commission's Regulations might be applied. No reply was received from the Salvadoran Government.

7. On May 13, 1994, petitioners again asked that a decision be made on the case in view of the Government's failure to reply.

8. On February 16, 1995, the Commission placed itself at the disposal of the parties concerned with a view of reaching a friendly settlement of the matter, in accordance with paragraph 1.f of Article 48 of the American Convention. This procedure was exhausted without reaching an agreement.

IV. ISSUES RAISED BY PARTIES ABOUT ADMISSIBILITY

EXHAUSTATION OF DOMESTIC REMEDIES

9. Petitioners allege that exhaustion of domestic remedies was not necessary because, in the period during which reports on the events were submitted, justice administration officials did not

provide the guarantees to comply with the requirements set forth in the American Convention, and, accordingly, the exceptions established in Article 46(2)(a) and (b) of the American Convention are applicable to this case.

10. The Commission notes that the file does not contain information disproving petitioners' claim, and that, on the contrary, there is sufficient reason to concur with what they contend. The Commission has repeatedly expressed its views on the serious problems in El Salvador's administration of justice during the period of those events.[FN2]

[FN2] Inter-American Commission on Human Rights, Report on the Situation of Human Rights in El Salvador, OEA/Ser.L/V/II.85, Doc. 28 rev., February 11, 1994, ps. 2, 3, 4, 5 and 6.

11. Also the Commission gathered information from the Report of the Truth Commission for El Salvador, which states, that "the Salvadoran Government has not complied with its duty to guarantee the human rights that the members ...[of COMADRES]... enjoy as individuals and as members" of that organization.[FN3] Accordingly the Commission concludes that Article 46(2)(a) and (b) applies, so exhaustion of domestic remedies is not required.

[FN3] United Nations, Report of the Truth Commission for El Salvador, San Salvador - New York, 1993, p. 99.

12. The Commission finds that the petition complies with the other admissibility requirements in Articles 46 and 47 of the American convention.

V. ANALYSIS

CONSIDERATIONS ON THE MERITS OF THE CASE

13. The Commission considers it to be of vital importance, first of all, to cite the case law of the Inter-American Court of Human Rights on the state's responsibility, which remains in force, regardless of any political changes that might occur within societies, and is fully applicable to the situation in El Salvador:

According to the principle of the continuity of the State in international law, responsibility exists both independently of changes of government over a period of time and continuously from the time of the act that creates responsibility to the time when the act is declared illegal. The foregoing is also valid in the area of human rights although, from an ethical or political point of view, the attitude of the new government may be much more respectful of those rights than that of the government in power when the violations occurred.[FN4]

[FN4] Velásquez Rodríguez Case, Judgment of July 29, 1988, par. 184.

14. It is important to remember also that Article 1.1 of the American Convention on Human Rights 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."

15. In that regard, the Commission has taken into account that the Inter-American Court of Human Rights, in referring to the duties of states that, like El Salvador, have ratified the American Convention on Human Rights, states that:

Article 1(1) is essential in determining whether a violation of the human rights recognized by the Convention can be imputed to a State Party. In effect, that article charges the States Parties with the fundamental duty to respect and guarantee the rights recognized in the Convention. Any impairment of those rights which can be attributed under the rules of international law to the action or omission of any public authority constitutes an act imputable to the State, which assumes responsibility in the terms provided by the Convention. [FN5]

[FN5] Velásquez Rodríguez case, Judgment of July 29, 1988, par. 164.

16. For the Commission, in addition to the obligation to guarantee the essential rights established in the American Convention on Human Rights, the State has, among the other obligations under Article 1.1 of the Convention, the particular obligation to establish the truth in those cases in which a person alleges that his basic rights have been violated. This obligation has been underscored repeatedly by the Commission[FN6] and in this case it is especially important.

[FN6] Inter-American Commission on Human Rights, Report on the Situation of Human Rights in El Salvador, OEA/Ser.L/V/II.85, Doc. 28 rev., February 11, 1994, ps. 80 and 81.

