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Institution: Inter-American Commission on Human Rights
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Title/Style of Cause: Jorge Alberto Rosal Paz 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: 11 March 2004
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I. SUMMARY

1. On August 18, 1983, the Inter-American Commission on Human Rights (hereinafter “the Commission”, the “Inter-American Commission” or “IACHR”), received a petition presented by Ms. Blanca Vargas de Rosal (hereinafter the “petitioner”) – which was subsequently supported by the Center for Human Rights Legal Action – against the State of Guatemala (hereinafter “the State” or “the Guatemalan State”) for the disappearance of Mr. Jorge Alberto Rosal Paz y Paz on August 12, 1983. According to the petition, Mr. Rosal was detained while driving between Teculután and Guatemala City. To date, his whereabouts remain unknown.

2. The petitioner alleged that Mr. Rosal was followed by two men on a motorcycle as he was driving on the highway towards Atlántico in the province of Zacapa. Upon arrival at the city of Lo de Pinto or Casas de Pinto in the municipality of Río Hondo, Zacapa, he was intercepted and abducted by an armed group travelling in a jeep. Mr. Rosal’s family received no more news about his whereabouts, nor could they find him in the hospitals, morgues or detention centres in Guatemala City, or in Zacapa and its environs. At the time of his detention, the agronomist was 28 years old and the father of a young daughter. He and his wife were expecting the birth of their second child.

3. The present friendly settlement report, done in conformity with the provisions of article 49 of the Inter-American Convention on Human Rights and article 41 (5) of the Rules of Procedure of the Commission, contains a brief summary of the facts alleged by the petitioner and the settlement reached. It also contains an agreement to publish the report.

II. PROCESSING BY THE COMMISSION

4. The Commission opened petition No. 9168 when it received the complaint on August 18, 1983 and transmitted it to the State. On August 23, 1983, the petitioner provided additional information, which was forwarded to the State on September 30, 1983, with the request that it communicate its observations thereon within 60 days.

5. On October 28, 1983, a relative of the victim sent a communication to the then President of Guatemala, General Mejía Vítores, and transmitted a copy thereof to the Commission for inclusion in the file. In the letter, the relative noted that two individuals had reported seeing Mr. Rosal under detention in Zacapa days after the kidnapping. The relative had received initial information about a neighbour who had called General López, a member of the Zacapa military command, to eliminate Mr. Rosal because of a dispute about cattle crossing over property.

6. The Commission received various clippings from the press and magazines in 1983 and 1984 that referred to the kidnapping and disappearance of Mr. Rosal. One of the reports indicated that various witnesses had seen two men on a motorcycle forcing Mr. Rosal towards the jeep. Another report indicated that the application for a writ of habeas corpus had been filed after the kidnapping, without result.

7. On May 30, 1984, the Commission reiterated its request for information from the Guatemalan State, since it had not received any response from the State. On February 19th and August 1, 1985, the Commission again reiterated its request for information to the Guatemalan State. On July 14, 1997, the petitioner provided additional information to IACHR.

8. On December 2, 1998, the Commission transmitted a communication to the petitioner, requesting that she provide additional information on the petition within 30 days in order to update its processing. The IACHR also placed itself at the disposal of the parties with a view to facilitating a friendly settlement of the matter. On that same date, IACHR sent a communication to the Guatemalan State requesting that information be provided within a period of 30 days also for the purpose of updating the processing of the petition. On December 17, 1998, the State requested an extension of 30 days for the requested updating of the present petition and of 44 other cases that had been initiated by the Commission 8, 9, 10 and 15 years previously. On January 20, 1999, the Guatemalan State reiterated its request for an extension, but on that occasion requested a further extension of 60 days. On January 27, 1999, IACHR granted the Guatemalan State's request for the extension.

9. On February 11, 1999, the Commission transmitted a copy of the proceedings in its file to the Guatemalan State.

10. On August 9, 2000, the Guatemalan State issued a statement acknowledging the institutional responsibility of the State in the Rosal Paz case, among others, and undertook to seek a friendly settlement in the instant case.

