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Title/Style of Cause: Irma Flaquer v. Guatemala
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Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioners: Robert K. Goldman, Julio Prado Vallejo.
Dated: 10 October 2003
Citation: Flaquer v. Guatemala, Petition 11.766, Inter-Am. C.H.R., Report No. 67/03,
OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)
Represented by: APPLICANT: the Inter-American Press Society
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I. SUMMARY

1. On March 11, 1997, the Inter-American Press Society (IPS) (hereinafter the “petitioners” or “IPS”) filed a petition with the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the Inter-American Commission”), wherein it alleged that the Guatemalan State (hereinafter “the State”, “the Guatemalan State” or “Guatemala”) had violated the right to life (Article 4), to a fair trial (Article 8), to freedom of expression (Article 13) and to judicial protection (Article 25), all in relation to the general obligation to respect the rights (Article 1) recognized in the Inter-American Convention on Human Rights (hereinafter “the Convention” or “the Inter-American Convention”).

2. The petitioners allege that the journalist Irma Flaquer Azurdía was a victim of enforced disappearance and presumably killed after being kidnapped on October 16, 1980 in Guatemala City. According to the petitioners, the reason for the journalist’s disappearance was her denunciation of political repression by the Government of General Romeo Lucas García, the corruption of civil servants and the military, acts of oppression against indigenous people and human rights violations, in her column in the newspaper La Nación, entitled “What others don’t dare to say out loud”.

3. On 9 August 2000, the Government of Guatemala signed a Comprehensive Agreement on Human Rights as part of the Peace Agreements that put an end to the internal armed conflict, wherein the State of Guatemala undertook to promote a friendly settlement in some of the cases pending before the Commission, one of them being the instant case, in keeping with the provisions of Articles 48(1)(f) and 49 of the American Convention. The friendly settlement was

reached on March 2, 2001, when the parties signed the respective friendly settlement agreement in Washington D.C.

4. The present report on the friendly settlement, prepared in conformity with Article 49 of the Convention and Article 41(5) of the Commission's Rules of Procedure, contains a brief summary of the facts alleged by the petitioners, the friendly settlement reached, and the agreement to publish the settlement.

II. CONSIDERATION BY THE COMMISSION

5. On March 11, 1997, the petitioners filed their petition with the Commission. It was then transmitted to the State on July 8, 1997. The State filed its response to the complaint on October 9, 1997. The State's response was sent to the parties and the exchange of information and observations provided for in the American Convention and in the Statute and Rules of Procedure of the Commission was initiated.

6. On August 9, 2000, the State of Guatemala, through the Presidential Steering Committee for Executive Policy on Human Rights (hereinafter "COPREDEH") signed a comprehensive agreement on human rights, in which it acknowledged the institutional responsibility of the State in the instant case arising from its failure to fulfill the obligation imposed under Article 1.1 of the American Convention to respect and guarantee the rights enshrined in the Convention. Guatemala also accepts that the facts that led to the filing of the complaint with the Inter-American Commission did occur and undertook to enter into negotiations in the instant case.

7. On the basis of the commitment given by the State, the parties held a number of meetings to define the terms of the agreement. The friendly settlement was finally reached on March 2, 2001, when the parties signed the agreement in Washington D.C. The parties have requested the Commission to endorse the friendly settlement agreement in its entirety.

III. THE FACTS

8. The petitioners allege that on October 16, 1980, Irma Flaquer Azurdia, a journalist, accompanied by her son Fernando Valle Flaquer, was driving in her car when in the area where they were two vehicles suddenly blocked her path. Fernando Valle Flaquer was injured in the incident and subsequently died at the General San Juan de Dios hospital, where he had been taken. Since that date, there has been no information about the whereabouts of Irma Flaquer Azurdia

9. The petitioners also allege that during the investigation of the case by the Guatemalan authorities, it became clear that, while the then Government officially regretted the presumed death of Flaquer, it failed to make any serious official effort to investigate the matter. Furthermore, the 1985 law on general amnesty provided an excuse for the lukewarm attempts to conduct an official investigation to be abandoned and diluted both the responsibility and the participation of any agency of the Government.

10. According to the petitioners, the modus operandi used in the kidnapping of Flaquer and the murder of her son Fernando was consistent with the mechanisms of repression used by the State during the internal armed conflict. The use of two vehicles and the type of maneuver in a very busy street have been described at various times in newspaper and human rights reports of the period as methods typically used by the police, military or Presidential Guard.

11. Finally, with regard to the exhaustion of domestic remedies, the petitioners noted that, under Article 46(2)(c) of the Inter-American Convention, the requirements for the exhaustion of domestic remedies are not applicable where there has been unwarranted delay in rendering a final judgment under previous remedies. The petitioners further claim that the task of the Commission for Historical Clarification did not constitute a domestic remedy to be exhausted, since that Commission lacked the authority to identify or punish individuals.

