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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 66/03; Petition 11.312
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Title/Style of Cause:	Emilio Tec Pop v. Guatemala
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:	Tec Pop v. Guatemala, Petition 11.312, Inter-Am. C.H.R., Report No. 66/03, OEA/Ser.L/V/II.118, doc. 5 rev. 2 (2003)
Represented by:	APPLICANT: the Human Rights Legal Action Centre
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I. SUMMARY

1. On June 21, 1994, the Human Rights Legal Action Centre (hereinafter “CALDH” or the “petitioners”) 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 their right to humane treatment (Article 5), to personal liberty (Article 7), to a fair trial (Article 8), 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 American Convention”).

2. The petitioners alleged that early in the morning of January 31, 1994, as 16-year old Emilio Tec Pop was making his way from the municipality of El Estor in the department of Izabal to the departmental capital of Cobán, in Alta Verapaz, he was detained by unknown individuals. On March 3, of the same year, 32 days later, the authorities of the military outpost of El Estor handed over the young man, Emilio Tec Pop, to his family.

3. On June 16, 2003, the State signed a friendly settlement agreement and, among other things, acknowledged the institutional responsibility of the State for the incident. It also undertook to pay compensation and to take steps to intensify the investigation of the facts with a view to punishing those responsible.

4. The present friendly settlement report, done 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 settlement reached, and the agreement to publish the report.

II. CONSIDERATION BY THE COMMISSION

5. On June 21, 1994, the petitioners filed their petition with the Commission and this was transmitted to the State on June 23, 1994. The State submitted its reply to the complaint on October 5, 1994, and this was sent to the parties, thus initiating the exchange of information and observations provided for in the American Convention and in the Statute and Rules of Procedure of the Commission.

6. On November 21, 1997, the Commission notified the parties of the adoption of report No. 53/97 on the admissibility of the instant case at the Commission's 97th regular session. Beginning on March 25, 1998, the parties resumed their exchange of information with a view to reaching a friendly settlement.

7. On October 3, 2000, the Commission received a proposal for a friendly settlement, in which the State, for its part, acknowledged its institutional responsibility for failing to guarantee the freedom and security of the minor Emilio Tec Pop and for failing to conduct an exhaustive investigation of the facts, as provided for in the Convention and in the Political Constitution of the Republic of Guatemala. It also undertook to pay the victim the sum of Q5,000. For their part, the petitioners requested the State to provide more details about its acknowledgement of its violations of the victim's human rights, in particular its responsibility in the violation of Article 1 of the Convention. The petitioners also requested that the agreement should include payment of the sum of Q500 to cover the travel expenses of the victim and a family member to go and collect the compensation. Based on this proposal by the Government and the commitment given by the State, a number of meetings were held by the parties to define the terms of the agreement.

8. On June 16, 2003, the parties signed the friendly settlement agreement. By signing the agreement, the State among other things acknowledged its institutional responsibility for the incident. A check in an amount equivalent to US\$2,000 was handed over to the beneficiary by way of compensation. With regard to humanitarian assistance, the State undertook to provide Mr. Tec Pop with seed capital and fertilizer for farming in order to improve his quality of life. Lastly, it undertook to step up its investigation of the facts with a view to punishing those responsible.

9. The friendly settlement was reached on March 2, 2001, when the parties signed the agreement in Washington D.C. The parties requested the Commission to ratify the friendly settlement agreement in its entirety.

III. FACTS ALLEGED BY THE PETITIONERS

10. The petitioners allege that Emilio Tec Pop, a minor, was illegally deprived of his liberty during the period from January 31 to March 2, 1994, while in the custody of the Guatemalan armed forces. They claim that he was held against his will and physically and mentally mistreated during that time. They charge that the soldiers threatened to kill Emilio, beat him and stabbed his hands with a knife.

11. Regarding recourse to domestic remedies, the petitioners allege that Manuel Tec Maquín approached the competent authorities to report that his son was missing within the first few days after noticing that he had failed to return home from working with his uncle. According to the petitioners, Manuel Tec Maquín went to the National Police, to the Justice of the Peace of the Municipality of El Estor and to the local military authorities. They claim that a document signed by the Justice of the Peace confirms the opening of criminal case No. 052-94, instituted following a complaint made to the National Police in February 1994. The document identifies the victim as Manuel Tec Maquín and the accused as José Chiquín. According to this record, the documents concerning the case were transmitted to the Second Investigative Court of Puerto Barrios on February 7, 1994. The petitioners contend that the authorities failed to respond to the complaints filed and also failed to launch an immediate investigation once the State became aware of the facts in respect of which the complaint had been filed.

