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Title/Style of Cause: Valentin Carillo Saldana v. Mexico
Doc. Type: Decision
Decided by: Chairman: Helio Bicudo;
First Vice-Chairman: Claudio Grossman;
Second Vice-Chairman: Juan E. Mendez;
Commissioners: Robert K. Goldman, Peter Laurie, Julio Prado Vallejo
Dated: 4 December 2000
Citation: Carillo Saldana v. Mexico, Case 11.808, Inter-Am. C.H.R., Report No. 107/00, OEA/Ser.L/V/II.111, doc. 20, rev.at 574 (2000)
Represented by: APPLICANT: Commission for Solidarity and Defense of Human Rights, A.C.
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I. SUMMARY

1. On September 22, 1997, the Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission” or the “IACHR”) received a note from the Commission for Solidarity and Defense of Human Rights, A.C. (“COSYDDHAC” or “the petitioners”) in which it complained that Mr. Valentín Carrillo Saldaña, a Tepehuan Indian, had been detained, tortured, and extrajudicially executed by the military in Chihuahua, Mexico, in October 1996. Mr. Carrillo Saldaña left his home for work on October 12, 1996, and was missing until his body was found buried on October 17, 1996, showing clear indications of torture. The petitioners allege that the Mexican authorities refused to provide any information to the relatives of Valentín Carrillo Saldaña during the time that the latter was presumably being detained by members of the armed forces of Mexico and that the investigation begun by the military authorities lacks the independence required to establish the facts and punish those responsible. The complaint imputes to the United Mexican States (“the State”) international responsibility for the violation of the following rights, which are guaranteed by the American Convention on Human Rights (“the American Convention”): right to life (Article 4), right to humane treatment (Article 5), right to personal liberty (Article 7), right to a fair trial (Article 8) and right to judicial protection (Article 25). They also allege violation of the general obligation set out in Article 1(1) to respect and guarantee the rights recognized in the American Convention, and the duty provided for in Article 2 for States Parties to adopt legislative measures to give effect to those rights and freedoms.

2. The parties signed a friendly settlement agreement on March 1, 1999, and an agreement for the implementation of the friendly settlement on December 2, 1999. In this report, which has been approved in conformity with Article 49 of the American Convention, the IACHR

summarizes the acts that are the object of the petition, takes note of the agreement reached by the parties, and decides to publish the case.

II. PROCESSING BY THE COMMISSION

3. On October 1, 1997, the Inter-American Commission transmitted the relevant parts of the petition to the State of Mexico and requested the corresponding information. The parties were notified of the State's response and an exchange of information and observations was begun, as provided for in the American Convention and in the Commission's Regulations.

4. On March 10, 1998, the Center for Justice and International Law ("CEJIL") joined the case as a co-petitioner. Subsequent to that date, CEJIL and COSYDDHAC submitted joint communications and were represented in the working meetings held to consider the present case.

5. On November 23, 1998, the Inter-American Commission placed itself at the disposal of the parties with a view to initiating the proceeding provided for in Article 48(1)(f) of the American Convention. On December 2, 1998, a meeting was held at the Office of the State Secretariat for Foreign Affairs of Mexico, in the capital of that country, to try to reach a friendly settlement. The meeting was attended by representatives of the parties, the then Chairman of the Inter-American Commission, and the attorney representing the Executive Secretariat responsible for the case. In its communication of December 22, 1998, the State formally undertook to resolve the case in a friendly settlement. In that communication, it informed the IACHR of the start of meetings between the Mexican authorities and the petitioners for the aforementioned purpose. On January 20, 1999, the parties met in Mexico to try to move ahead with the friendly settlement procedure in this case.

6. On March 1, 1999, a meeting to follow up that initiative was held at the headquarters of the Inter-American Commission, at which time the representatives of the parties and the IACHR signed the agreement for a friendly settlement. On October 4, 1999, another meeting was held at the headquarters of the Inter-American Commission as part of the process provided for in Article 48(1)(f) of the American Convention. The questions that remained to be settled were discussed at that meeting, particularly those concerning the delivery of a copy of the judgment handed down against the military personnel who had been found responsible for the extrajudicial killing of Valentín Carrillo Saldaña, and the calculation of the compensation to be paid to the relatives of the victim.

