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File Number(s): Report No. 28/04; Petition 1886/02  
Session: Hundred and Nineteenth Regular Session (23 February – 12 March 2004)  
Title/Style of Cause: Cesar Geovanny Guzman Reyes v. Guatemala  
Doc. Type: Decision  
Decided by: President: Jose Zalaquett;  
First Vice-President: Clare K. Roberts;  
Second Vice-President: Susana Villaran;  
Commissioners: Evelio Fernandez Arevalo, Paulo Sergio Pinheiro, Freddy Gutierrez Trejo, Florentin Melendez..  
Dated: 10 March 2004  
Citation: Guzman Reyes v. Guatemala, Petition 1886/02, Inter-Am. C.H.R., Report No. 28/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 (2004)

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## I. SUMMARY

1. On July 24, 2003, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received a petition filed by Elida Argentina Reyes García de Orozco (hereinafter “the petitioner”) in which she alleges that the State of Guatemala (hereinafter “the State” or “the Guatemalan State”) is liable for the forced disappearance of César Geovanny Guzmán Reyes.

2. The petitioner argues that the State is responsible for violation of the right to life, to humane treatment, to personal liberty, to a fair trial, and to due judicial protection, which are enshrined in Articles 4, 5, 7, 8, and 25, respectively, of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), to the detriment of César Geovanny Guzmán Reyes, the victim. As regards the admissibility of the case, the State has not alleged that domestic remedies were not exhausted.

3. After analyzing the positions of the parties, the Commission concluded that it had competence to decide on the petition brought by the petitioners, and that the case was admissible, in light of Articles 46 and 47 of the American Convention. By virtue of the foregoing, the Commission has decided to notify the parties of its decision and to continue with an examination of the merits of the case pertaining to the alleged violation of Articles 4, 5, 7, 8, and 25 of the cited international instrument.

## II. PROCEDURES OF THE COMMISSION

4. On August 15, 2002, the IACHR proceeded to process the petition identified by N° 1886/2002, pursuant to the provisions of its Rules of Procedure in effect as of May 1, 2001, and it transmitted the relevant portions of the petition to the State, giving it a period of two months to submit its observations. On December 11, 2002, the Guatemalan State presented its observations, which were transmitted to the petitioners on December 17, 2002. In its letter dated December 17, 2002, the IACHR informed the petitioners that in the event it should be necessary, the IACHR would request in due time that they send further information, but that, in any event, the petitioners were authorized to send the Commission any additional allegations or information they deemed relevant.

5. On December 15, 2002, the State presented its observations, and they were forwarded to the petitioner on December 17, 2002, with a deadline of 30 days to respond. This is the most recent communication in the case files.

### III. POSITIONS OF THE PARTIES

#### A. Position of the petitioner

6. The petitioner argues that on July 13, 2001, in the vicinity of the home of Mrs. Elida Argentina Reyes García de Orozco, at approximately 6:30 p.m., several heavily armed individuals driving several vehicles with tinted windows took away her son, César Geovanny Guzmán Reyes. She adds that in the early hours of July 14, 2001, at approximately 1:55 a.m., vehicles drove past the door of her home and she heard the voice of her son shouting: "Mama, help me." Mrs. Elida Argentina Reyes García further states that when she left her home to look for her son that same morning, she realized that a very suspicious car was sitting on the corner across the street from where her son had been taken. This car had been circling the house together with another vehicle a few days earlier. According to their license plates, both vehicles belonged to the National Civil Police.

7. The petitioner maintains that César Geovanny Guzmán Reyes was in the basement of the Police Department [Dirección General de la Policía], together with ten other men, where they were tortured. As regards the arrest warrant against Mr. Guzmán Reyes, the petitioner alleges that it was issued illegally by a police officer named Crispin, who, according to a statement received by the Office of the Public Prosecutor for Human Rights [Procuraduría de los Derechos Humanos], was at the police station along with a group of policemen, and was in charge of the police on duty on the day that Mr. Guzmán Reyes disappeared.