12. The petitioners allege that the Guatemalan State is responsible for the violation of the rights of Emilio Tec Pop recognized in the American Convention on Human Rights (hereinafter "the Convention") to personal liberty (Article 7), to humane treatment (Article 5), to a fair trial and to judicial protection (Articles 8 and 25) and therefore failed to fulfil its obligations under Article 1 (1) to respect and guarantee the rights set forth in the Convention.

IV. FRIENDLY SETTLEMENT AGREEMENT

13. The State and the petitioners signed a friendly settlement agreement, the text of which reads as follows:

I. BACKGROUND

On June 23, 1994, the Inter-American Commission on Human Rights transmitted the pertinent parts of the case of Emilio Tec Pop, identified as Case No.11.312, to the Government of Guatemala. It noted that early in the morning of January 31 of that year, as Emilio Tec Pop was travelling from the municipality of El Estor, in the department of Izabal to the departmental capital of Cobán, in Alta Verapaz, he was detained by unknown individuals and that 32 days later, on March 3, of the same year, the authorities of the military outpost of El Estor, a municipality in the department of Izabal, returned the minor, Emilio Tec Pop, to his family.

The illustrious Commission adopted report No. 53/97 on admissibility during its 97th regular session and reiterated its willingness to place itself at the disposal of the parties for the purpose of facilitating a friendly settlement of the case based on respect for the principles of human rights, and invited the parties to respond to its offer. The friendly settlement procedure was accepted by the State and by the petitioner and his legal advisers.

The State of Guatemala, through the Presidential Commission on Human Rights (COPREDEH), and with the concurrence of the legal representatives of the alleged victim, have reached this agreement following a series of conversations aimed at compensating for the damage caused.

The State of Guatemala, in strict compliance with the obligations it undertook by becoming a party to the American Convention on Human Rights and other international human rights instruments, and recognizing that any violation of an international obligation that causes injury gives rise to a responsibility to provide adequate compensation, together with the legal representatives of Mr. Emilio Tec Pop, has decided to agree to a friendly settlement, in conformity with the provisions of Articles 48.1(f) and 49 of the American Convention on Human Rights. The State's consent to accept this procedure is evidence of its good faith in complying with 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 assumed in treaties. The Commission also wishes to reiterate that the friendly settlement procedure provided for in the Convention and in the Rules of Procedure of the Commission permits the settlement of individual cases in a non-contentious manner. In that regard, the efforts of the representatives of the State, the petitioner and his legal representative that produced concrete results in the instant case should therefore be acknowledged.

II. PARTIES APPEARING

The following persons were present at the signing of this friendly settlement agreement: the Chairman of the Presidential Commission on Human Rights (COPREDEH), Dr. Alfonso Fuentes Soria; the petitioner, Emilio Tec Pop; Mr. Fernando López Antillón, legal adviser to the petitioner and Director of the Legal Department of the Human Rights Legal Action Centre (CALDH).

III. ACKNOWLEDGEMENT OF STATE RESPONSIBILITY AND ACCEPTANCE OF THE FACTS

On the instructions of the President of the Republic, the Presidential Steering Committee for Executive Policy on Human Rights (COPREDEH), acting on behalf of the Guatemalan State, acknowledged before the illustrious Inter-American Commission the institutional responsibility of the State in the instant case for the violation of fundamental guarantees.

The President of the Republic has instructed the senior officials of COPREDEH to make approaches aimed at initiating negotiations, facilitating and, if possible, reaching friendly settlements with victims and/or their relatives in cases before the Commission, in conformity with the provisions of Article 48.1(f) of the Inter-American Convention on Human Rights.

The Presidential Steering Committee for Executive Policy on Human Rights (COPREDEH), in compliance with the instructions received from the President of the Republic, concludes on this date the friendly settlement agreement in the case of Emilio Tec Pop. That settlement was motivated mainly by a desire to seek the truth, see justice done, restore the victim's dignity, pay compensation for the alleged violation; and strengthen the regional human rights system.

The State of Guatemala thus acknowledges the institutional responsibility of the State arising from its failure to fulfill its obligations under Article 1.1 of the Inter-American Convention on Human Rights to respect and guarantee the rights set forth in the American Convention, and under Articles 5, 7, 8, 19 and 25 of the Convention.

IV. COMPENSATION AND ASSISTANCE

Based on the foregoing, the State of Guatemala, through COPREDEH, shall pay to Mr. Emilio Tec Pop compensation in the amount of two thousand United States dollars (US\$2,000) or the equivalent in national currency (Q.) at today's rate of exchange.