17. In view of this situation, the Inter-American Commission on Human Rights, which has the duty to bring to a conclusion the proceedings on situations that are brought to it for consideration, particularly when they involve violation of the basic rights of persons, warned the Salvadoran Government about the possible application of the presumption of truth set forth in article 42 of its Regulations, which reads:

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.

18. In the analysis of the petition submitted, the Commission considers of special importance the case law of the Inter-American Court of Human Rights, that states that "silence of the accused or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations, so long as the contrary is not indicated by the record or is not compelled as a matter of law,"[FN7] which is reaffirmed by Article 42 of the Commission's Regulations.

[FN7] Velásquez Rodríguez case, Judgement of July 29, 1988, par. 138.

19. The Commission considers that the petitioner should furnish sufficient information for it to make the analysis called for in Articles 46 and 47 of the American Convention and in Article 32 of its Regulations, that is, to determine whether the petitioner has satisfied the requirements for admission and admissibility. Similarly, the Commission must evaluate the petitioner's version of the facts in accordance with the provisions of the American Convention and the Regulations of the Commission.

20. The Inter-American Court has implicitly established the criteria that should be employed to evaluate the petitioner's version in order to determine whether there is other evidence that might lead to a different conclusion. Especially important for that action by the Commission are the criteria of consistency[FN8] and credibility.[FN9]A third requirement that is absolutely necessary before analyzing consistency and credibility is specificity, which is deduced as a corollary of those two factors.

[FN8] Velásquez Rodríguez case, Judgment of July 29, 1988 of the Inter-American Court of Human Rights, par. 143. The determination of consistency is the logical/rational comparison of the information furnished by the petitioner, to establish that there is no contradiction between the facts and/or the evidence submitted.

[FN9] Velásquez Rodríguez case, Judgment of July 29, 1988 of the Inter-American Court of Human Rights, par. 146. The credibility of the facts is determined by assessing the version submitted, including its consistency and specificity, in evaluating the evidence furnished, taking into account public and well-known facts and any other information the Commission considers pertinent.

21. In determining whether the facts are well founded, the State's failure to appear cannot force the petitioners to meet a standard of evidence equivalent or similar to the one they initially would have had to meet if the Government had appeared. If the State of El Salvador had appeared or had answered the complaint, the petitioners would have had other opportunities to furnish further proof and/or controvert the government's reply,[FN10] and the Commission would have had the opportunity to witness the litigious debate and enhance its evaluation of the facts. Accordingly, the Commission cannot, in reaching a decision on the matter, require the same or a similar amount of evidence as it would have required from the petitioners if the Government had appeared, furnishing evidence and contesting the evidence of the petitioner. The

Commission must necessarily confine itself to the evidence furnished by the petitioner, and to other evidence available to it in order to resolve the issue.[FN11]

[FN10] See Article 37, subparagraph 7 of the Commission's Regulations.

[FN11] It is important to note that the Commission has stated on several occasions that there was a serious human rights situation in El Salvador from 1980 to 1989 (Inter-American Commission on Human Rights, Report on the Situation of Human Rights in El Salvador, OEA/Ser.L/V/II.85, Doc. 28 rev., February 11, 1994, ps. 1 - 6). Also, the 1993 Report of the Truth Commission for El Salvador contains information pertinent to this case, although only in relation to one of the events (see supra event # 12. bomb in COMADRES headquarters on October 31, 1989).

22. The Commission therefore considers that the facts are not presumed to be true merely because the State did not appear, but rather that the truth of them derives from an analysis of the alleged facts in light of the criteria established here.[FN12] The petitioners must therefore establish the requirements of admissibility and the minimum elements of consistency, specificity and credibility in their version of the facts for them to be presumed to be true.

[FN12] See supra footnote 9.

VI. CONCLUSIONS

23. The specific facts alleged by the petitioners are of particular importance because they are, as indicated, the main referent for determining, in this case, whether there is other evidence. For that purpose, the criteria of consistency, specificity and credibility contemplated by the Commission, and supported and developed by other rules of international law, are applied to the analysis of the facts as follows:

24. Based on the criteria mentioned, the Commission concludes:

24.1. On the death of Ana Delmi González in 1980 (event #1), there is not sufficient specificity in the petitioners' version. No mention is made of the day and month on which the events occurred. To be able to presume the truth of the facts and therefore the state's international responsibility, it is essential to have a detailed version that would enable the Commission to make an analysis of "other elements," which in this case are a matter of chronology.