8. With regard to the issue of exhaustion of domestic remedies, the petitioner points out that on July 14, 2001, she filed a complaint on the disappearance of her son with the Section on Minors and Disappeared Persons of the Criminal Investigation Service and with the Office of Civil Liability of the National Civil Police. She alleges that subsequently, on July 15, 2001, the Office of the Public Prosecutor for Human Rights filed a writ of habeas corpus [Recurso de Exhibición Personal] in favor of César Geovanny Guzmán Reyes with the Juez Primero Penal de Paz de Turno [First Criminal Magistrate on Duty] in the Department of Guatemala. In the brief filed by the Public Prosecutor, it stated that, according to witnesses, Mr. César Geovanny Guzmán Reyes was illegally arrested by men dressed in civilian clothing, and then taken in a

gray Toyota, with a personal license plate of P-571010, accompanied by another vehicle, a Toyota Tercel. It was further reported that these vehicles belonged to the Estado Mayor Presidencial, and that the disappeared person had been the victim of taunts and torture by the authorities of that place.[FN1] Moreover, the petitioner points out that the Office of Public Prosecutor for Human Rights filed two writs of habeas corpus on August 4, 2001 and on August 13, 2001, the first one with the First Criminal Magistrate [Juez Primero de Paz Penal] and the second one with the Seventh Criminal Magistrate.

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[FN1] The information pertaining to the content of the brief filed by the Office of the Public Prosecutor for Human Rights with the First Criminal Court was offered to the IACHR by the State of Guatemala.  
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9. The petitioner adds that on July 24, 2001, Attorney Gustavo Antonio Montenegro Rouge, Advisor of the Legal Area of the Mutual Support Group Foundation, filed a writ of habeas corpus in favor of César Geovanny Guzmán Reyes with the Juzgado de Primera Instancia Penal [First Criminal Trial Court].

B. Position of the State

10. The State reports that, after the complaint was filed with the IACHR, the Presidential Commission in charge of Coordinating Executive Policy on Human Rights [Comisión Presidencial Coordinadora de la Política del Ejecutivo en materia de Derechos Humanos]–COPREDEH –proceeded to compile information from the Ministerio Público and the National Civil Police, and specifically from the Criminal Investigation Section, for the purpose of determining the details of the alleged act. The court file was identified as 567-M-01 in Agencia Fiscal No. 14 of the Ministerio Público, and the case was assigned number 9059-2001, under the responsibility of Officer 4º of the Juzgado Sexto de Primera Instancia Penal, Narcoactividad y Delitos contra el medio ambiente [Sixth Trial Court for Criminal Matters, Drug Trafficking, and Environmental Crimes]. On August 7, 2001, according to the Guatemalan State, Mrs. Reyes García and her husband appeared to make a statement at Fiscalía No. 14 of the Ministerio Público.

11. The State points out that on July 16, 2001, the Section on Organized Crime of the Criminal Investigation Service of the National Civil Police requested that the Ministerio Público authorize the search and inspection of the premises located at 2da. Avenida 7-75 and 8ª calle 2-13 zona 07, Colonia Landivar. The State adds that the results of that search were negative, according to the report of Officer III of the National Civil Police, Rudy Arnoldo Torres Sarceño.

12. The State reports that in a written communication dated July 18, 2001, Attorney Jorge Mario Castillo Díaz, “Defender of Due Process and Imprisonment” of the Office of the Public Prosecutor for Human Rights, requested that Fiscalía No. 14 initiate criminal proceedings as authorized by the law, to shed light on the alleged events.

13. The State indicates that in a written communication dated August 7, 2001, the head of the Vehicle Control Department of the Tax Administration Superintendency [Superintendencia de Administración Tributaria] and the head of the Traffic Department of the National Civil Police were asked to produce a report giving the names of the persons in whose name the vehicles referred to in the complaint were registered. The State further indicates that the case records of the investigation were transferred to the Fiscalía contra el Crimen Organizado [Office of the Government Attorney for Organized Crime] under the responsibility of government attorney María del Rosario Acevedo Peñate, after Mrs. Reyes García presented information indicating that her son, César Geovanny, was the victim of kidnapping and that a ransom of one million quetzales had been demanded. The State adds that on September 19, 2001, Mrs. Reyes García gave a statement in that Fiscalía and that various investigative proceedings into the kidnapping of César Geovanny were initiated.