11. On May 14, 2002, the petitioner transmitted a communication to the IACHR stating her position with respect to a possible friendly settlement of the case, which was forwarded to the

State on May 16, 2002. On July 29, 2002, the State informed the Commission that it had received and was reviewing the petitioner's position on the amount of economic compensation.

12. On February 12, 2003, the petitioner transmitted a proposal aimed at expediting the friendly settlement procedure.

13. On February 28, 2003, during the 117th ordinary session of the Commission, a working meeting was held between the parties to discuss the terms of a friendly settlement. On March 12, 2003, the petitioner transmitted to the Commission a communication containing the information that

the Presidential Commission to Coordinate Executive Policy in Human Rights (COPREDEH) required in order to prepare a financial statement. On April 3, 2003, the petitioner transmitted a communication to IACHR attaching the communication she had forwarded to COPREDEH, as agreed upon in the working meeting.

14. On June 12, 2003, the petitioner transmitted a communication to IACHR reiterating the need to expedite the agreement. On August 14, 2003, the petitioner informed IACHR of the status of the negotiations with the Guatemalan State. On October 10, 2003, she provided additional information on the status.

15. On January 14, 2004, the Guatemalan State transmitted a communication to IACHR enclosing the friendly settlement agreement signed by the parties in Guatemala City on January 9, 2004.

III. THE FACTS

16. The petitioner alleges that Mr. Jorge Alberto Rosal Paz was forcibly disappeared in 1983. Mr. Jorge Alberto Rosal Paz studied agronomy at the Pan-American School of Agriculture and after his studies abroad returned to Guatemala to work on a farm owned by his parents, who had received death threats under the Government of Lucas García for raising public awareness of malnutrition and other causes of child mortality. Mr. Rosal Paz was taken captive by heavily armed men who were waiting for him by the monument to the soldiers of the village of Casas de Pinto, in the municipality of Río Hondo, Zacapa, as he was travelling from the city of Zacapa to the farm. The illegal arrest of Mr. Rosal Paz occurred on Friday, August 12, 1983 and three villagers from a neighbouring village who had witnessed the incident immediately reported that Mr. Rosal Paz had been arrested by soldiers from the Zacapa military base No. 7. The petitioner also alleges that the Guatemalan State failed to investigate and to respond to the Commission's request to clear up the matter of Mr. Rosal's whereabouts.

17. According to the information sent to IACHR by the victim's relatives, they had exhausted all of the remedies available to them for obtaining information about the victim's whereabouts and none of the remedies had yielded results. The petitioner noted that on that very date, August 13, 1983, she had met with Colonel Guillermo Rodríguez, who was the commanding officer on duty at the Zacapa base and that he had not allowed her to enter the base to look into the cells. She had met with the Chief of the National Police, Colonel Ponce Nich, in the evening of August

13 and that meeting had also proved fruitless. Ms. Blanca de Rosal had sent a telegram to the Head of State, Mejía Victores, requesting an audience, but had received no reply. On August 16, 1983, she had filed a writ of application for habeas corpus. On August 17, 1983, she had telephoned the then Army Chief of Staff and was never granted an audience. On August 21, 1983, she was received by the Head of State, who had said that the case would be investigated. There had been no communication either after that meeting. On November 29, 1984, she had met with the Attorney General of the Nation, the Chief of Staff of the President, the Press Secretary, the Deputy Minister of the Interior and the Secretary-General of the Government, all of whom had given what seemed to be an undertaking to launch an investigation. However, on December 14, 1984, they had met again, but on that occasion to receive information about the investigations carried out. Unfortunately, the authorities had said that the evidence was confidential and that they could not show it to her.

18. Finally, the petitioner alleges that she had gone to hospitals, morgues, military bases and detention centres, had approached the highest authorities and had filed a series of writs of application for habeas corpus on behalf of Mr. Rosal Paz, and that all of those actions had led to the filing of the petition. None of those actions, however, had helped to determine the whereabouts of Mr. Rosal.

