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Title/Style of Cause: Dixie Urbina Rosales v. Honduras
Doc. Type: Decision
Decided by: President: Juan Mendez;
First Vice-President: Marta Altolaguirre;
Second Vice-President: Jose Zalaquett;
Commission members: Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts, Susana Villaran.
Dated: 9 October 2002
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Represented by: APPLICANT: the Committee of the Families of Disappeared Detainees in Honduras "COFADEH"
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I. SUMMARY

1. On November 17, 1995, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission" or "the IACHR") received a petition presented by the Committee of the Families of Disappeared Detainees in Honduras "COFADEH" (hereinafter "the petitioners"), in which the international liability is alleged of the Republic of Honduras (hereinafter "the State", "the State of Honduras" or the "Honduran State") for the death of Mr. Dixie Miguel Urbina Rosales (hereinafter "Dixie", "Dixie Urbina", "the young Urbina" or the "alleged victim"). The petitioners allege that the facts they have denounced constitute a violation of various provisions of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"): Article 4 (right to life), Article 5 (right to humane treatment), Article 8 (right to a fair trial) and Article 25 (right to judicial protection). Moreover, they allege violation of the general obligations of the State to respect rights protected in the Convention under Article 1(1) of the same.

2. The petitioners allege that on October 22, 1995, a patrol of the Public Security Force (henceforth the "FUSEP") detained Mr. Abelardo Acosta Jiménez and Mr. Dixie Urbina Rosales in a barber's shop, taking them to the police station in the La Granja neighborhood. Since Dixie was carrying a birth certificate in the name of Ramón Antonio Ortega Vásquez, his arrest was registered under this name. Mr. Jiménez was released the same day, but Dixie remained in detention. The young Urbina was then removed to the Seventh Battalion of the FUSEP. On the morning of October 23, Dixie was taken from number 3 cell, where he had been detained along with other persons, and was never seen again. His whereabouts are still unknown.

3. The Honduran State affirms that Mr. Dixie Miguel Urbina Rosales was indeed detained on October 22, 1995 by agents of the Public Security Force, who took him first to the headquarters of the Third Police Squadron and subsequently to the Seventh Regional Command (CORE 7) in Tegucigalpa (hereinafter "CORE 7"), and according to the Command's records was freed the day after.

4. With respect to admissibility, the State alleges that the petition is inadmissible because the domestic remedies are being exhausted.

5. After analyzing the available de facto and de jure background, the Commission resolved to declare this case admissible, because, if proven, the deeds alleged by the petitioners could constitute a violation of the right to life (Article 4); right to humane treatment (Article 5); personal liberty (Article 7); due judicial guarantees (Article 8(1)); and the right to judicial protection (Article 25), as well as a breach of the general obligation to respect rights (Article 1(1)), enshrined in the American Convention.

II. PROCESSING BY THE COMMISSION

6. The Commission received the petition on November 16, 1995 and opened the case on January 11, 1996. It communicated the pertinent parts of the petition to the State, requesting the relevant information within a period of 90 days.

7. In a note on February 1, 1996 the State responded to the Commission's request, indicating that it was sending a copy of the petition to the relevant government institutions. The relevant parts of this communication were sent to the petitioners on February 8, 1996. The State responded to the petition on March 11, 1996. On the following May 8, the petitioners presented their comments. On June 15, 1996 the State presented its comments on these observations to the IACHR, and on August 19, 1996 the petitioners presented fresh observations on the comments of the State.

8. On July 10, 1998, the Commission requested the parties to present supplementary information on the case and, principally, the lawsuit tried in the Criminal Court of First Instance against the authorities allegedly involved in the disappearance of Mr. Dixie Miguel Urbina Rosales. In a note on August 7, 1998, the petitioners reported that the most recent move by the prosecuting attorney assigned to the case had been to request the Criminal Court of Second Instance to send a judicial communication to the First Court in Choluteca requesting it to take a statement from the witness, Mr. Abelardo Acosta Jiménez.

