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Title/Style of Cause:	Emilio Tec Pop v. Guatemala
Doc. Type:	Decision
Decided by:	Chairman: Ambassador John Donaldson; First Vice Chairman: Dr. Carlos Manuel Ayala Corao; Second Vice Chairman: Professor Robert Kogod Goldman; Members: Ambassador Alvaro Tirado Mejia, Dr. Oscar Lujan Fappiano, Dean Claudio Grossman.
Dated:	17 October 1997
Citation:	Tec Pop v. Guatemala, Case 11.312, Inter-Am. C.H.R., Report No. 53/97, OEA/Ser.L/V/II.98, doc. 6 rev. (1997)
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I. BACKGROUND

The Facts Alleged

1. On June 21, 1994, the Inter-American Commission on Human Rights (hereinafter "the Commission") received a petition denouncing that minor Emilio Tec Pop, 14 years of age, had been deprived of his personal liberty by agents of the State of the Republic of Guatemala (hereinafter "Guatemala," or "the State") for over four weeks in violation of the guarantees of the American Convention. The petitioners reported that on January 28, 1994, Emilio's uncle had asked his father's permission for the boy to help him work loading wood in El Estor. Emilio worked with his uncle into the early hours of January 29, 1994. On January 30, 1994, he took another job loading sand. On January 31, after receiving his pay, Emilio took a bus to Cobán. After spending some hours there, he began the trip back to El Estor. Because he only had enough money to pay for part of the trip, the bus left him at Panzós at approximately 17:00 hours.

2. Not knowing the route or the distance involved (approximately 45 kilometers), Emilio began walking back to El Estor along the highway. After walking for some time, he passed a group of houses and a sentry post. A few meters from the post, he was stopped by a group of five men, who demanded to see his identification documents. When he responded that he wasn't carrying any, the men hit him, and told him, without explanation, that they would be waiting for him in the village of Secacar on February 20.

3. Emilio continued walking, and encountered a group of armed men who demanded to see his identification documents. They detained him, beat him, and took him to the post of the local civilian self-defense patrols (PAC's). The next morning, at 08:00 hours, a bus full of soldiers

arrived and took Emilio to the military base in Cobán. A group of five or six soldiers interrogated Emilio, who then told them about his encounter with the five men and the reference they had made to waiting for him in Secacar on February 20. The petitioners reported that these interrogations continued over two days and that the soldiers beat him, jabbed at his fingers with a knife, and threatened to kill him. The agents involved in these interrogations included one known as "Chepe," and a Captain named Alvarado Gerónimo who hit him. While detained on the base he was held in a small room. Whenever he was taken outside of that room, his hands were tied.

4. On February 20, 1994, six soldiers took Emilio to the village of Secacar near Nimblabenque. When no one showed up in the village, the soldiers took him back to the base in Cobán. During the trip back, the angry soldiers reportedly tried to strangle Emilio with a belt. They took him back to the same room where he had been held. They covered his face and interrogated him, accusing him of lying.

5. The petitioners indicated that, in the first days after Emilio failed to return home from working with his uncle, his father, Manuel Tec Maquín, had gone to various authorities to inquire about him. Manuel Tec Maquín denounced Emilio's disappearance at the office of the National Police in El Estor, and before the Justice of the Peace of El Estor, who promised to send copies of the denunciation to Puerto Barrios and Cobán. He also went with a member of the Parish of San Pedro Apóstol to the military detachment in El Estor to inquire about Emilio, and spoke with official Nefy Méndez. On February 25, 1994, the Parish priest spoke with the same official, who indicated that in the coming days the military would be delivering a young subversive to his parents in the town of Nimblabenque. The official would not reveal the name of the youth.

6. On March 2, 1994, military authorities returned Emilio to El Estor. They told him not to say anything to anyone about what had transpired during the time he was held at the military base in Cobán. The local Military Commissioner cited Manuel Tec Maquín to appear at the military detachment in El Estor to collect his son. When Emilio's parents arrived at the detachment, the authorities delivered his son, and directed them to sign (with a fingerprint) certain documents, although they were not permitted to read them. An official told Manuel Tec Maquín that his son had been involved with the guerilla, and that the military would henceforth be watching the community of Nimblabenque for any outbreaks of subversion. The petitioners indicated that, as a consequence of these events, the local Military Commissioner had threatened Emilio and his father that if they did not participate in communal activities (such as opening roads and other work projects) they would have "problems." For this reason, the petitioners asked that the Commission address the Government for the purpose of requesting precautionary measures.

II. PROCESSING BEFORE THE COMMISSION

7. Case 11.312 was opened on June 22, 1994, and the pertinent parts of the petition were transmitted to the Government of Guatemala on June 23, 1994, with information in response requested within 90 days.

8. The Government requested additional time to submit its response by means of a note of September 26, 1994. In a note of October 7, 1994, the Commission indicated that an extension of 30 days had been granted.

9. On October 5, 1994, the Government submitted its response to the Commission's request for information, indicating that the minor Emilio Tec Pop had never been illegally detained by members of the armed forces. Rather, he had been found, apparently lost and suffering from mental disorders, and the military had given him aid and returned him to his family.