IV. FRIENDLY SETTLEMENT

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

FIRST: BACKGROUND

The Government of the Republic of Guatemala, headed by Mr. Alfonso Portillo Cabrera, with a view to achieving harmony and reconciliation in the Guatemalan society, issued on August 9, 2000 a statement accepting the institutional responsibility of the State in specific cases of violations of human rights committed in the context of the internal armed conflict and brought before the Inter-American Commission on Human Rights (hereinafter IACHR), having given instructions to

“the Presidential Commission to Coordinate Executive Policy in Human Rights” (hereinafter COPREDEH) to examine the possibility of reaching friendly settlement agreements with the petitioning parties in the said cases. The case of JORGE ALBERTO ROSAL PAZ Y PAZ is one of the cases selected for this purpose.

On March 4, 2002, at the Headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., United States of America, an agreement was reached between Mrs. Blanca Elvira Vargas Cordón de Rosal (hereinafter the petitioner), with the assistance of the Center for Human Rights Legal Action (hereinafter CALDH) and the representative of COPREDEH to initiate action aimed at reaching a friendly settlement of the case in question.

As a consequence of that meeting, on March 23 of the same year, IACHR transmitted to the Permanent Representative of Guatemala to the Organization of American States (OAS) the file

containing the historical background details of the case of Rosal Paz y Paz. This file was received by COPREDEH on April 9, 2002.

Approximately two months later, COPREDEH received from the petitioner the proposal to begin the process of negotiation aimed at reaching a friendly settlement agreement. Subsequently, on July 26 of the current year, a meeting was held at the offices of COPREDEH, in which officials of this Presidential body and of IACHR, as well as the parents of Jorge Alberto Rosal Paz y Paz participated. On that occasion, COPREDEH indicated that it would submit its response to the petitioner prior to the IACHR hearings scheduled for October 2002.

At its 116th Ordinary Session, the illustrious Inter-American Commission on Human Rights (IACHR) expressed interest in expediting the case of “Jorge Alberto Rosal Paz y Paz” and its willingness to place itself at the disposal of the parties to facilitate a friendly settlement of the case on the basis of the principles of respect for human rights. It invited the parties to pronounce on that possibility. The friendly settlement was agreed upon by the State, the petitioner and her legal advisors.

The State of Guatemala, through the “Presidential Commission to Coordinate Executive Policy in Human Rights” (COPREDEH), has begun and completed with this agreement a series of discussions that were initially held with the attorneys of the Center for Human Rights Legal Action (CALDH) and which finally culminated with the representative of the Council of Runujel Junam Ethnic Communities, Mr. Amilcar Méndez Urizar, and the representative of Mrs. Blanca Elvira Vargas Córdón de Rosal, through the present friendly settlement agreement.

The State of Guatemala, in strict fulfilment of the obligations assumed with the signing of the American Convention on Human Rights and other instruments of international human rights law and aware that any violation of an international obligation that resulted in harm gives rise to a responsibility to adequately compensate for it, with financial compensation being the way to do so, by virtue whereof the State of Guatemala, together with Mrs. Blanca Elvira Vargas Córdón de Rosal, have decided to reach a friendly settlement, in accordance with the provisions of articles 48.1 (f) and 49 of the American Convention on Human Rights (sic) and article 45 of the Rules of Procedure of the Inter-American Commission on Human Rights (IACHR). Its acceptance of the proposal to proceed in this way reflects the good faith of the State in fulfilling the aims and objectives of the Convention under the principle *pacta sunt servanda*, by virtue of which States must discharge in good faith the obligations it assumes in treaties. It also wishes to reiterate that the friendly settlement mechanism provided for in the Convention and in the Rules of Procedure of the illustrious Inter-American Commission on Human Rights (IACHR) allows for an individual case to be brought to a conclusion in a non-contentious manner. Mention should be made in this connection of the efforts made by the representatives of the State and by the petitioner and her legal representatives that permitted concrete results to be achieved in this case.

