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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 32/99; Case 11.677
Session: Hundred and Second Regular Session (22 February – 12 March 1999)
Title/Style of Cause: Diego Velasquez Soc and Matias Velasquez v. Guatemala
Doc. Type: Decision
Decided by: Chairman: Professor Robert K. Goldman;
First Vice-Chairman: Dr. Helio Bicudo;
Second-Vice Chairman: Dean Claudio Grossman;
Commissioners: Prof. Carlos Ayala Corao, Dr. Alvaro Tirado Mejia.
Dated: 11 March 1999
Citation: Velasquez Soc v. Guatemala, Case 11.677, Inter-Am. C.H.R., Report No. 32/99, OEA/Ser.L/V/II.106, doc. 6 rev. (1999)
Represented by: APPLICANTS: the Council of Ethnic Communities Runujel Junam and the Center for Justice and International Law
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I. SUMMARY

1. On August 26, 1996, the Inter-American Commission on Human Rights (hereinafter "Commission") received a petition denouncing the May 24, 1993 killing of Pastor Diego Velásquez Soc and wounding of his father Matías Velásquez by members of the Civilian Self-Defense Patrols of the Republic of Guatemala (hereinafter "Guatemala" or "State").^[FN1] The petitioners, the Council of Ethnic Communities Runujel Junam (Consejo de Comunidades Etnicas Runujel Junam (CERJ)) and the Center for Justice and International Law (CEJIL), reported that at approximately 1:00 a.m. on May 24, 1993, Pastor Velásquez and his family were returning to their home in the Canton San Pedro, San Pedro Jocopilas, Department of El Quiché after attending a religious vigil. In a street near the local PAC detachment, three men intercepted Pastor Velásquez and, without a word, shot him to death. When his father, Matías Velásquez, tried to illuminate the faces of the killers with his lantern, they shot him, wounding his right hand.

[FN1] The Civilian Self-Defense Patrols (PAC's) were created by the de facto military regime led by General Efraín Rios Montt in late 1981. For further information see, e.g., IACHR, Fourth Report on the Situation of Human Rights in Guatemala, OEA/Ser.L/V/II.83, Doc. 16 rev., June 1, 1993, Ch. VI. At the time of the facts, they had been renamed the Voluntary Civilian Self-Defense Committees, but remained better known as the "PAC's," which is how they will be identified in the present report.

2. Family members and other witnesses allegedly identified the perpetrators as Juan Chivalán Xam and José Xiloj, PAC members, and Francisco Marroquin Vásquez, First Chief of the PAC's and Chief of the Military Commissioners of San Pedro Jocopilas. The petitioners allege that members of the family were subsequently subjected to threats and attacks by PAC members. They indicate that the PAC's were state agents at the time of the attack, and intimately linked with the Guatemalan Army. They submit that the State of Guatemala is responsible for the killing of Diego Velásquez Soc and wounding of Matías Velásquez, and for its failure to respond with appropriate measures to investigate, submit those responsible to prosecution and punishment, and repair the consequences of the crimes, in violation of Articles 1(1) 4, 5, 8 of the American Convention.

3. The State maintains that it bears no international responsibility in the present case. It asserts that the Guatemalan judiciary is seized of the matter, and carrying out the measures required by law. The State submits that the case must be viewed within the context of the period of the facts, and notes that it has taken significant positive measures to disband the PAC's and eliminate the position of military commissioner. It contends that the case is inadmissible because the petitioners have failed to exhaust domestic remedies as required.

4. As set forth in the report that follows, having examined the contentions of the parties on the question of admissibility, the Commission decided to admit the present case and proceed to an analysis of the merits.

II. PROCESSING BEFORE THE COMMISSION

5. The Commission opened Case 11.677 on September 18, 1996, and transmitted the pertinent parts of the petition to the Government of Guatemala by means of a note of the same date, with a response requested within 90 days. The petitioners were notified that this action had been taken.