10. On November 28, 1994, the petitioners submitted their observations to the response of the Government. They maintained the validity of the facts denounced in the petition, controverted the Government's assertion that no family member had attempted to invoke and exhaust the applicable domestic remedies, and emphasized the right of minors, such as Emilio Tec Pop, to corresponding measures of protection under the American Convention. The petitioners underlined that the armed forces were not authorized to carry out the actions that the Government had reported with respect to Emilio Tec Pop. These observations were transmitted to the Government in a note dated December 12, 1994, with a request that all information with respect to the case be provided within 30 days.

11. The Government responded with a note of April 26, 1995, ratifying its response of October 5, 1994, and reiterating that, because domestic remedies had yet to be exhausted, the case was inadmissible. These observations were transmitted to the petitioners on May 16, 1995, with any response or additional information requested within 45 days.

12. On August 22, 1995, the petitioners submitted their response, and requested that the Commission conclude the processing of the case and adopt a decision. The petitioners maintain that Manuel Tec Maquín invoked the appropriate remedies, but obtained no response. The petitioners further noted that, due to the nature of the facts concerned, they did not consider the case susceptible to the procedure for friendly settlement.

13. On December 4, 1995, the Commission directed letters to both parties, indicating that it was willing to place itself at their disposal for the purpose of facilitating a friendly settlement should they wish to engage in this process contemplated in Article 48.1.f of the American Convention. The parties were requested to respond within 30 days. On December 11, 1995, the petitioners responded with a note reiterating the position stated in their communication of August 22, 1995. On January 16, 1996, the Government submitted a communication indicating that, in view of their position that the rights of Emilio Tec Pop had not been subject to any violation, and that the present case was inadmissible because domestic remedies had not been exhausted, they could not make any pronouncement with respect to the Commission's offer to facilitate a friendly settlement.

III. THE POSITIONS OF THE PARTIES

The Position of the Petitioners

14. The petitioners allege that minor Emilio Tec Pop was illegally deprived of his liberty between January 31 and March 2, 1994 while held in the custody of the Guatemalan armed forces. They assert that he was held against his will and physically and mentally mistreated during that time. The petitioners charge that soldiers threatened to kill Emilio, beat him, and jabbed at his fingers with a knife.

15. With respect to the invocation of domestic remedies, the petitioners submit that Manuel Tec Maquín approached the relevant authorities to denounce that his son was missing during the first days after he failed to return home from working with his uncle. According to the petitioners, Manuel Tec Maquín went to the National Police, the Justice of the Peace of the Municipality of El Estor, and local military authorities. They submitted a document signed by the Justice of the Peace recording the existence of criminal process 052-94, initiated pursuant to a denunciation presented before the National Police in February of 1994. The record identifies the victim as Manuel Tec Maquín, and the accused as José Chiquín. According to this record, the documents relative to the matter were transmitted to the Second Court of First Instance of Instruction in Puerto Barrios on February 7, 1994. The petitioners contend that the authorities failed to respond to the denunciations submitted, and failed, moreover, to carry out the investigation required de oficio once the State was on notice of the facts denounced.

16. The petitioners maintain that the State of Guatemala is responsible for having violated the rights of Emilio Tec Pop under the American Convention to personal liberty (Article 7), to physical integrity (Article 5), to judicial protection and guarantees (Articles 25 and 8), and therefore breached its Article 1.1 obligations to respect and guarantee the rights established.

The Position of the Government

17. With respect to the facts, the Government sustains that:

a. The PAC's of Panzós, Alta Verapaz, informed the Command of Military Zone 21, headquartered in Cobán, that they had found Emilio Tec Pop, and that he appeared to be lost and suffering from mental disorders. The Command sent personnel to bring the minor to the Military Zone with the objective of assisting him.

b. The time that he remained in the Zone was strictly the time required to locate his parents. This was very difficult because the minor constantly changed his story with respect to the place of his residence.

c. Emilio told the military personnel that he had been kidnapped by terrorists for eight days, and that they had given him a mission to go to Panzós, which is where he encountered the Committee of Peace and Development and denounced what had happened to him.

18. The Government maintains that Emilio Tec Pop was never illegally deprived of liberty, much less kidnapped by the armed forces. Rather, he was kept in the Military Zone for his own security, and was given medical attention, food and clothing while the authorities located his family.

19. The Government affirms that, according to an investigation carried out by the National Police, neither the family nor any other person filed a denunciation with a competent

jurisdictional body to initiate legal proceedings. Accordingly, the Government maintains that the case is inadmissible due to the failure of the petitioners to invoke and exhaust the applicable domestic remedies. The Government, noting the 1994 entry into force of a new Code of Criminal Procedure providing for enhanced juridical security and protection, sustains that any claimant seeking justice bears the obligation to provide all available means of proof within the framework of the corresponding judicial procedure. The Government maintains its willingness to clarify the case under study, but contends that the petitioners have not exhausted the internal remedies which would allow for the identification and sanctioning of those responsible.