9. On September 11, 2002, the Commission once again asked the petitioners for information as to the status of the criminal proceedings and on September 16 requested a copy of the proceedings and the two writs of habeas corpus served, along with the respective decisions. A similar request was sent to the State on September 17, 2002. Both parties were given 15 days to send the information requested. On September 20, 2002, the petitioners sent a copy of the two habeas corpus writs served and the reports produced by the serving judges (jueces ejecutores). Neither party has sent a copy of the proceedings requested.

III. POSITIONS OF THE PARTIES

1. The petitioners

10. According to the petitioners, on October 22, 1995 while Mr. Abelardo Acosta Jiménez and Mr. Dixie Urbina Rosales were in a barber's shop, a FUSEP patrol arrived which went straight to where they were and arrested them. At the time Dixie was carrying a birth certificate in the name of Ramón Antonio Ortega Vásquez, and this was the name under which he was arrested. The patrol took them to the local FUSEP station, releasing Jiménez at 1 pm the same day; Dixie remained in detention. Having told Dixie's sister what had happened, Abelardo made enquiries about him at the local station in the La Granja neighborhood. He was told that he had been moved to the Seventh Command of the FUSEP.

11. On October 23, 1995 Dixie's sister, Ms. Wendy Dayanara Urbina Rosales, and her husband, Mr. Oscar Reniery Rosales, went to the Seventh Command of the FUSEP to enquire about Dixie. At the command, it was confirmed that he was in detention there, and for this reason they gave the guards the food they had brought for him. A few minutes later, the guards returned with the food, announcing that Dixie had been released under an amnesty at 7.00 am. Witnesses recognized Dixie in cell number 3 at the Seventh Battalion, and one of them declared that he had been taken away at 7.00 am and had not returned. After October 23, Abelardo went to the Central Penitentiary to see if Dixie was there, but was told "there's no Dixie here." From the morning of October 23, no-one has set eyes on the victim and there has been no news of him.

12. The petitioners point out that the State set up an "investigating commission to establish the details and report back on the supposed disappearance of Honduran citizen Dixie Miguel Urbina Rosales, alias Ramón Antonio Ortega Vásquez" (henceforth "the Investigating Commission"), and that this had concluded that Mr. Urbina Rosales had been arrested because Mr. Adamis Oyuela Carranza had accused Dixie and Mr. Abelardo Acosta Jiménez of insulting him in a threatening manner at the barber's shop. The petitioners allege that the investigative commission's conclusion does not square with the declaration made by Oyuela in the Criminal Court of Second Instance that he had never accused Mr. Dixie Urbina Rosales or Mr. Abelardo Acosta and that he had just cut their hair. Moreover, Oyuela says that he had been a witness, along with his sister, at the moment the police patrol had arrived and arrested both men without producing an arrest warrant.

13. The petitioners affirm that from the foregoing it is clear first that the arrest of Mr. Dixie Urbina was illegal, and second that the place where he was last seen alive was the Seventh Command of the FUSEP.

14. The petitioners allege that some witnesses declared that during the days that followed October 23 they had gone to the Seventh Command of the FUSEP to enquire about Dixie and had been told by Sargent Roberto Palacios that he had been moved to the Central Penitentiary. According to these witnesses, it had not been possible to establish the whereabouts of the presumed victim, even after asking for information at the penitentiary, in the courts and in the Direction of Criminal Investigation (Dirección de Investigación Criminal, DIC). The petitioners

also point out that in his statement to the court the victim's father declared that a few days prior to Dixie's arrest persons driving a white, dual-cabin Toyota Hilux pick-up with darkened windows had been asking neighbors as to his whereabouts.