24.2. As to the bomb of July 1980 (event #2), there are conflicting versions in the documents that the petitioner furnished to the Commission. While the version of América Sosa refers to a bomb in July 1980, another version, that of María Teresa Tula, refers to two attacks in 1980: on March 13 and in September. Based on this disagreement on dates, it is impossible for the Commission to presume as true facts those regarding which there are substantial inconsistencies, such as the dates on which the events occurred.

24.3. As to the entry into and the pillaging of the COMMADRES offices on June 12, 1985 (event #3), the Commission presumes those facts to be true and finds that there was a violation of the right to property (Article 21) and the right to be free from arbitrary and abusive interference (Article 11). The version of the facts is sufficiently detailed for the consistency and credibility of the version to be analyzed. There is no evidence available to the Commission that would lead to a different conclusion.

24.4. As to the detention of María Ester Grande and the torture to which she and her son were subjected (event #4), the Commission presumes the claims to be true and finds that there was a violation of the right of the two victims mentioned to have their physical, mental and moral integrity respected (Article 5). There is sufficiently detailed and consistent documentary proof of this, and it is credible. There is no evidence that would lead to a different conclusion.

24.5. As to the alleged detention and torture of Gloria Alicia Galán (event #5), the Commission cannot presume the facts to be true, because it finds that the version submitted lacks sufficient specificity to make possible the above-mentioned analysis. Among other things, the day and month on which the alleged events occurred are not given.

24.6. As to the kidnapping and torture on May 6, 1986 reported in the petition (event #6), the Commission presumes the facts to be true and finds that the right to human treatment (Article 5) and the right to personal liberty (Article 7) were violated. The main document and the notices published by COMADRES and by the nongovernmental Human Rights Commission of El Salvador (CDHES) establish the name of María Teresa Tula as a victim of the alleged acts. All of this is confirmed in a third detailed document entitled "affidavit," signed by the victim, which gives a detailed account of the events.

24.7. As to the reported events of May 28, 1986 (event #7), the Commission presumes that the facts presented are true and finds that the right to humane treatment (Article 5) was violated. The petitioners's version is reinforced by the version published by the Los Angeles Times on September 24, 1986, which quotes the then President of El Salvador, José Napoleón Duarte, as saying that he would investigate the events. This constitutes a public and well-known fact that corroborates the credibility of those facts. The Commission has received no report of any investigation being made.

24.8. Regarding the attack with explosives on May 28, 1987, the Commission presumes the facts related are true, and finds that the right to property (Article 21) and the right to humane treatment (Article 5) were violated. The Commission finds that, while it is true that the petitioners do not indicate Government agents as responsible for commission of the acts, the case file does not show that an investigation has been conducted on this matter by the Salvadoran Government.

24.9. On the events petitioners said happened on September 3, 1987 (event #9), the Commission finds that the version submitted on the case by Gloria Alicia Galán lacks the minimum elements of specificity to enable the Commission to evaluate the consistency and credibility of the version. It is mentioned that the skull of one of the alleged victims was fractured while he was held captive, but petitioner does not include minimal further information

on whether he was released or the kind of torture to which he was subjected, or basic documents such as medical certificates, for example, which normally would exist in such cases.

24.10. Regarding the events that occurred on December 7, 1988 (event #10), the Commission finds that the information contributed is not detailed, which prevents analyzing the consistency and credibility of the version, and to establish the existence and type of alleged human rights violation. The Commission refrains from presuming these facts are true.

24.11. On the events of April 19, 1989 (event #11), the Commission finds that the information is not sufficiently detailed to make an analysis on the consistency and credibility of the version, or to determine the existence and type of human rights violations. The Commission cannot presume these facts to be true.