7. On December 2, 1999, the parties and the representatives of the Inter-American Commission signed at the Commission's headquarters "an agreement for implementation of the friendly settlement," which was aimed at defining the issues that remained pending in the document signed on March 1, 1999.[FN1] On June 15, 1999, the State submitted additional information, which was communicated to the petitioners on June 29, 1999.

[FN1] At the signing of the aforementioned agreement, the IACHR issued a press release in which it stated:

The Commission congratulates the parties for the initiatives taken during this first successful step towards a friendly settlement. The IACHR also expresses its satisfaction at the significant progress made towards ensuring observance of the human rights of the population of Mexico, as part of the international obligations assumed by Mexico within the inter-American system. IACHR, Press Release N° 29/99, December 3, 1999.

8. The State of Mexico reported on September 1, 2000, that scholarships had been awarded to the children of Valentín Carrillo Saldaña. That information was communicated to the petitioners on September 2, 2000, and the response of the petitioners was submitted on October 2, 2000.

9. The response of the petitioners was transmitted to the State of Mexico on October 3, 2000. The State submitted its observations on October 18, 2000, the pertinent parts of which were transmitted to the petitioners. On November 22, 2000, a communication was received with the final comments of the petitioners.

III. FACTS OF THE CASE

10. The lifeless body of Valentín Carrillo Saldaña was found on October 17, 1996, five days after he had disappeared. His mother and his wife were told that he had been seen in the hands of the military of that area and that it was obvious that he had been badly beaten. His family began to ask questions of the military and, when the latter failed to provide information about his whereabouts, took the initiative to organize various searches. Finally, based on the accounts of the witnesses who had seen him in the hands of the military, the body of Mr. Carrillo Saldaña was found buried some 45 minutes away from the locality of San Juan Nepomuceno. The autopsy revealed that the victim had suffered “multiple injuries to his internal organs, infarction and death by asphyxiation, blows to the chest, internal bleeding from the kidneys and liver. His tongue was out of his mouth and his eyes out of their sockets, signs of hanging by the neck, and blows to the arms and legs.”

11. His family brought a complaint to the Office of the Public Prosecutor of the state of Chihuahua on October 17, 1996, for the acts alleged in the petition. At the request of the Office of the Military Prosecutor, once it had been determined that members of the armed forces were involved in the acts, the Office of the Public Prosecutor declared on October 22, 1996, that it did not have the competence to investigate the case.

12. On March 16, 1999, the presiding military judge handed down a sentence condemning to 30 years in prison Cavalry Captain Gustavo Aviña Gutiérrez as “guilty and criminally liable as the material and voluntary perpetrator of violence against individuals, resulting in an aggravated homicide,” the victim of which was Valentín Carrillo Saldaña. However, the Supreme Military Tribunal found Sergeant Angel Durón Marmolejo, Second Lieutenant Edgar Ricardo Ramírez Fuentes, Corporal Evaristo Hernández García, Corporal Serafín Vásquez Paredes, and Private Héctor Manuel Borja Rodríguez not guilty. On appeal, the Supreme Military Tribunal reduced the sentence of Captain Aviña Gutiérrez to 20 years. Challenging that decision, the officer’s defense counsel filed an application for amparo on September 19, 2000.

IV. FRIENDLY SETTLEMENT

13. The friendly settlement agreement signed by the parties and the representatives of the Inter-American Commission on December 2, 1999, reads as follows:

Agreement between the United Mexican States (hereinafter “the State”) and the Commission for Solidarity and Defense of Human Rights, A.C. (hereinafter “COSYDDHAC”) and the Center for Justice and International Law (hereinafter “CEJIL”) in their capacity as representatives of the interests of the family of Mr. Valentín Carrillo Saldaña, for the purpose of resolving by friendly settlement case 11.808, now before the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”), in accordance with the provisions of Articles 48, 49, and 50 of the American Convention on Human Rights (hereinafter “the American Convention”), with the parties agreeing to comply with the following provisions:

BASES FOR AGREEMENT

FIRST: At the invitation of the IACHR, on December 1, 1998, the State, on the one hand, and COSYDDHAC and CEJIL (hereinafter “the petitioners”), on the other, began a dialogue aimed at reaching a friendly settlement of case 11.808 (Valentín Carrillo Saldaña), now before the Commission.