14. The State points out that on February 22, 2002, the legal advisor of the Grupo de Apoyo Mutuo presented to the Judge in charge of the Investigation a petition of habeas corpus in favor of the disappeared person. However, at the time of the State's communication, i.e., December 15, 2002, it did not know whether the petition had been settled.

15. The State of Guatemala states that on June 12, 2002, in a written communication signed by Government Attorney Rodolfo Jovito Méndez Alvarado, of the Fiscalía contra la Corrupción [Office of the Government Attorney for Corruption], forwarded the case records to the Executive Secretariat of the Ministerio Público, which in turn forwarded them to Fiscalía No. 14 headed by Attorney Jaime Arnoldo Rosales.

16. The State declares that the diligence carried out by the Ministerio Público up to now have been fruitless since the authorities have not been able to determine the whereabouts of Caesar Giovanni Guzmán Reyes, or to identify those responsible. Likewise, the State indicates that Mr. Jaime Rosales, responsible for the Fiscalía No. 14, indicated that the investigation carried out did not contribute sufficient elements to locate Caesar Giovanni Guzmán Reyes, or to identify those responsible.

#### IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

##### A. Competence

17. In principle, the petitioners are authorized by Article 44 of the American Convention to lodge petitions with the IACHR. The petition names individual persons as the alleged victims, in respect of whom the Guatemalan State was committed to respect and guarantee the rights established in the American Convention. As regards the State, the Commission advises that Guatemala has been a state party to the American Convention since May 25, 1978, the date on which it deposited its instrument of ratification. In addition, Guatemala has been a state party to the Inter-American Convention on the Forced Disappearance of Persons since February 25, 2000, the date on which it deposited its instrument of ratification. Therefore, the Commission has full competence *ratione personae* to consider the petition.

18. The Commission has competence *ratione loci* to consider the petition, since it alleges violations of rights protected by the American Convention that took place within the territory of a state party to that treaty, and the Inter-American Convention on Forced Disappearance of Persons.. The IACHR has competence *ratione temporis* because the obligation to respect and guarantee the rights protected in the American Convention and the Inter-American Convention on Forced Disappearance of Persons. was already in effect for the State on the date on which the acts alleged in the petition occurred. Finally, the Commission has competence *ratione materiae*, because the petition reports violations of human rights protected by the American Convention and the Inter-American Convention on Forced Disappearance of Persons.

B. Requirements for admissibility

1. Exhaustion of domestic remedies

19. The petitioner alleges that it pursued the available judicial remedies in an attempt to determine the whereabouts of the victim, including several writs of habeas corpus filed with domestic courts. The State for its part does not make any allegations regarding exhaustion of domestic remedies, even though the remedies being pursued were indicated.

20. The Commission is of the view that the petitioner endeavored to use the means available to her to determine the whereabouts of César Geovanny Guzmán Reyes and to provide for reparation of his rights. From information received, it is apparent that no final judgments were issued in that respect, and that the writs of habeas corpus that were filed were not successful as mechanisms for establishing the whereabouts of the victim. According to the information received it is inferred that the remedies of personal discovery were not effective, and based upon the information present by the State in which it indicates:

The measures taken by the Public Ministry up to this point have been fruitless since the location of Cesar Giovanni Guzman Reyes has not been achieved, nor the identification of those responsible of this act.[FN2]

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[FN2] State of Guatemala in it's reply to Petition P-1886/2002 - César Giovanni Guzmán Reyes dated February 24, 2004.  
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21. The IACHR considers that these remedies have been objects to final judgments and that the remedies of personal discovery attempted resulted fruitless as mechanisms for establishing the whereabouts of the victim. According to the jurisprudence of entities in the inter-American system, the petition to produce the person, or habeas corpus, is the appropriate recourse for clarifying the whereabouts of a disappeared person.[FN3]

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[FN3] Inter-American Court of Human Rights, Case of Caballero Delgado and Santana. Preliminary Challenges, Judgment of January 21, 1994, paragraph 64.  
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22. Seeing as the judicial remedies pursued to determine the whereabouts of Cesar Giovanni Guzman Reyes, and to identify, try, and punish those responsible for his disappearance, have not produced any results despite having passed more than two years since the facts occurred. In view of the fact that the petitioner pursued the remedies available under domestic legislation, and that on the date the petition was presented to the Commission, she had not received a response to them, it is appropriate to conclude that the exception to the requirement of prior exhaustion of domestic remedies, stipulated in Article 46(2)(c) of the American Convention applies.