6. The State responded on January 10, 1997, indicating that domestic remedies had not been exhausted, and that measures had been taken to prevent such violations, including the dissolution of the PAC's and the elimination of the position of military commissioner. This information was transmitted to the petitioners on February 18, 1997, with observations requested within 30 days. This request was reiterated on May 13, 1997, with a deadline of 30 days for a response.

7. The petitioners' response, dated May 14, 1997, expressed their view that the general measures reported were valuable but did not resolve the case under study. The pertinent parts of this response were transmitted to the State on July 3, 1997, with any information in response requested within 30 days.

8. The State submitted a brief response on July 31, 1997, maintaining that domestic remedies had not been exhausted. This was transmitted to the petitioners on August 14, 1997, with observations requested within 30 days.

9. Pursuant to the January 14, 1998 request of the petitioners, on January 23, 1998, the Commission notified the parties that it would convene a hearing during its 98th regular period of

sessions. That hearing was held on February 26, 1998, with representatives of both parties present. Issues raised included the security situation of the family members, the status of the judicial investigation, and the complainants' access to the judicial case file. The petitioners submitted copies of (1) an August 16, 1997 letter signed by the Interim Commander of Military Zone 20 addressed to the prosecutor confirming that those accused had been PAC members in the Canton San Pedro, and listing the weapons that PAC had been provided; and (2) a February 11, 1998 order to arrest the accused. This information was formally transmitted to the State on April 16, 1998, with a request that the information submitted in response address the status of the arrest orders and location of the judicial case file.

10. On May 19, 1998, the State submitted information indicating that its authorities were preparing a copy of the record which would be remitted once available; asserting that access to the file had never been restricted; and confirming that its authorities were establishing the whereabouts of those accused in order to effectuate the arrest order. This was transmitted to the petitioners on June 16, 1998, with observations requested within 30 days.

11. On May 20, 1998, the petitioners submitted additional information and observations, including several documents relative to the domestic proceedings. This information was transmitted to the State on June 16, 1998, with observations in response requested within 30 days. On July 13, 1998, the petitioners requested a 15 day extension to submit their observations to the May 19, 1998 submission of the State.

12. On July 20, 1998, the State submitted additional information indicating that measures were being taken to effectuate the arrest order, and asserting the relevance of the context in which the events denounced took place. Also by note of July 20, 1998, the petitioners submitted their observations to the May 19, 1998 response of the State. These submissions were transmitted to the respective parties on September 1, 1998, with any observations in response requested within 30 days.

13. On September 21, 1998 the petitioners submitted observations, the pertinent parts of which were transmitted to the State on November 23, 1998, with any information in response requested within 30 days. In the interim, on October 5, 1998, the State had provided a report concerning measures taken to effectuate the arrest order. This information was transmitted to the petitioners on November 12, 1998, with observations in response requested within 30 days.

14. On December 11, 1998, the petitioners submitted observations, the pertinent parts of which were transmitted to the State on January 28, 1999, with any observations requested within 30 days.

III. THE POSITIONS OF THE PARTIES

A. The Position of the Petitioners

15. The petitioners sustain that the State of Guatemala is responsible for the acts of its agents, members of the PAC's, in killing Pastor Diego Velásquez Soc and wounding his father Matías Velásquez, in violation of Articles 4 and 5 of the Convention, and for having failed to respond

with the measures required to investigate, prosecute and punish those responsible, and repair the consequences, in violation of Articles 8 and 1(1).

16. The petitioners report that the May 24, 1993 attack was denounced by Matías Velásquez before the Court of Peace of San Pedro Jocopilas the following day, May 25, 1993, where it was identified as cause number 36-93. Matías Velásquez also presented a denunciation before the Human Rights Ombudsman on May 28, 1993. In June of 1993, cause number 36-93 was transferred to the Second Court of First Instance of El Quiché, and assigned number 906-93.