IV. FRIENDLY SETTLEMENT REACHED

12. The State and the petitioners reached agreement on a friendly settlement, which provides as follows:

ONE: The search for a friendly settlement is consistent with the principles set out in the statement of the President of Guatemala, Alfonso Portillo Cabrera, on August 9, 2000, in which he acknowledged the institutional responsibility of the State in the instant case.

TWO: The State deplores and acknowledges that the forced disappearance of the journalist, Irma Marina Flaquer Azurdia, on October 16, 1980 was despicable and endorses the view that it is urgently necessary to continue with and vigorously reinforce administrative and legal measures aimed at identifying those responsible, determining the whereabouts of the victim and applying the appropriate criminal and civil punishment.

THREE: The State acknowledges its obligation to pay the amount of compensation that is eventually agreed upon with the petitioners. In that regard, it undertakes to study and consider the list of requests for compensation submitted by the petitioners, all on behalf of Irma Flaquer Azurdia:

- (a) Establishment of a committee to expedite the judicial proceeding composed of two representatives each from COPREDEH and IPS;
- (b) Establishment of a scholarship for the study of journalism;
- (c) Erection of a monument to journalists who sacrifice their lives for the right to freedom of expression, symbolized in the person of Irma Marina Flaquer Azurdia;
- (d) Designation of a wing of a public library as a repository for all material related to the works of the journalist in question;
- (e) Naming of a public street after her;
- (f) Establishment of a university chair in journalism history;
- (g) Writing of letters to the relatives asking for forgiveness;
- (h) Organization of a course for the training and social rehabilitation of inmates in the Women's Correctional Centre (COF);

- (i) Compilation and publication of a book containing a selection of the best columns, writings and Articles of the disappeared journalist;
- (j) Production of a documentary;
- (k) Holding of a public ceremony to honor her memory.

FOUR: The State and the petitioners agree to establish the Justice Promotion Committee (hereinafter “Comité de Impulso”) and set March 19, 2001 as the date for starting its activities, after a public ceremony to be held in the city of Fortaleza, Brazil, within the framework of the biannual meeting of IPS. The State and the petitioners agree that within 30 days from that date the Committee should begin the task of investigating the case of Irma Marina Flaquear Azurdia and establish a timetable and schedule of activities for honoring the disappeared journalist that includes all the demands listed under item THREE of this agreement. Prior to that, it should set September 2001, the birthday of the disappeared journalist, as the date for the holding of a public ceremony in Guatemala City to be attended by the parties to the case.

FIVE: In accordance with the Rules of Procedure of the Inter-American Commission on Human Rights, the Comité de Impulso shall report to the Commission every two months on the progress of the investigations and activities.

Done in the city of Washington D.C. on March 2, 2001.

13. On June 11, 2001, the Comité de Impulso met to discuss the activities to honor Irma Flaquear, including: the institution of criminal proceedings through the compilation of testimonies and documents and the opening of the case by the Attorney-General’s office; establishment of a scholarship; compilation of material on journalism and publication of a book; organization of a training course for female prisoners and establishment of a university chair; naming of a library hall and street after her, and writing of a letter to her relatives asking for forgiveness.

14. On July 5, 2001, the Comité de Impulso again met to review progress towards fulfilment of the commitments given at the previous meeting. A plan of action was also drawn up at that meeting for implementation on September 5. The plan included a hearing in the Supreme Court; audiences with the Attorney-General and the President of the Republic, respectively; inauguration of the monument in memory of Irma Flaquer; inauguration of Irma Flaquer Azurdia street; a mass offered for the Flaquer family; and a special ceremony conducted by the Guatemalan Association of Journalists.

15. On September 7, 2001, the Comité de Impulso held a meeting to discuss the progress made towards implementation of the commitments given at the previous meeting, including organization of the activities scheduled for September 5, as stated at the previous meeting.

16. On October 22, 2001, the Comité de Impulso reported to the Inter-American Committee on the meeting held on October 15, 2001 which, among other things, reviewed the progress made in discussions with the Schools of Communication Sciences of the University of San Carlos de Guatemala and two private universities, the Mariano Gálvez University and the Rafael Landívar University, on the establishment of a scholarship for the study of journalism and a university

chair in journalism history, and the naming of a wing in a public library as a repository for the material related to the works of Irma Flaquer. The Ministry of the Interior, the Director of Prisons and the Management of the National Institute for Technical Training and Productivity (INTECAP) were also approached with a view to conducting in November 2001 a vocational training course for the reintegration into society of inmates from the Women's Correctional Centre (COF). A documentary, entitled "Irma Flaquer - a woman unbowed", was screened on October 15 during the General Assembly of IPS in Washington, D.C.

17. On February 14, 2002, the petitioners reported to the Commission on the progress made in the friendly settlement procedure. They reported that on December 11, 2001, the Attorney General of the Republic of Guatemala, Adolfo González Rodas, had announced the reopening of the legal proceedings and had appointed Gustavo Adolfo Barreno Quemé as special prosecutor to follow up the Irma Flaquer case.