2. Period for presentation

23. Article 46(1)(b) of the Convention establishes that the petition must 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. In the case in point, this provision does not apply, by virtue of the provisions of Article 46(2)(c) of the Convention and Article 32(2) of the Rules of Procedure of the Commission. In the opinion of the Commission, the petition was presented—July 24, 2002--within a reasonable period of time, considering the date on which the alleged violation of the rights occurred and the circumstances of the case. Consequently, this requirement is considered to have been met.

3. Duplication of procedures and res judicata

24. The case records do not contain any information that would lead one to determine that this matter is pending in another international proceeding, or that it reproduces a petition already examined by this or another international entity. Therefore, it is concluded that it has met the requirements stipulated in Article 46.1(c) and 47(d) of the American Convention.

4. Characterization of the alleged acts

25. The Commission believes that the allegations of the petitioner regarding the presumed violation of the victim's right to a fair trial and right to judicial protection could be characterized as a violation of the rights guaranteed in Articles 8 and 25, considered in conjunction with Article 1(1), of the American Convention[FN4]

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[FN4] Admissibility Report N° 79/01, Case 12.101, Marco Antonio Molina Theissen, Guatemala, October 10, 2001, paragraph 28 - 33; Admissibility Report N° 10/02, Petition 12.393, James Judge, Ecuador, February 27, 2002, paragraph 21; Admissibility Report N° 12/02, Petition 12.090, Jesús Enrique Valderrama Perea, Ecuador, February 27, 2002, paragraph 16; Admissibility Report N° 16/02, Petition 12.331, Marco Antonio Servellón García, Rony Alexis Betancourt Hernández, Diómedes Obed García and Orlando Alvarez Ríos (“Los Cuatro Puntos Cardinales”), Honduras, February 27, 2002, paragraph 28 - 32; Admissibility Report N° 9/97, Case 11.509, Mexico, March 12, 1997, paragraph 35; Case Juan Humberto Sánchez vs. Honduras, Judgment of June 7, 2003. Serie C N° 99, paragraph. 67; Case Baena Ricardo et al. Preliminary Objections. Judgment of November 18, 1999. Serie C N° 61, paragraph 41; Case de la “Panel Blanca” (Paniagua Morales et al.). Preliminary Objections. Judgment of January 25,

1996. Serie C N° 23, paragraph 42; and Case Gangaram Panday. Preliminary Objections. Judgment of December 4, 1991. Serie C N° 12, paragraph 18.

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## V. CONCLUSIONS

26. The Commission concludes that the case is admissible and that it is competent to examine the petition lodged by the petitioners on the alleged violation of the right to life, humane treatment, personal liberty, a fair trial, and judicial protection due to the victim, and that these can be characterized as a violation of the rights guaranteed in Articles 4, 5, 7, 8, and 25, to be considered in conjunction with Article 1(1), of the American Convention.

27. On the grounds of the arguments of fact and of law set forth above, and without prejudice to the merits of the case,

## THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

### DECIDES:

1. To declare the case under study admissible, in relation to Articles 1(1), 4, 5, 7, 8, and 25 of the American Convention and Article 1(a) y (b) d of the Inter-American Convention on Forced Disappearance of Persons.
2. To notify the State and the petitioners of this decision.
3. To initiate proceedings on the merits of the case.
4. To publish this decision and include it in its Annual Report, to be presented to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on the 10th day of March, 2004. (Signed): José Zalaquett, President; Clare Kamau Roberts, First Vice-President; Susana Villarán, Second Vice-President; Commissioners: Evelio Fernández Arévalo, Paulo Sergio Pinheiro, Freddy Gutiérrez Trejo, Florentín Meléndez..