SECOND: The corresponding agreement was signed by the parties on March 1, 1999.

THIRD: The parties have agreed as follows:

- A. To continue and conclude by a judgment of the court the criminal proceeding instituted against Cavalry Captain First Class Gustavo Aviña Gutiérrez, a proceeding in which the accused was sentenced to 30 years incarceration in an ordinary prison, dismissal from his job, and disqualification from ever again serving in the Mexican army or air force;
- B. That the representatives of the State would provide the petitioners with a copy of the above-mentioned judgment, as well as the judgments handed down against the other military personnel involved in the acts;
- C. That the necessary formalities would be started with a view to compensating the family of Valentín Carrillo Saldaña, in conformity with the applicable domestic laws, but that this would not imply a tacit acceptance of international responsibility by the State.

Agreement on the following terms was reached subsequently:

- D. Award of scholarships to the victim’s minor children in an amount sufficient to provide for their schooling, until they reach the age of majority, and the provision of medical care and health services to the victim’s widow and children;
- E. By way of compensation for the moral damage caused, the State and the petitioners will issue a joint public statement.

FOURTH: Considering that item “A” has been covered by the lower court judgment handed down on March 16, 1999, by the Military Court of the III Military Region, in which the accused was condemned to incarceration in an ordinary prison, dismissal from his employment, and disqualification; that the requirements under “B”, “C,” and “E” would be met in this agreement; and that the State will notify the IACHR within a reasonable period of the details of the implementation of item “D,” the parties request that, in conformity with the provisions of Article 49 of the American Convention, the IACHR should conclude this case and issue the corresponding report of a friendly settlement.

FIFTH: For the purpose of fulfillment of item “B,” the State shall make available to the petitioners a copy of the aforementioned judgment handed down against Captain Aviña Gutiérrez and copies of the judgments handed down against the following persons: Cavalry Sergeant Second Class Angel Durón Marmolejo, Cavalry Second Lieutenant Edgar Ricardo Ramírez Fuentes, Signal Corporal Evaristo Hernández García, Corporal (cook) Serafín Vásquez Paredes and Private (sanitation) Héctor Manuel Borja Rodríguez.

SIXTH: In fulfillment of item “C,” the State shall deliver to the petitioners a check made out to Ms. Elena Chaparro, the widow of Carrillo, in the amount of \$102,661.00 (one hundred and two thousand, six hundred and sixty one Mexican pesos) as compensation for the material damage, which includes indemnization and funeral expenses, in conformity with the provisions of domestic law.

SEVENTH: Mr. Carrillo Saldaña’s widow and children shall be given, through the document attached hereto, guarantees of medical assistance and health services. Guarantees shall also be provided for the award of scholarships to the victim’s minor children until they reach the age of majority.

EIGHTH: In addition, by way of compensation for the moral damage suffered, the State and the petitioners shall issue a joint public statement, which they shall sign together with the present document.

NINTH: In this act, the representative of the State of Mexico hereby delivers to the representatives of the victim check N° 8270251, drawn on the Banco Internacional (BITAL) and made out to Mrs. Elena Chaparro, the widow of Carrillo, in the amount of \$102,661.00 (one hundred and two thousand, six hundred and sixty one Mexican pesos), together with a copy of the judgments handed down in criminal case N° 1758/96, which was brought on the basis of preliminary investigation AP 52M/26/96.

