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File Number(s):	Report No. 69/03; Petition 11.807
Session:	Hundred and Eighteenth Regular Session (7 – 24 October 2003)
Title/Style of Cause:	Jose Alberto Guadarrama Garcia v. Mexico
Doc. Type:	Decision
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:	Guadarrama Garcia v. Mexico, Petition 11.807, Inter-Am. C.H.R., Report No. 69/03, OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)
Represented by:	APPLICANTS: the Center for Justice and International Law, and Christian Action for the Abolition of Torture
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I. SUMMARY

1. On August 25, 1997, the Inter-American Commission on Human Rights (“the Inter-American Commission” or “the IACHR”) received a communication from the Center for Justice and International Law and Christian Action for the Abolition of Torture (“CEJIL” and “ACAT”; hereinafter jointly “the petitioners”) claiming that Mr. José Alberto Guadarrama García was abducted on March 26, 1997, in the town of Emiliano Zapata, Morelos state, by a group of four armed individuals who got out of a vehicle while he was waiting for a bus on the street, in the company of his mother, Elvira García Avelar. The petitioners report that Mr. Guadarrama García’s mother identified José Luis Velásquez Beltrán, an officer of the judicial police, as one of the individuals who had abducted her son and reported the incident to the Public Prosecution Service that same day. She was later told that the officer in question belonged to the Antikidnapping Group, and that he had already given a statement; however, he was never brought before Mrs. García Avelar for her to identify him, and he continued his regular employment. On April 11, 1997, the Morelos authorities reported that Mr. Velásquez Beltrán had left his job; and, although a warrant for Velásquez Beltrán’s arrest was later issued, to date he has not been detained.

2. The complaint alleges that the United Mexican States (“the State”) is internationally responsible for violating the following rights protected by the American Convention on Human Rights (“the American Convention”): the right to life (Article 4), to humane treatment (Article 5), to personal liberty (Article 7), to a fair trial (Article 8), to privacy (Article 11), and to judicial protection (Article 25). The petition also claims that the State violated the general obligation of respecting and ensuring those rights set forth in Article 1(1) of the American Convention.

3. The parties signed an agreement containing the ground rules for beginning a friendly settlement procedure on October 30 1999, and they reached a final friendly settlement agreement on February 27, 2003. In this report, adopted under Article 49 of the American Convention, the IACHR summarizes the allegations, describes the agreement reached by the parties, and resolves to publish it.

II. PROCESSING BY THE IACHR

4. On September 30, 1997, the Inter-American Commission conveyed the relevant parts of the complaint to the Mexican State and asked it to furnish the corresponding information. The State's reply was forwarded to the parties, and the exchange of information and comments described in the American Convention and in the Commission's Rules of Procedure began. On October 7, 1997, the petitioners requested precautionary measures on behalf of the mother of José Alberto Guadarrama García, who had received threats following a press conference at which she revealed that a complaint had been lodged with the IACHR; these precautionary measures were granted on October 17, 1997.

5. Following the hearing on the case held on October 16, 1998, the Inter-American Commission suggested to the Mexican State the text of an agreement pursuant to Article 48(1)(f) of the American Convention. The State sent its comments on the draft agreement on October 20, 1998, and the Inter-American Commission forwarded it to the petitioners on October 26. After the agreement was signed on October 30, the parties and the Inter-American Commission held numerous meetings and hearings, which are listed below (Section IV: Compliance with the Agreement).

III. FRIENDLY SETTLEMENT AGREEMENT

6. The agreement signed on October 30, 1998, setting the bases for the friendly settlement, reads as follows:

ONE

This friendly settlement agreement in the case of José Alberto Guadarrama García, No. 11.807, currently being processed by the Inter-American Commission on Human Rights ("the Commission" or "the IACHR"), is entered into by and between the United Mexican States ("the State" or "Mexico") and the organizations representing the victim's family in the processing of this case before the IACHR: Christian Action for the Abolition of Torture (ACAT) and the Center for Justice and International Law (CEJIL) (hereinafter "the petitioners").