15. The petitioners say that on October 29, 1995 Mr. Miguel Urbina, the father of Mr. Dixie Urbina Rosales, denounced the disappearance of his son to the DIC.[FN1] On November 1, 1995 the victim's father lodged a writ of habeas corpus against those in charge of the Seventh Command of the FUSEP, led by Colonel David Abraham Mendoza. The writ was served on Friday, November 3, 1995 by the serving judge of the Attorney General's office, but to no positive outcome[FN2]. On November 2, 1995, before the Criminal Court Second Instance of Comayaguela, the victim's father made a criminal accusation against Lt-Col David Abraham Mendoza and those other agents and officials of the Seventh Command who took part in the arrest and disappearance of his son. On November 9 of that year, the victim's father lodged a second writ of habeas corpus against the commander of the Cobras Battalion, Col. Aldo Aldana, and on November 16 he lodged a formal petition with the Attorney General's office.[FN3] On November 28, 1995 the victim's father lodged a third writ of habeas corpus before the Court of Appeal in La Ceiba, Atlantica, and on March 14, 1996 the Committee of the Families of Disappeared Prisoners in Honduras ("COFADEH") lodged another before the First Court of Appeal in San Pedro Sula, Cortés, both to no avail.

[FN1] Petition N° 10395-95, received by Agent N° 489

[FN2] Report by the serving judge of the Attorney-General's office to the Supreme Appeals Court, November 3 1995.

[FN3] Complaint filed before the Dirección General de Fiscalía del Ministerio Público of Honduras on November 16, 1995

16. According to the petitioners, on January 23, 1996, the First Criminal Court undertook an inspection of the Seventh Command of the FUSEP from which it established that:

1. In the register of the Seventh Command, in Volume 158, it shows that Mr. Dixie Urbina Rosales was admitted under the name of Ramón Antonio Ortega, supposedly for being in the company of the young man Abelardo Rosales, from whom a Russian-made 27-calibre Te. Te. pistol was confiscated.

2. The arrest was carried out at Charly hairdressers, in the Barrio Villa Adela, Comayaguela, by police agent Victoriano Centeno. The order for the arrest was issued by Lieutenant Oscar Francisco Andrade Flores, supposedly in response to an accusation against Dixie by Mr. Adamis Oyuela for robbery of a sound system.

17. The petitioners add that in testimony given on February 12, 1996 by Mr. Adamis Oyuela before the First Criminal Court, he said that he never accused Dixie, and that FUSEP agents entered while he was waiting his turn to have his hair cut and detained him without producing any arrest warrant whatsoever.

18. According to the petitioners, the last thing to take place in the proceeding is a visit by the prosecuting attorney Suyapa Vásquez, member of the Special Prosecutor's Office for Human Rights.

2. The State

19. The Honduran State affirms that, according to investigations carried out by the Special Prosecutor's Office for Human Rights, Mr. Dixie Miguel Urbina Rosales, was indeed arrested on October 22, 1995, at "Charly" barber's shop. The arrest was carried out by agents from the Public Security Force (FUSEP), following a petition by Mr. Ademís Oyuela Carranza, the owner of the barber's shop, that Dixie and Abelardo Acosta had arrived at the hairdressers and, when one of them had had his hair cut, had insulted him in threatening tones. The agents afterwards took Dixie to the headquarters of the Third Police Squadron.

20. The State alleges that subsequently Dixie was taken to Tegucigalpa's Seventh Regional Command (CORE 7). His detention was registered in the name of Ramón Antonio Ortega Vásquez, because this was how the detainee identified himself from the birth certificate he had with him on his capture. The State affirms that Mr. Dixie Miguel Urbina Rosales was released on October 23, 1995, as revealed by the register of CORE 7. Dixie appears in the list of prisoners as number 17, besides which the following comment appears in the margin: "accused of robbing various people by Adrián Oyuela Carranza, one of those affected".

21. The state's account continues by saying that once corroborated the fact that Dixie Urbina was detained at the Seventh Command of FUSEP, the courts were contacted to see whether Ramón Antonio Ortega Vásquez (the name in which Dixie's detention was recorded) had previously been sent for trial. The answer was negative, since no petitions or accusations had been made against him. The State undertook visits to the morgue and hospitals to find out whether the young man had died or had been admitted to hospital.