17. The petitioners allege that the victims' family members were thereafter subjected to acts of intimidation. On June 25, 1995, a group of PAC members allegedly threatened Miguel and Noé Reynoso Velásquez, cousins of Diego Velásquez, accusing them of being members of the Guatemalan National Revolutionary Unity (hereinafter "URNG"). On July 1, 1995, PAC members reportedly shot at the home of Matías Velásquez, and were heard to say that they would "deal with" other family members. They allegedly shot at his home a second time on January 21, 1996. In each instance, witnesses were able to identify some of the PAC members responsible. The petitioners indicate that these attacks were denounced before the police and the Human Rights Ombudsman in April of 1996, and before the United Nations Mission for the Verification of Human Rights and of Compliance with the Commitments of the Comprehensive Agreement on Human Rights in Guatemala (hereinafter "MINUGUA").

18. The petitioners report that the case remains in the initial investigation stage. Notwithstanding the passage of almost six years, the pertinent authorities had failed to take fundamental measures such as ordering a ballistics report; taking the declarations of those accused; receiving the testimony of certain witnesses and family members; and requesting information from the local Military Zone or PAC commanders. They allege that the case file had been inactive or lost between June of 1993 and September of 1995, and September of 1995 and September of 1997. They note that the Public Ministry had requested that an arrest order be issued against the three accused in 1995, but the Second Court of First Criminal Instance had denied the request on the basis of insufficient proof. It was only on February 11, 1998 that an arrest order was finally issued, and the petitioners maintain that the authorities have been negligent in failing to carry it out.

19. The petitioners allege that testimonial, documentary and circumstantial evidence shows that Juan Chivalán Xam and José Xiloj, PAC members, and Francisco Marroquín Vásquez, First Chief of the PAC's and Chief of the Military Commissioners of San Pedro Jocopilas committed these crimes. They maintain that the PAC's were formed and armed by the State, and cite the August 16, 1997 letter signed by the Interim Commander of Military Zone 20 confirming that the three men accused had been PAC members and listing the weapons they had been given. The petitioners allege that this case fits within a pattern of violations by PAC's and military commissioners. They cite reports by the Commission and MINUGUA in support of their contention that the authorities have demonstrated a lack of will to investigate or prosecute such actors, with the result that the violations they commit remain in impunity. While the petitioners acknowledge the general steps taken by the State to eliminate the position of military commissioners and disband the PAC's as positive, they indicate that these measures have not resolved the particular case.

20. The petitioners maintain that the case is admissible because domestic remedies were invoked to the extent possible, but have been impossible to exhaust. They allege that the victims' family members have been impeded in their pursuit of those remedies by acts of intimidation by PAC members. They indicate that domestic remedies have been essentially unavailable because the case file was inactive or lost for two periods totaling more than four years, and have been ineffective for having failed to produce the results for which they were designed. Further, the petitioners assert that a final decision has been unduly delayed. Finally, the petitioners maintain that the petition was timely filed, as the matter has not been the subject of a final judicial decision, and was submitted within a reasonable time from the facts denounced.

B. The Position of the State

21. The State does not contest that Pastor Velásquez was killed and his father wounded; rather, the State indicates that these facts are under investigation by its judiciary and those accused have not been proven guilty. The matter, identified as case file number 2558-96 and process number 906-93, remains pending before the Second Court of First Criminal Instance, Narcoactivity and Crimes against the Environment (hereinafter "Second Court of First Criminal Instance"). Those accused are Juan Chivalán Xam, José Xiloj and Francisco Marroquín Vásquez.

22. As of the State's submission of May 19, 1998, the last action of record had been the issuance of the February 11, 1998 order to the National Civil Police to arrest the three men accused. That order had been issued pursuant to the February 10, 1998 request of the Public Ministry. The State indicated that the authorities were taking measures to establish the whereabouts of the accused. In its July 20, 1998 submission, the State reported that an urgent operation designed to locate the accused had been undertaken. On October 5, 1998, the State reported that, on June 4, 1998, five investigators and police agents had gone to San Pedro Jocopilas to investigate and execute the arrest order. They visited the homes of those accused but found only family members. Police agents interviewed the Mayor of San Pedro Jocopilas, who indicated that those accused had not been seen in the area since the issuance of the arrest order. An alderman reportedly told investigators that he had heard rumors that the three men had been seen in Guatemala City and the Petén. The State reported that its authorities were continuing to search for them.