TWO

The parties agree to begin a friendly settlement procedure in Case No. 11.807, which deals with the forced disappearance of José Alberto Guadarrama García, under investigation by the Office of the Attorney General for Justice of Morelos state ("the PGJM"). This friendly settlement procedure will be assisted by, in representation of the State, the Ministry of Foreign Affairs, the

Ministry of the Interior, the Office of the Attorney General of the Republic, and the National Human Rights Commission, through the regular monitoring of the PGJM's investigations, in accordance with their respective legal powers. The petitioners will be represented by the Guadarrama García family, ACAT, and CEJIL, who will participate in the procedure.

THREE

The objectives of the friendly settlement procedure are the following:

- a. Arresting José Luis Velásquez Beltrán, pursuant to the judicial arrest warrant already issued.
- b. Identifying all those who plotted and carried out the crimes committed against José Alberto Guadarrama García.
- c. Prosecuting all the plotters and perpetrators, so they can be duly punished by the competent judicial authorities.
- d. Locating José Alberto Guadarrama García.
- e. Providing the Guadarrama García family with redress, compensation, and reparations for the incident, to which end the State and the petitioners may agree on the source and terms of compensation for the relatives of Mr. José Alberto Guadarrama García, without prejudice to the legal action they may be required to pursue in accordance with Mexican law.

FOUR

The parties will provide the IACtHR with regular reports on the pursuit of the objectives set forth in Paragraph Three of this agreement.

FIVE

The deadline for meeting the objectives of this agreement shall be February 13, 1999, the date on which the IACtHR's next regular session is to begin and during which a hearing, to be attended by the parties, may be convened. This deadline may be extended by the IACtHR, in light of the contributions furnished by the parties.

SIX

In accordance with Article 48(1)(f) of the American Convention on Human Rights, the IACtHR shall oversee this procedure until such time as the objectives set forth in this agreement have been met in full.

IV. COMPLIANCE WITH THE AGREEMENT

7. The petitioners and the State reported, respectively, on November 3 and 13, 1998, about their progress in complying with these points and the meetings they had held in Mexico. On December 1, 1998, a friendly settlement meeting was held at the headquarters of the Mexican Ministry of Foreign Affairs in Mexico City, attended by representatives of the parties, the chairman of the Inter-American Commission at that time, and the Executive Secretariat lawyer

responsible for the case. At that meeting, the parties agreed to continue their implementation of the agreement and to report back to the IACHR prior to its February 1999 session.

8. On March 1, 1999, a meeting was held at the headquarters of the Inter-American Commission for following up on the friendly settlement agreement in the case at hand. On that occasion, the parties reported on the steps taken as a part of that procedure. On March 16 and May 6, 1999, the State and the petitioners held meetings in Mexico to deal with the case; they reported on those events on June 9, 1999.

9. On October 4, 1999, a working meeting attended by the parties was held at the Inter-American Commission's headquarters. On that occasion the Commission agreed to locate an independent expert to conduct an expert analysis of the skull found on April 27, 1997, in Jojutla, Morelos, in order to determine whether or not it belonged to Mr. Guadarrama García. The petitioners wrote to the IACHR on November 12, 1999, with respect to this matter and, on November 29, 1999, the Inter-American Commission presented experts Robert Kirschner and Robert Bux with the proposal. The former wrote on January 13, 2000, to say that he agreed to carry out the expert analysis, and this fact was reported to the IACHR.