22. In February 1996, Honduras points out, a commission was appointed, called "The Investigating Commission to Establish the Facts and Report Back on the Supposed Disappearance of Honduran Citizen Dixie Miguel Urbina Rosales, alias Ramón Antonio Ortega Vásquez". The investigating commission^[FN4] (composed of two police colonels and captains) concluded that Mr. Urbina Rosales had been released from captivity by the Seventh Regional Command of the Public Security Force (FUSEP) on October 23, 1995. The commission found no evidence or incriminating indications that clearly established State responsibility in the case of Mr. Dixie Miguel Urbina Rosales.

[FN4] The "Investigating Commission to Establish the Facts and Report Back on the Supposed Disappearance of Honduran Citizen Dixie Miguel Urbina Rosales, alias Ramón Antonio Ortega Vásquez" was established in accordance with Internal Accord No.FSP-(FS-1) from the General Commander of the Public Security Force, Police Colonel DEM Don Julio César Chavez Aguilar. The commission was composed of Police Colonel DEM Marco Antonio Matute Lagos (its coordinator) and by Police Colonel DEM Agustín Cardons Macías, Police Captain Mario Leonel Zepeda Espinoza and Police Captain Abencio Atilo Flores Morazán, (its members).

(Documentary evidence provided by the State, forming part of the evidence in the file of the case before the IACHR.)

23. According to the State, the most recent actions taken at the judicial level are as follows. The prosecutor assigned to the case requested the Criminal Court of Second Instance on November 15, 1996 to send a judicial communication to the Criminal Court of First Instance in Choluteca to take the testimony of the witness Mr. Abelardo Acosta Jiménez, a prisoner in the Choluteca penitentiary. Acosta gave his testimony on December 11, 1996 and, according to what the State indicated in its communication of August 7, 1998, this testimony was received by the court which had requested it on January 2, 1998.

24. With respect to admissibility, the State claims that the domestic judicial processes are still being pursued

IV. ANALYSIS

A. The Commission's competence *ratione loci*, *ratione personae*, *ratione temporis* and *ratione materiae*

25. The Commission has competence *ratione loci* to hear this petition on account of the fact that in it violations of rights protected under the American Convention could have taken place within the territory of a State Party.

26. The Commission has competence *ratione personae* by right of passive legitimation [*legitimación pasiva*] since the claim is made against a State Party, in accordance with the general application of the Convention's Articles 44 and 45. This competence follows from the very nature of the inter-American system for the protection of human rights under which States Parties undertake to respect and guarantee the rights and liberties recognized in Article 1 of the Convention.

27. The Commission has competence *ratione personae* by right of the active legitimation [*legitimación activa*] that the petitioners have in this case under Article 44 of the Convention which establishes that "any non-governmental entity legally recognized in one or more member states of the Organization" may lodge petitions containing denunciations or petitions of violation of the Convention by a State Party to the detriment of one or more individual persons.

28. The Commission has competence *ratione temporis* since the facts alleged in the petition took place when the obligation to respect and guarantee the rights established by the Convention were applicable to the State of Honduras which ratified it on September 8, 1977.

29. Finally, the Commission has competence *ratione materiae* because in the petition violation is claimed of Articles 4 (right to life); 5 (right to human treatment); 7 (right to personal liberty); 8 (right to a fair trial), 25 (right to judicial protection) and 1(1) obligation to respect rights under the American Convention.

B. Other requisites for the admissibility of the petition

1. Exhaustion of domestic remedies

30. Article 46(1) of the American Convention on Human Rights establishes that for a petition or communication in line with Articles 44 or 45 to be admissible to the Commission, it is necessary that "remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law".