The amount of the compensation was decided by mutual agreement between the Government, Mr. Fernando López Antillón, legal adviser to the petitioner and Director of the Legal Department of CALDH, and Mr. Emilio Tec Pop. Payment was made by a personal check delivered to the petitioner at the headquarters of the Presidential Steering Committee for Executive Policy on Human Rights.

Having received this amount with which he was completely satisfied, Mr. Emilio Tec Pop handed over the corresponding receipt and indicated that he would request that the petition to the Inter-American Commission on Human Rights for economic compensation be withdrawn.

The State of Guatemala, acting through COPREDEH, undertakes to provide seed capital in the form of basic grains to be determined after a visit by the Ministry of Agriculture, Livestock and Food to the place of residence of Emilio Tec Pop with the aim of improving his standard of living.

V. INVESTIGATION AND PUNISHMENT OF THOSE RESPONSIBLE

Subject to Guatemalan domestic law and in conformity with its international obligations, the State of Guatemala undertakes to investigate the facts and, based on the findings of the investigation, to institute civil, criminal and administrative proceedings against those persons who, in the performance of their official State duties or in exercise of public authority, are found responsible for the acts that have been acknowledged in this agreement, and/or, where the investigation fails to prove the involvement of officials or agents of the State in the violations, the State undertakes to determine the criminal and civil liability of the private individuals who participated in and committed the offences in question.

COPREDEH reserves the right to recover from the individuals or agents of the State found to be liable for the damage and injury caused to the petitioner the compensation it has paid.

VI. INFORMATION

The State of Guatemala, acting through COPREDEH, shall be responsible for compliance with the terms of this friendly settlement agreement with respect to the payment of compensation to the victim and the restoration of his dignity. It shall report to the Inter-American Commission on Human Rights the progress made in any criminal, civil or administrative proceeding that might arise as a result of the investigations carried out by the Office of the Attorney General.

VII. EXEMPTION FROM TAXES

The payment made by the Guatemalan State to the person who is the object of this friendly settlement shall not be subject to taxation of any kind.

VIII. PUBLICATION OF THE REPORT

The Government of the Republic of Guatemala and CALDH request the illustrious Inter-American Commission to publish the relevant report, in accordance with Article 49 of the American Convention on Human Rights.

IX. LEGAL BASIS

The present friendly settlement is concluded on the basis of respect for the human rights recognized in Articles 1.1, 5, 7, 8, 19 and 25 of the Inter-American Convention on Human Rights; Article 45 of the Rules of Procedure of the Inter-American Commission on Human Rights; Articles 1, 2, 3, 44, 46, and 183, and in the fundamental principles enshrined in the political Constitution of the Republic of Guatemala and in the Peace Agreements signed by the Government of the Republic of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca.

X. ACCEPTANCE

The parties signing this agreement state that they freely and voluntarily accept and agree with the terms of the above provisions, and confirm that this agreement brings to an end the dispute over the international responsibility of the State for the violations of the human rights of Mr. Emilio Tec Pop.

Done in Guatemala City, on this sixteenth day of the month of June in the year two thousand and three.

14. On July 10, 2003, the Commission received the report of the Government of Guatemala on the progress made in the friendly settlement process. In the report, the State informed the Commission that on June 18, 2003, acting through COPREDEH, it had made a compensatory payment of US\$2,000 to Mr. Emilio Tec Pop. The amount had been decided upon by mutual agreement between the Government of Guatemala, CALDH and Mr. Tec Pop. The payment had been made by a personal check handed over to the victim.

15. On July 30, 2003, the petitioners transmitted their comments on the report submitted by the Government of Guatemala on July 10, 2003. According to the petitioners, the State had not yet delivered to Mr. Emilio Tec Pop an appropriate quantity of basic grain seeds, as provided for in the proposal. Nor had the Government fulfilled its commitment to investigate and punish those responsible for the violations of the victim's rights under the Inter-American Convention.

16. With respect to the commitments undertaken by the State, the humanitarian assistance and justice components are still under implementation. Indeed, with regard to implementation, the Commission has been informed of the efforts being made by COPREDEH to that end. Concerning the former, the matter is being taken up with the Ministry of Agriculture, Livestock

and Food and, concerning the latter, approaches have been made to the Office of the Attorney-General to step up the investigation into the case.

V. DETERMINATION OF COMPATIBILITY AND IMPLEMENTATION

17. 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 assumed in treaties. The Commission also wishes to reiterate that the friendly settlement procedure provided for in the Convention permits 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 the settlement of disputes, which can be used by both parties.

18. The Inter-American Commission has closely monitored the progress of the friendly settlement procedure agreed upon 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.

VII. CONCLUSIONS

19. 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.

20. 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 June 16, 2003.
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.