10. On March 9, 2000, the Inter-American Commission informed the Mexican State that Dr. Robert Kirschner, an expert at the University of Chicago's Center for International Studies, had agreed to review the evidence available in Case 11.807 relating to the identification of Mr. Guadarrama García. In the same letter it asked for high-quality copies of the victim's dental records and the technical laboratory documents describing the DNA tests. On May 5, 2000, the Mexican State reported that it had sent Dr. Kirschner "the expert studies carried out by Mexican agencies on the remains allegedly belonging to Mr. Guadarrama García." Dr. Kirschner submitted his report to the Inter-American Commission on September 16, 2000. In it he stated that: "While many of the findings in these reports are consistent [with] a positive identification, there are both contradictory results and uncertainty in the DNA testing that preclude positive identification at this time." [FN1]

[FN1] The report ends with the following paragraphs:

Conclusions

Based on the available evidence, excluding DNA testing, the results of the forensic investigation into the identity of the skull thought to be that of Jose Alberto Guadarrama Garcia are highly consistent with such an identification. This is based primarily on comparison of the antemortem and postmortem dental x-rays, supplemented by the testimony of Sr. Guadarrama Garcia's dentist, Dra. Bustos Hernandez. In addition, other anthropologic findings in this case are consistent with such an identification. However, the contradictory and incomplete results from the DNA testing prevent positive identification with 100% certainty, which is the standard in forensic cases. This uncertainty must be resolved.

Recommendations:

1. The DNA testing should be repeated by an independent, highly skilled forensic DNA laboratory capable of performing mitochondrial DNA analysis.
2. If available, a molar tooth should be used as the source for the DNA, since tissue from the root of a tooth is more likely to yield DNA that is not degraded or contaminated.

3. Mitochondrial DNA analysis should be performed. It is less likely to be degraded than nuclear DNA, and because it is maternally inherited (i.e., only from one's mother), the issue of paternity does not arise.

Report of Dr. Robert H. Kirschner, Departments of Pathology and Pediatrics, and the Human Rights Program, University of Chicago, September 16, 2000, p. 3.

11. On October 11, 2000, another working meeting was held at Commission headquarters, which studied the current level of compliance with the friendly settlement agreement. On that occasion the State agreed that it would ask the Office of the Attorney General for Justice in the Mexican Federal District (PGJDF) about the possibility of the mitochondrial DNA analysis being performed in that country, and, if the reply was negative, to study the possibility of entrusting the test to an "external independent expert."

12. On February 26, 2001, during the Inter-American Commission's 110th session, another working meeting was held in connection with Case 11.807. The State accepted Dr. Kirschner's presence at the independent expert analysis to be performed in Mexico City and reported that the skull had already been handed over to the PGJDF. The petitioners agreed to take charge of the logistic arrangements and the expert's traveling expenses. The representatives of the government of Morelos in attendance at the meeting agreed with the petitioners that they would continue to work together "to exhaust the investigation of the case" and that they would meet again in Morelos at a later date.

13. On February 27, 2001, the IACtHR informed Dr. Kirschner of the invitation the parties had extended for him to attend the PGJDF's procedure and asked him to propose a date. The petitioners told the Inter-American Commission that they had spoken with the expert on the telephone, and that he had explained that "although he was qualified to review the results of the expert analysis, he was not an expert in DNA studies; he therefore recommended they contact other university professors with expertise in the field, such as Dr. Mary Claire King of the University of Seattle," to attend the aforesaid procedure.[FN2] In response to that proposal, in a communication of March 16, 2001, the Mexican State noted that "it had no problem whatsoever with Dr. Mary Claire King attending the expert analysis and reviewing its results."

[FN2] Petitioners' submission, March 9, 2001.

14. The petitioners reported on May 8, 2001, that they had been unable to locate Dr. King, and had therefore contacted Dr. Luis Fonderbrider of the Argentine Forensic Anthropology Team. The petitioners suggested holding a meeting with Dr. Fonderbrider during a trip he was to make to Mexico City in May 2001 to participate in technical activities with the Office of the High Commissioner of the United Nations. On May 29, 2001, a letter was received from the Mexican State in which it stated "its complete willingness" to attend the proposed meeting with Dr. Fonderbrider.