V. FULFILLMENT OF THE AGREEMENT

14. The State of Mexico has informed the Commission that “since the formalities required for the minor children of Mr. Carrillo Saldaña to be registered as beneficiaries of PROGRESA have not been completed, a few days ago the authorities of the state of Chihuahua granted the minors the amount of \$3,000.00 (three thousand pesos) to pay the cost of their schooling.”[FN2]

[FN2] Communication dated June 15, 2000, from the State.

15. On September 1, 2000, the State communicated that it had awarded individual scholarships to the minors Cristina, Florentino, Gerónimo, and Valentina, the children of Mr. Carrillo Saldaña, consisting of an annual amount of \$6,000 Mexican pesos, as well as food assistance. On that same date, the IACHR communicated this information to the petitioners and requested any observations that the petitioners might care to make.

16. In response, the petitioners communicated the following:

On December 2, 1999, when the Friendly Settlement Agreement for this case was signed, the seventh item was still pending, concerning the provision to the widow and children of Mr. Carrillo Saldaña of guarantees of medical care and health services as well as the award of scholarships to the victim's minor children until they reached the age of majority.

Since the matter of the scholarships remains pending to this date, we wish to inform you that the annual award of the amount of \$6,000.00 (six thousand Mexican pesos) for each of the minor children, plus monthly food provisions, so far has not been given to the minors nor has any arrangement been made to ensure that they receive the aforementioned benefits in a timely manner. Moreover, the staff of the State Office for the Protection of Minors and the Family has informed members of COSYDDHAC that a single annual payment of six thousand Mexican pesos will be made for all the minors.

In these circumstances, we consider to be inaccurate the claim of the Government of Mexico that it has fully complied with the terms of the Agreement of December 2, 1999. Consequently, we have still not met the requirements set out in Article 49 of the American Convention for the Commission to report a friendly settlement of this case.[FN3]

[FN3] Communication dated October 2, 2000, from the petitioners.

17. The petitioners requested the State of Mexico, through the IACHR, to provide information "on the manner, place, and date in which it will guarantee the timely delivery of the financial award and food provisions to be granted as a scholarship to Mr. Carrillo Saldaña's children, thereby establishing a mechanism that is both prompt and accessible to the petitioners." They also requested the issuance of a document "as proof of the beneficiaries' entitlement during the years in which they are entitled to the financial award and food provisions." The document should state the equivalent amount in dollars in order to preserve the purchasing power of the scholarship. Finally, they requested the Mexican authorities to provide that the "food provisions" should not be worth less than 150 dollars per month.

18. The State notified the IACHR that the amount of 6,000 pesos per year offered under the friendly settlement to each of the minor children of Mr. Carrillo Saldaña was an "appropriate and even generous amount, when it is considered that education in Mexico was free of cost" and

gave details about the manner in which the amount would be paid.[FN4] It added that the amount of the indemnization had been set in local currency and that, as a result, “the intention to change that amount into its dollar equivalent was inappropriate, especially on the basis of adverse economic forecasts.” It further described the delivery of the “monthly food provisions” to Mr. Carrillo Saldaña’s family until his children reached the age of majority as “a unilateral, good-faith gesture by the Mexican State,” which, in its view, should therefore not be converted into a cash amount.

[FN4] In this regard, the State agreed as follows:

Payment of the amount due will be made every four months, so that each minor will receive the amount of \$2,000.00 (two thousand Mexican pesos) every four months. The payments will be delivered by Claudia Pérez Aguilar, the State Coordinator of the Program, to the widow of Mr. Valentín Carrillo in the offices of the State Office for the Protection of Minors and the Family, which is located in Calle Tamborel y 12, número 4800, in Chihuahua, Chihuahua, C.P. 31050.

The scholarships were processed and approved with effect from September of this year, which means that the amounts corresponding to the months of September to December 2000 will be paid during the current month and subsequent payments will be made every four months beginning in April 2001.

Communication dated October 18, 2000, from the State.