18. In March 2002, copies of the book containing a selection of the best journalistic columns, writings and Articles of the disappeared journalist were distributed at the mid-year meeting of IPS, held in the Dominican Republic.

19. In May 2002, the petitioners reported to the Commission on the compensation paid by the Government of Guatemala. The State paid compensation to seven members of Irma Flaquer's family, as follows:

Sergio Valle (Irma Flaquer's son)	Unknown amount
Anabella Flaquer (Irma Flaquer's sister)	Q 200,000 (approx. US\$30,000 in May 2002)
Mayra Rosal (wife of Fernando Valle, killed in the attack)	Q 200,000 (approx. US\$30,000 in May 2002)
Alejandro Valle (son of Fernando Valle, killed in the attack)	Q 200,000 (approx. US\$30,000 in May 2002)
Scholarship for Alejandro Valle	Q 30,000 (approx US\$5,000 in May 2002)
Fernando Valle (Irma Flaquer's former husband)	Q 100,000 (approx. US\$15,000 in May 2002)
Irma Flaquer's daughter	Q 100,000 (approx US\$15,000 in May 2002)
Irma Flaquer's daughter	Q 100,000 (approx. US\$15,000 in May 2002)

20. On November 29, 2002, the President of COPREDEH informed the Commission that, by Decision No. 1150-2002, issued by the Rector of the University of San Carlos de Guatemala, the Biblioteca de la Paz on the fifth floor of the Educational Resources Building in Zone 12 of the university campus had been designated the "Irma Flaquer" Library.

21. On May 21, 2003, the State through COPREDEH reported on the fulfillment of the commitment relating to the Women's Correctional Centre (COF). Specifically, on May 17, 2003, COF had reported on the motivational workshops that had been organized by COPREDEH for a

prison population of 134 female inmates. It also reported on the workshops on enhanced performance and motivation organized for 84 security guards, 14 domestic helpers and administrative staff.

22. On June 17, 2003, the State reported on the workshops conducted by officials of the education department of COPREDEH during the period from January to May 23, 2003 for the staff and inmates of the COF. A diploma course on human and social values will be conducted in the second half of the year for COF inmates. The subjects to be taught include human rights, moral and social values, psychosocial recovery, interpersonal relations, motivation, and self-esteem. Similar programs will be organized in other prisons and correctional institutions throughout the country.

23. Regarding the request of Mr. Fernando Valle Arizpe that the State should reinstate the license issued to him by the National Forestry Institute (INAFOR), COPREDEH has indicated its intention to continue to facilitate his representations to the Institute and to the National Council for Protected Areas, once a suitable area had been identified for the logging activities which he is seeking to carry on.

24. The Commission was informed that the petitioners were satisfied that the great majority of the points of the agreement had been implemented. However, the following three points are yet to be implemented: (1) establishment of a scholarship for the study of journalism; (2) creation of a university chair on the history of journalism; and (3) the writing of a letter to family members asking for forgiveness. The Commission will continue to monitor compliance with these points by the Guatemalan State until the agreement is fully observed.

V. DETERMINATION OF COMPATIBILITY AND IMPLEMENTATION

25. The Inter-American Commission reiterates that in accordance with Articles 48.1 (f) and 49 of the Convention, the aim of this procedure is "to reach a friendly settlement of the case based on respect for the human rights recognized in this Convention". The State's acceptance of this procedure is evidence of its good faith in respecting the aims and objectives of the Convention, based on the principle of *pacta sunt servanda*, according to which, States must discharge in good faith the obligations they assume in treaties. The Commission also wishes to reiterate that the friendly settlement procedure provided for in the Convention permits the individual cases to be settled in a non-contentious manner and has shown in cases in various countries that it constitutes a useful vehicle for settlement of disputes, which can be used by both parties.

26. The Inter-American Commission has closely monitored progress in implementation of the friendly settlement reached in the instant case. The Commission greatly appreciates the efforts made by both parties to reach this settlement, which is compatible with the object and purpose of the Convention.

VI. CONCLUSIONS

27. For all the above reasons and by virtue of the procedure set out in Articles 48.1(f) and 49 of the American Convention, the Commission wishes to reiterate its deep appreciation for the efforts of the parties and its satisfaction that a friendly settlement agreement has been reached in the instant case that is consistent with the object and purpose of the American Convention.

28. Based on the considerations and conclusions set out in this report

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To approve the terms of the friendly settlement agreement signed by the parties on March 2, 2001.
2. To continue to follow up and monitor those points of the friendly settlement agreement that are still pending, and, in this connection, to remind the parties of their obligation to report to the Inter-American Commission every three months on the implementation of this friendly settlement agreement.
3. To publish this report and to include it in the Commission's annual report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 10th day of the month of October, 2003. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Robert K. Goldman and Julio Prado Vallejo, Commissioners.