15. In addition, the petitioners presented the government of Morelos with a proposal for compensation; in response, the government asked them for an additional 45 days in which to present its reply, as noted in the communication from the Mexican State dated July 20, 2001. On November 14, 2001, another working meeting attended by the parties in this case was held during the Inter-American Commission's 113th session. On November 23, 2001, the Mexican State and the petitioners met at the headquarters of that country's Ministry of Foreign Affairs:

The meeting studied the compensation proposal submitted by the petitioners. For each item, the Office of the Attorney General offered its counterproposal, in accordance with the guidelines of the inter-American human rights system.

With respect to the compensation, the Office of the Attorney General said it could deposit the amount in a lump sum within five working days following its acceptance by the petitioners, or it could create a trust fund whereby the Guadarrama family would receive regular payments of money.

The petitioners noted that they would reply to the Attorney General's offer no later than the following week, after discussing it with the rest of the Guadarrama family.

The petitioners remarked that the next meeting could discuss the issue of the scholarship they had requested on behalf of one of Mrs. Elvira García Avelar's grandchildren, that they would make a specific proposal in that regard, and that the same meeting would readdress the question of the symbolic redress.[FN3]

[FN3] Minutes of the working meeting of November 23, 2001, submitted as an appendix to the State's communication of November 30, 2001.

16. The petitioners submitted their compensation proposal; this was answered by a State counterproposal "based on the guidelines set down by the inter-American system," which the petitioners accepted.[FN4] On March 1, 2002, the victim's family was awarded the amount of MXN \$1,083,957.00 (one million, eighty-three thousand, nine hundred and fifty-seven Mexican pesos) to cover consequential damages, future losses, and nonmaterial damages. On October 18, 2002, another working meeting with the parties in this case was held at the Inter-American Commission's headquarters.

[FN4] State's submission, December 23, 2002, p. 2.

17. The Mexican State sent a communication on December 23, 2002, summarizing the formalities pursued during the friendly settlement procedure and noting that a meeting had been held with the petitioners in Mexico City on December 4, 2002. In that note the State emphasized its position regarding its compliance with the points of the agreement, including the steps taken to complete the arrest of José Luis Velásquez Beltrán and all the plotters and perpetrators of the

crimes committed against José Alberto Guadarrama García as set forth in Preliminary Inquiry No. EZ/089/97-03.[FN5] In spite of this, the State explains that at the time it was unable to sign an agreement of compliance with the procedure on account of differences with the petitioners regarding the publication of its recognition of responsibility for the facts of this case[FN6].Based on this, the State holds that the matter is closed and asks the Inter-American Commission to issue the deed of compliance with the friendly settlement of the case.

[FN5] The State explains:

The investigations yielded results sufficient to indicate the probable responsibility of Gilberto Domínguez Romero, Francisco Peña Hernández, Armando Martínez Salgado, and José Luis Velásquez Beltrán, who were referred to the local courts for the crimes of abducting and murdering José Alberto Guadarrama García (and, with respect to the last named criminal, as has already been stated, no information is available about his legal situation).

State's submission, December 23, 2002, p. 1.

[FN6] The State explains that the petitioners "demanded, in addition to what had already been agreed upon and accepted by the representatives of the Mexican government, the publication of said public recognition in a national daily newspaper." The State reported that it had chosen to "comply with what had previously been accorded: to wit, two publications in the top selling dailies in Morelos state, with the comments thereon made by the petitioners." Ibid., p. 3.

18. On February 6, 2003, the State submitted a communication enclosing copies of the newspapers published in Morelos with the recognition of responsibility signed by the governor of the state.[FN7] The State added that it was "studying the possibility of issuing a "specific press release from the Ministry of Foreign Affairs" with the aforesaid public recognition of responsibility and that the local authorities would continue their investigations to locate José Luis Velásquez Beltrán and would report back regularly to José Alberto Guadarrama García's family on the case's progress. The State repeated its request that the agreement of compliance with the friendly settlement in this case be issued and that the Inter-American Commission "acknowledge the political willingness with respect to human rights displayed by the government of Morelos state."