SECOND: PERSONS PRESENT AT THE SIGNING OF THE FRIENDLY SETTLEMENT AGREEMENT

The following persons were present at the signing of the friendly settlement agreement: on one side, the Chairman of the Presidential Commission to Coordinate Executive Policy in Human

Rights (COPREDEH), Dr. Alfonso Fuentes Soria; the petitioner Blanca Elvira Vargas Cordón de Rosal and Mr. Amilcar Méndez Urizar, the representative of the petitioner and a member of the "Runujel Junam" Council of Ethnic Communities -CERJ.

THIRD: ACKNOWLEDGEMENT OF THE RESPONSIBILITY OF THE STATE AND ACCEPTANCE OF THE FACTS

The Constitutional President of the Republic has instructed the Presidential Commission to Coordinate Executive Policy in Human Rights (COPREDEH) to acknowledge on behalf of the Guatemalan State and to the illustrious Inter-American Commission on Human Rights the institutional responsibility of the State in cases of the violation of fundamental guarantees.

The Presidential Commission to Coordinate Executive Policy in Human Rights (COPREDEH) was further instructed to pursue friendly settlement agreements with victims and/or their families with respect to the cases brought before the Inter-American Commission on Human Rights (IACHR) in order to promote understandings and thus facilitate the initiation of negotiations under the mediation of the illustrious Commission, with a view to reaching settlements in conformity with the provisions of article 48.1.f of the American Convention on Human Rights.

The Presidential Commission to Coordinate Executive Policy in Human Rights (COPREDEH), in compliance with the instructions received from the Constitutional President of the Republic, concludes at the present date the search for a friendly settlement in the case of "Jorge Alberto Rosal Paz y Paz". The achievement of this settlement is based principally on: the search for truth and the administration of justice; the dignity of the victim; compensation for the violation of the human rights of the victim; and strengthening of the regional system of human rights.

Guatemala thus acknowledges the institutional responsibility of the State arising from its failure to discharge the obligation imposed by article 1.1 of the American Convention on Human Rights (sic) to respect and guarantee the rights enshrined in the American Convention and in articles 4, 5, 7, 8, 11, 17, 19 and 25 of the Convention.

FOURTH: ECONOMIC AND OTHER TYPES OF COMPENSATION

Against this background, the State of Guatemala, through COPREDEH, awards to Mrs. Blanca Elvira Vargas Cordón de Rosal, by way of economic compensation on a one-time basis the amount of 2,500,000.00 quetzales (Q. 2,500,000.00). The amount of the compensation has been set by common agreement between the Government of the Republic, Mrs. Blanca Elvira Vargas Cordón de Rosal and her representative Mr. Amilcar Méndez Urizar, a member of the Council of Runujel Junam Ethnic Communities. The payment shall be made by any one of the following means: (1) delivery of a personal check at the main office of the Presidential Commission to Coordinate Executive Policy in Human Rights or by a deposit into her personal account at the Crédito Hipotecario Nacional.

After the amount has been received to her entire satisfaction, Mrs. Blanca Elvira Vargas Cordón de Rosal shall request that the petition to the Inter-American Commission on Human Rights be filed away and shall specifically renounce any other claim for economic compensation, either

before domestic judicial or administrative bodies or before another international organ, based on or arising from the same acts.

This compensation is for the material damage suffered (loss of income and related damage) and the moral harm caused to the family of the agronomist Jorge Alberto Rosal Paz y Paz, for the reasons mentioned in this agreement and in conformity with the criteria which the Honorable Inter-American Court of Human Rights (IACHR) has laid down on the question of compensation. This amount shall be paid from the General Budget of Income and Expenditures of the State for the year 2004, to which end COPREDEH shall notify the Ministry of Finance in order to discharge this obligation.

On the question of education, the State of Guatemala through COPREDEH shall take the necessary action and measures for scholarships to be granted to María Luisa and Jorge Alberto Rosal Vargas, the children of Mr. Jorge Alberto Rosal Paz y Paz, at the intermediate and university levels at George Washington University and the University of Georgetown in Washington, D.C., United States of America, from the year 2004 until the completion of their studies.