31. On 29 October, 1995 Miguel Urbina, the father of Dixie Urbina Rosales, denounced the disappearance of his son to the Direction of Criminal Investigation (DIC).[FN5] On November 1, 1995, he lodged a writ of habeas corpus before the First Appeals Court against those in charge of the Seventh Command of the Public Security Force (FUSEP), led by Colonel David Abraham Mendoza, which was served on Friday, November 3, 1995, by the serving judge, but to no avail.[FN6]

[FN5] Petition N° 10395-95, received by Agent N° 489

[FN6] Report by serving judge from the Attorney-General's office to the President of the Supreme Court of Appeals, November 3, 1995.

32. The Honduran State opposed the objection because domestic remedies had not been exhausted,[FN7] but did not identify the domestic remedies to be exhausted nor show their efficacy in this particular case.[FN8]

[FN7] IACtHR, Castillo Páez case, Preliminary Objections, Judgment of January 3, 1996. Series C N° 24, para 41.

[FN8] In the spirit of Article 46(1) of the Convention and in agreement with the general principles of international law, it falls to the State that has argued the objection of non-exhaustion to prove that in its domestic system that there are still remedies that have not been exhausted (Velásquez Rodríguez case, Preliminary Objections, para 88; Fairén Garbi and Solís Corrales, Preliminary Objections, para. 87; and Godínez Cruz case, Preliminary Objections, para. 90). Once a State Party has proved the existence of domestic remedies for the exercise of a right that is protected by the Convention, the burden of proof shifts to the petitioner, who should therefore show that the objections contemplated in Article 46(2) are valid.

33. The Inter-American Court has established that, in cases of disappearance, resort to habeas corpus is normally adequate to find a person presumed to be detained by the authorities, to find out whether he is held legally and, where appropriate, secure his liberty. In such cases, the very fact of attempting unsuccessfully a habeas corpus or defense writ is sufficient to show that remedies for domestic jurisdiction have been exhausted if the detainee in question fails to reappear, since there are no more remedies available in such cases.[FN9]

[FN9] Velásquez Rodríguez case, judgment of July 29, 1988, series C N° 4 (1988), para. 72.

34. In the case in question, none of the writs of habeas corpus lodged had a positive outcome in determining the whereabouts of Dixie, who has still not reappeared in spite of the seven years that have elapsed since the events of the case took place. Consequently, the Commission considers that the filing of writs of habeas corpus was sufficient to fulfill the requirement under Article 46 of the Convention, and for this reason should reject the preliminary objection of the government on the inadmissibility of the petition on the grounds of non-exhaustion of domestic remedies.

35. For the aforementioned reasons, the Commission concludes that the petition sub judice is admissible on the basis of Article 46 of the American Convention.

2. Time period for the submission of the petitioners

36. Article 46(1) of the American Convention provides that for a petition to be admitted it should be "lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment".

37. Since the Commission has concluded that the remedy of habeas corpus lodged on November 3, 1995, exhausted domestic jurisdiction and since the petition was presented on November 15 of the same year, the IACHR establishes that the Convention's deadline for lodging the petition was adequately met.

3. Concurrency of legal actions

38. The Commission understands the subject of the petition is not pending in another international proceeding for settlement, nor is it substantially the same as one previously studied by the Commission or another international organization. Consequently, the Commission considers that the requirement established under Article 46(1)(c) is met.

4. Characterization of the facts alleged

39. The Commission considers, in principle, that the facts exposed by the petitioners could be characterized as a violation of the rights guaranteed in the American Convention. Since the petition is not manifestly groundless or patently inadmissible, the Commission considers that the requisites established under Article 47(b) and (c) of the Convention are satisfied.

V. CONCLUSIONS

40. The petition presented in this case describes a possible violation of the rights protected by the American Convention. Consequently, the Commission has full faculties to know and hear the matter that forms the basis for the petition.

41. In view of the foregoing analysis and conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible.
2. To continue to study the merits of the case.
3. To transmit this report to the State of Honduras and the petitioners.
4. To make this report public and to 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, in Washington, D.C., on this the 9th day of October 2002. Signed: Juan Méndez, President; Marta Altolaquirre, First Vice President; José Zalaquett, Second Vice President; Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts, and Susana Villarán Commission members.