[FN7] After summarizing the facts of the case and the steps taken in compliance with the friendly settlement agreement, the publication, signed by Mr. Sergio Alberto Estrada Cajigal Ramírez, Governor of the state of Morelos, reads as follows:

We have thus worked to build a different, open government, one that always acts within the legal framework prevailing in the state. In this way we are preventing, fighting, and punishing acts of corruption and impunity and, at the same time, we are designing government practices that are helping us regain credibility and society's trust. In order to assume our responsibilities, the government of the state is meeting the commitments it has acquired, aware that a democratic government that does not respect the basic rights of all humans is an unthinkable proposition. "Public Recognition in the Case of José Alberto Guadarrama García," paid announcement published in "La Unión de Morelos" and "Ahora Morelos Semanal," Morelos, Mexico, January 12, 2003.

19. On February 26, 2003, the parties once again went to the headquarters of the Inter-American Commission and held a working meeting at which they reviewed all the steps taken during the friendly settlement procedure and discussed the points for the signing of a final agreement.

V. FINAL FRIENDLY SETTLEMENT AGREEMENT

20. On February 27, 2003, at the IACtHR's headquarters, a document called "Final Friendly Settlement Agreement" was signed. In it, the parties agreed as follows:

This agreement is signed, on the one hand, by Christian Action for the Abolition of Torture (ACAT) and the Center for Justice and International Law (CEJIL) (hereinafter "the petitioners"), representing the Guadarrama García family, and, on the other, the Mexican State (hereinafter "the State"), represented by the Ministry of Foreign Affairs.

Background

The petitioners and the State signed a friendly settlement agreement in the present case on October 30, 1998, the objectives of which were defined in section three of the agreement.

The petitioners and the State have held numerous working meetings in order to make progress with the different points contained in that agreement.

The parties recognize the efforts made by the different players in pursuing compliance with the stated objectives, in consideration whereof they execute this final friendly settlement agreement, taking into consideration the following actions:

- (a) The identification of a portion of Mr. José Alberto Guadarrama García's remains has been possible through the different expert analyses conducted in Mexican institutions and by the Argentine Forensic Anthropology Team.
- (b) Several agents of the State who participated in the abduction and subsequent killing of Mr. José Alberto Guadarrama García have been charged and arrested and are being prosecuted.
- (c) The Guadarrama García family has received compensation in accordance with criteria established by the inter-American system for the protection of human rights.
- (d) The Mexican Federal Government and the government of Morelos state have extended a public recognition of their responsibility in the facts of this matter.

As agreed at the working meeting held at IACtHR headquarters on February 26, 2003, the State will carry out an analysis of the declaration referred to by the petitioners on that occasion and will report back to the IACtHR as appropriate.

The State also agrees to continue pursuing the formalities necessary to serve the arrest warrant that is still pending.

VI. CONCLUSIONS

21. The Inter-American Commission has closely followed the development of the friendly settlement reached in this case. The information above shows that the agreement has been implemented according to the terms of the American Convention.

22. During its processing, the parties made considerable efforts to pursue the agreement's different items. The IACHR warmly applauds the contributions of all the individuals who made this friendly settlement possible, and it holds the direct and active participation of the representatives of Morelos state to be highly positive, in accordance with the terms of Articles 1, 2, and 28 of the American Convention. In addition to the specific achievements attained in this case, that attitude is sure to set an excellent example for the authorities of other regions and countries.

23. Based on the foregoing factual and legal considerations,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To approve the friendly settlement agreement signed by the parties on October 30, 1998, together with the final friendly settlement agreement signed on February 27, 2003.
2. To monitor the points of the agreement that have not been met in full.
3. To publish this report and to include 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 the city of Washington, D.C., on the 22nd 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.