IV. CONSIDERATIONS WITH RESPECT TO ADMISSIBILITY

20. The Commission is competent to examine the subject matter of this complaint, as it concerns alleged violations of Articles 1, 5, 7, 8, 19 and 25 of the American Convention. The Republic of Guatemala deposited its ratification of the American Convention on May 25, 1978, and the Convention entered into force for all parties on July 18, 1978.

21. The petition includes the information required by Article 32 of the Commission's Regulations, and meets the conditions set forth in Article 46.1.c of the American Convention and Article 39 of the Commission's Regulations, as it is neither pending settlement in another international inter-governmental proceeding, nor essentially duplicative of a petition pending or previously considered by the Commission. The petition was timely filed, as required by Article 46.1.b, given that the central events denounced took place between January 31 and March 2, 1994, and the petition was received on June 21, 1994.

22. Article 46 of the American Convention specifies that, in order for a case to be admitted, "remedies under domestic law [shall] have been pursued and exhausted in accordance with generally recognized principles of international law." This requirement ensures the State concerned the opportunity to resolve disputes within its own legal framework. The position of the Government is that this case is inadmissible because the petitioners failed to invoke domestic remedies. The petitioners maintain that when Emilio Tec Pop failed to return home after working with his uncle, his father approached the National Police, the Justice of the Peace of El Estor, and local military authorities. The case file before the Commission contains a record signed by the Justice of the Peace referring to criminal process 052-94, opened pursuant to a denunciation filed by Manuel Tec Maquín before the National Police, and transmitted to the Second Court of First Instance of Instruction in Puerto Barrios on February 7, 1994. While the copy of the record provided does not recite the specific facts denounced, the data set forth is consistent with the account provided by the petitioners, and the Government has provided no information to controvert or otherwise explain the existence of this criminal process. The record thus reflects that the petitioners did invoke domestic remedies.

23. In accordance with Article 46 of the Convention, when domestic remedies are unavailable as a matter of fact or law, the requirement that they be exhausted is excused. See Advisory Opinion OC-11/90 of August 10, 1990, Exceptions to the Exhaustion of Domestic Remedies (Art. 46.1, 46.2.a and 46.2.b American Convention on Human Rights), Ser. A No. 11, para. 17. Article 46.2 of the Convention specifies that this exception applies: if the legislation of the State concerned fails to afford due process for the protection of the right allegedly violated; if

the party alleging violation has been hindered in his or her access to domestic remedies; or if there has been unwarranted delay in the issuance of a final judgment through domestic recourses.

24. The record reflects that the domestic authorities were placed on notice that a 14 year old boy was missing through denunciations filed by his father on February 6 and 7, 1994. The record before the Commission contains no information as to an investigation, or any attempt to investigate the whereabouts of the boy, who remained missing until March 2, 1994. Moreover, the record is silent as to whether any measures were ever taken to process criminal action 052-94. The Commission thus concludes that, while the authorities were on notice of the facts denounced, they failed to respond as required by domestic law and by the American Convention. In accordance with domestic law, the Public Ministry is responsible for the prosecution de oficio of a criminal action. As a practical matter, domestic remedies were unavailable to the petitioners.

25. When a petitioner alleges that he or she is unable to prove exhaustion, Article 37 of the Commission's Regulations establishes that the burden then shifts to the Government to demonstrate which specific domestic remedies remain to be exhausted and offer effective relief for the harm alleged. See, Velásquez Rodríguez, Judgment of June 26, 1987, para. 88. In the instant case, the Government has not discharged that burden.

26. As indicated by the foregoing analysis, the present petition fulfills the requirements for admissibility set forth in the American Convention and the Regulations of the Commission. A decision of this nature is taken without prejudice to the competence of the Commission, in the event that it receives subsequent information with respect to the exhaustion of domestic remedies, to reconsider its declaration of admissibility, depending on the status of progress in the case.

27. As to Article 48.1.f of the American Convention, which authorizes the Commission to place itself at the disposal of the parties for the purpose of facilitating a possible friendly settlement, the record reflects that the parties were notified of the Commission's disposition to assist them in this regard at the close of 1995, but chose not to avail themselves of this process at that time. The Commission considers that this case could be susceptible to this procedure, and for this reason, again offers in the operative portion of this resolution to place itself at the disposal of the parties for this purpose.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

28. To admit Case 11.312 on the basis of the record in the case and the foregoing analysis pursuant to Articles 46, 47 and 48 of the American Convention on Human Rights.

29. To transmit the present report to the State of Guatemala and the petitioners.

30. To place itself at the disposal of the parties for the purpose of facilitating a friendly settlement based on the principal of respect for human rights, should they wish to avail themselves of this procedure established in Article 48.1.f of the American Convention. If so, the

parties must manifest their desire to initiate this procedure within 30 days from the date of transmission of the present report.

31. To continue its analysis of the issues raised as they have been set forth in this report in order to make a determination on the merits of the case.

32. To publish this report in its Annual Report to the General Assembly of the OAS.