23. The State indicates that the family members of the victims never officially denounced any threats or acts of intimidation to the authorities. It reported that, having received notice of these allegations, the appropriate institutions were taking steps to avoid the commission of such acts against these individuals.

24. With respect to the petitioners' allegations concerning access to the judicial case file, the State indicates that, as a matter of domestic law, judicial processes are public except in stipulated cases by judicial order. The persons involved and their attorneys have the right to be present for proceedings, and respond as the law provides. It submits that access to the case file in the present case has never been restricted.

25. The State notes that the facts of this case took place in the context of the armed conflict which affected Guatemala for 36 years. Abuses were committed by both parties to that conflict, and the population, especially in the area of El Quiché, was profoundly affected. The State emphasizes that it has taken measures aimed at preventing such abuses, namely the September 15, 1995 elimination of the position of military commissioner, the August 13, 1996 disbanding of the PAC's, as well as the enactment of reforms to the Criminal Code typifying the crimes of extrajudicial execution, forced disappearance and torture. The State indicates that MINUGUA has reported on these positive measures and the progressive decrease in violations after the demobilization of actors including the PAC's, military commissioners and URNG.

26. In summary, the State asserts that it bears no international responsibility in this case. It has carried out a "serious and formal investigation in conformity with its internal juridical order." "Those responsible have been identified," arrest orders were issued on the basis of investigations and expert reports, and the relevant authorities are establishing their whereabouts. The State maintains that the applicable domestic remedies have neither been ineffective nor unduly delayed.

IV. ANALYSIS

A. Competence of the Commission

27. In accordance with its mandate, the Commission is competent to examine the subject matter of this complaint, as it concerns alleged violations of Articles 1, 4, 5 and 8 of the American Convention. Guatemala has been a party to that Convention since its ratification of May 25, 1978, and the allegations at issue concern events subsequent to that date. The Convention entered into force for all parties on July 18, 1978. The petitioners have locus standi to appear pursuant to the terms of Article 44 of the Convention. In their submissions, the petitioners have stated claims which, if consistent with other requirements and shown to be true, could tend to establish the violation of a right protected by the American Convention.

B. Requirements to Admit a Petition

28. 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.

C. Exhaustion of Domestic Remedies

29. Article 46 of the American Convention specifies that, in order for a case to be admitted, "remedies under domestic law [must] have been pursued and exhausted in accordance with generally recognized principles of international law." This requirement exists to ensure the state concerned the opportunity to resolve disputes within its own legal framework. When domestic remedies are unavailable as a matter of fact or law, however, the requirement that they be exhausted is excused.[FN2] 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. Consequently, when, as in the present case, the 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.[FN3]

[FN2] See IACtHR, Exceptions to the Exhaustion of Domestic Remedies (Art. 46.1, 46.2.a and 46.2.b American Convention on Human Rights), Advisory Opinion OC-11/90 of August 10, 1990, Ser. A No. 11, para. 17.

[FN3] IACtHR, Velásquez Rodríguez Case, Merits, Judgment of July 29, 1988, Ser. C No. 4, para. 59 (citing decision on preliminary exceptions in same case, para. 88).

30. The record indicates that Matías Velásquez presented a denunciation before the Court of Peace of San Pedro Jocopilas the day after the alleged attack, on May 25, 1993. The matter was transmitted to the Second Court of First Criminal Instance, where it remains pending. The State has not questioned the appropriateness or adequacy of the remedy invoked, or suggested that other remedies offer effective relief. Rather, it sustains that its judiciary and Public Ministry are seized of this matter and carrying out the necessary measures.