19. With regard to the criminal proceeding instituted against Captain Gustavo Aviña Gutiérrez, the State informed the Commission as follows:

On September 19, 2000, the convicted officer filed an appeal of amparo against the judgment of the High Court by which he had been sentenced to 20 years in prison for the crime of violence against individuals, resulting in homicide. In this regard, it should be recalled that, as the Friendly Settlement Agreement very clearly indicates, the commitment with regard to the punishment of those responsible for the homicide was fully honored with the judgment of the lower court convicting the said army officer.[FN5]

[FN5] Idem.

20. In their final observations on the case, the petitioners accept the amount offered by the State of Mexico by way of scholarships, with the express reservation that their decision was dictated by the economic need of the victim’s family.[FN6] They also express their concern about the subsequent payment of the scholarships, since the official who paid the first part of the scholarships is alleged to have stated that “they were under instructions to do so for only one year and that she did not know what would happen after the change in government administration.”[FN7] Finally, the petitioners reiterate their position regarding the punishment of Captain Aviña Gutiérrez and express concern at other recent acts committed in the area.

[FN6] In this regard, the petitioners state as follows:

Free basic education in Mexico means that the public school does not charge tuition for children to receive instruction, but the State does not provide the ... necessary school materials, nor does it pay for the cost of transportation that children such as the children of Mr. Carrillo Saldaña must pay to travel to the place where the nearest public school is located. Nor does it pay for the food that the students need during the school day, or for clothing or shoes....

Nevertheless, because of the extreme need which caused her to accept the amount offered by the Government, Mrs. Elena Chaparro, the widow of the victim, has accepted the first installment of the amount that was paid in Baborigame, in the municipality of Guadalupe y Calvo, Chihuahua, through the DIF, together with two deliveries of food provisions.

Communication dated November 22, 2000, from the petitioners.

[FN7] Idem.

VI. CONCLUSIONS

21. The Inter-American Commission has closely followed the implementation of the friendly settlement reached in this case. The foregoing information shows that for the most part the terms of the friendly settlement have been honored, in a manner consistent with the provisions of the American Convention. The IACHR highly appreciates the efforts made by both parties to reach the agreement and to implement it.

22. Without prejudice to the agreement reached by the parties or to the approval of the present report, the IACHR considers it appropriate to reaffirm its position regarding the competence of the ordinary courts to hear cases involving the violation of human rights. The Inter-American Commission also reserves the right to monitor the serving of the sentence of Captain Gustavo Aviña, as well as the continuing award of the benefits provided for in the seventh basis for agreement set out above.[FN8]

[FN8] It should be recalled in that connection that the Inter-American Court, in the Maqueda case, concurred with the withdrawal of the IACHR on the grounds that a friendly settlement had been reached resulting in the pardon and release of the victim, who had been sentenced in violation of his right to a fair trial. The Court, however, expressed the following specific reservation:

Considering that the central issue in the case is the violation of the right to freedom of Mr. Maqueda and that this right has been restored through the agreement reached by the parties, the Court is of the view that the agreement violates neither the letter nor spirit of the American Convention. Although the application, which the Commission brought before the Court, cites other rights that are enshrined in the Convention, as well as mechanisms and provisions of internal law, these have been raised in connection with the right to freedom. This notwithstanding, the Court, bearing in mind the responsibility that it has to protect human rights, reserves the right to reopen and to continue proceedings in the case if there were in the future any change in the circumstances on which the agreement was based.

Inter-American Court of Human Rights, Maqueda case, judgment of January 27, 1995, paragraph 27.

23. Based on the above considerations of fact and of law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To approve the friendly settlement agreement signed by the parties on March 1, 1999, as well as the Agreement for Implementation of the Friendly Settlement signed on December 2, 1999.
2. To monitor those provisions of the Agreement that have not been fully implemented.
3. To certify the delivery of the benefits to the family of Valentín Carrillo Saldaña, when such deliveries take place.
4. To publish the present report and to include it in its annual report to the General Assembly of the OAS.

Done and signed by the Inter-American Commission on Human Rights in the city of Washington D.C., on December 4, 2000. (Signed): Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Juan E. Méndez, Second Vice-Chairman; Members: Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.