24.12. As to the attack with explosives against the COMADRES headquarters on October 31, 1989, the Commission presumes the alleged facts (event #12) to be true and finds that the rights to humane treatment (Article 5) and to private property (Article 21) were violated. The facts alleged are based on a detailed report of América Sosa. These facts are confirmed with newspaper clippings on the attack. In addition, the Commission agrees with the conclusions of the Truth Commission for El Salvador, which determined in its report[FN13] that there was "ample proof that the Salvadoran Government has not fulfilled its duty to guarantee the human rights" of COMADRES members, and that there is "substantial proof that the competent officials of El Salvador did not conduct a complete and impartial investigation" of the attack against the COMADRES headquarters.

[FN13] United Nations, Report of the Truth Commission for El Salvador, San Salvador - New York, 1993, p. 93 and the following.

24.13. Regarding the events that took place on November 15, 1989 (event #13), the Commission presume them to be true and finds that the right to be treated with respect for the inherent dignity of the human person (Article 5.2) and the right not to be subjected to cruel, inhuman, or degrading treatment (Article 5.2) were violated. The version furnished by petitioners is sufficiently detailed to establish that it is consistent and coherent.

25. The Commission also underscores the conclusion of the Truth Commission for El Salvador that there is "sufficient proof" on "systematic and repeated attacks against the life, physical integrity and liberty" of COMADRES members.[FN14] These conclusions have been taken into consideration by the Commission in making the above analysis. The conclusions serve as a reference to evaluate the credibility of the petitioners' version, and to establish that the right of freedom of association (Article 16) was indeed violated by the Salvadoran Government.

[FN14] Idem., p. 99.

26. It can therefore be concluded, from the information in events #3, 4, 6, 7, 8, 12 and 13, that there is no evidence to lead the Commission to a different conclusion. The following Court ruling is recalled:

Thus, in principle, any violation of rights recognized by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the state. However, this does not define all the circumstances in which a state is obligated to prevent, investigate and punish human rights violations, nor all the cases in which the state might be found responsible for an infringement of those rights. An illegal act which violates human rights and which is initially not directly imputable to a state (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the state, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.[FN15]

[FN15] Velásquez Rodríguez case, Judgment of July 29, 1988, par. 172.

27. On these basis, the Commission considers that the right to judicial protection (Article 25) has been violated by the Salvadoran State in the present case.

28. Since the Government has not furnished the Inter-American Commission on Human Rights with information to disprove the facts reported, and taking into consideration the petition submitted, as well as the lack of new evidence, the Commission has decided to find the facts true, and accordingly rules that the Salvadoran State is responsible for the above-mentioned violations.

VII. RECOMMENDATIONS

29. Therefore, the Commission makes the pertinent recommendations, trusting that they will be properly implemented by the Government of El Salvador, based on Article 50.3 of the Convention and Article 47 of the Commission's Regulations.

1. That a speedy, impartial and exhaustive investigation be made on the events reported, so as to fully clarify the circumstances in which they occurred, that the guilty parties be identified, and that they be brought to justice so that they receive the punishment that such grievous conduct demands.

2. That the necessary monetary compensation be made for violation of the above-mentioned rights and that fair compensatory damages be paid to the persons affected and to their families, as the case may be.

3. That the necessary steps be taken to avoid the commission of similar acts in the future, taking into consideration particularly the recommendations in the Report of the Truth Commission for El Salvador regarding the administration of justice and those of the Commission in its Report on the Situation of Human Rights in El Salvador.

4. Request the Government of El Salvador to adopt, within 90 days, the necessary measures in accordance with paragraphs 1, 2 and 3.

VIII. TRANSMISSION TO THE GOVERNMENT AND DECISION TO PUBLISH

30. The above report was duly transmitted to the Government of El Salvador on April 21, 1995, and a period of 90 days was given for compliance with the recommendations. That period having elapsed without any reply being received from the Government, the Inter-American Commission on Human Rights, at its 91st regular session, considers that the Government of El Salvador has not taken appropriate measures in keeping with the preceding recommendations, and decides to adopt this report and to publish it in its Annual Report as provided in Article 51 of the American Convention on Human Rights.