31. Given that almost six years have passed since this judicial recourse was invoked, the Commission will first consider the question of timing and potential delay. The record provides no information from the State explaining or justifying the delay in the criminal investigation. In response to the petitioners' charge that the file was lost or inactive from June of 1993 to September of 1995, and again from September of 1995 to September of 1997, the State has indicated simply that access to the file was never restricted. It has, however, provided no information with respect to measures taken during those periods. Nor does the record indicate why three years passed before the request for an arrest order against the three accused first submitted and declined in 1995, was resubmitted and accepted in 1998. While it is evident that the receipt of further information could justify such a circumstance, the record contains no information with respect to measures taken during the intervening period. Even after the arrest order was issued in February of 1998, the State only reported one police deployment, on June 4, 1998, specifically aimed at executing it. The State has consistently indicated that its judiciary was taking the measures required by law, but has provided no information to substantiate which judicial measures have been taken, or with what results.

32. While any criminal investigation will necessarily have its own requirements, "[t]he rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the [presumed] ... victim ineffective." [FN4] As a general rule, a criminal investigation must be conducted promptly, not only to protect the interests of the victim, but to safeguard the rights of any person thereby placed under suspicion. Pursuant to the foregoing analysis, and without prejudice to its examination on the merits, the Commission finds that the almost six year delay in the issuance of a judicial decision constitutes an exception to the

requirement of Article 46(1) of the Convention in accordance with the terms set forth in Article 46(2).

[FN4] IACtHR, Velásquez Rodríguez Case, Preliminary Exceptions, Judgment of June 26, 1987, Ser. C No. 1, para. 93; Fairén Garbi and Solís Corrales Case, Preliminary Exceptions, Judgment of June 26, 1987, Ser. C No. 2, para. 92; Godínez Cruz Case, Preliminary Exceptions, Judgment of June 26, 1987, Ser. C No. 3, para. 95.

D. Timeliness

33. In accordance with Article 46(1)(b) of the Convention, a petition must be presented in a timely manner, namely, within six months from the date on which the complaining party was notified of the final judgment at the domestic level. This rule ensures legal certainty and stability once a decision has been taken. When there has been no final judgment, as in the present case, Article 46(2) indicates that, insofar as this is attributable to a lack of due process, denial of access to remedies, or unwarranted delay, the six months rule does not apply. In that case, Article 38 of the Commission's Regulations establishes that the deadline for presentation shall be "within a reasonable period of time, in the Commission's judgment, as from the date on which the alleged violation of rights has occurred, considering the circumstances of each specific case." As this provision indicates, the six months rule does not apply where the complaint concerns a continuing violation.

34. The petitioners contend that the petition was timely filed, and the State has presented no exception in this regard. The petition, filed on August 26, 1996, deals primarily with events initiated on May 24, 1993, with the killing of Pastor Velásquez and wounding of Matías Velásquez. The petitioners invoked domestic remedies in Guatemala concerning these crimes. Further, the case deals with crimes that require prosecution de oficio, and the Guatemalan State had the obligation to investigate them and process the corresponding cause. More than six years have transpired with no substantive result. Under these circumstances, the Commission considers that the deadline of six months from the final decision within the internal process is not applicable.

V. CONCLUSIONS

35. The Commission concludes that it has the competence to examine this case and that the petition is admissible, in accordance with the requirements of Articles 46 and 47 of the American Convention.

36. On the basis of the findings of fact and law set forth above, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible.
2. To transmit this report to the parties.
3. To continue with the analysis of the merits of the case.
4. To place itself at the disposal of the parties for the purpose of reaching a friendly settlement on the basis of respect for the human rights protected in the American Convention, and to invite the parties to indicate their response as to this possibility.
5. To make this report public, and publish it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights (IACHR), in the city of Washington, D.C., on the 11th day of the month of March in the year 1999. (Signed): Robert K. Goldman, President; Hélio Bicudo, First Vice President; Claudio Grossman, Second Vice President; Commissioners Alvaro Tirado Mejía and Carlos Ayala.