The State of Guatemala, through the Ministry of Education, shall rename the Northeast School of Agriculture (EANOR) the "Ing. Ag. Jorge Alberto Rosal Paz y Paz" School. A commemorative plaque shall be unveiled at the site and the highest authority of the State (the President of the Republic) or his representative shall publicly acknowledge responsibility, in conformity with the provisions of the American Convention on Human Rights.

The State of Guatemala through the appropriate authority shall take the necessary measures to provide Mrs. Blanca Elvira Vargas Cordón de Rosal with land owned by the State and situated in the jurisdiction of the village of Pasabien, municipality of Rio Hondo, department of Zacapa, whose perimeter measures approximately 604.60 meters and which abuts the properties of the following persons: to the north: 213.60 meters, it abuts the property of Hugo Castañeda; to the south: 187 meters it runs alongside a paved roadway; to the east: 111 meters, it adjoins Finca Matriz, property of the State; and to the west: 93 meters, it adjoins the property of Mr. Hernan Roldan. This commitment is limited to use of the land for a family dwelling.

FIFTH: INVESTIGATION AND PUNISHMENT OF THOSE RESPONSIBLE

In conformity with Guatemala's constitutional and legal provisions and with its international obligations, the State of Guatemala undertakes to reopen its investigations of the acts through the Office of the Attorney General and to the extent possible to bring civil, criminal and administrative charges against those persons who, in the discharge of State functions or relying on their public authority, are presumed to have participated in the acts that led to the disappearance of the agronomist Jorge Alberto Rosal Paz y Paz, acts that have been acknowledged in this agreement and/or in the event that the investigations do not prove the participation of elements or agents of the State in these violations, to determine the criminal and civil responsibilities of the private individuals that participated and carried out the illegal acts in question. Moreover, to the degree that it is able and in function of the nature and circumstances of the case, the State of Guatemala undertakes to institute legal proceedings against those

persons who, through their omissions, negligence or inexperience, have delayed the administration of justice in this case.

SIXTH: INFORMATION

The State of Guatemala, through COPREDEH, is bound by the present friendly settlement and shall inform the Inter-American Commission on Human Rights of the fulfilment of the obligations assumed by the State under this friendly settlement agreement.

SEVENTH: EXEMPTION FROM TAXES

The payment that the State of Guatemala shall make to the beneficiary or beneficiaries under this friendly settlement agreement shall not be subject to currently applicable taxes or to any taxes that may be imposed in future.

EIGHTH: PUBLICATION OF THE REPORT

The Government of the Republic of Guatemala, Mrs. Blanca Elvira Vargas Cordón de Rosal, and the Council of the Runujel Junam Ethnic Communities, represented by Mr. Amilcar Méndez Urizar, request the illustrious Inter-American Commission to publish the relevant report in conformity with article 49 of the American Convention on Human Rights.

NINTH: LEGAL BASIS

This friendly settlement agreement is concluded on the basis of respect for the human rights recognized in articles 1.1.,4, 5, 7, 8, 19 and 25 of the 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 of the Political Constitution of the Republic of Guatemala, and the provisions of the peace agreements signed between the Government of the Republic of Guatemala and Unidad Revolucionaria Nacional Guatemalteca.

TENTH: ACCEPTANCE

The parties to the signing of this Agreement freely and voluntarily express their acceptance of and agreement with the contents of the above clauses and state for the record that they thus put an end to the dispute over the international responsibility of the State with respect to the case of “Jorge Alberto Rosal Paz y Paz”, which is being considered by the Inter-American Commission on Human Rights (IACHR).

The present Agreement is concluded in Guatemala City on the ninth day of January in the year two thousand and four.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

20. The Commission reiterates that in conformity with articles 48 (1) (f) and 49 of the Convention, this mechanism is used “with a view to reaching a friendly settlement of the matter

on the basis of respect for the human rights recognized in this Convention.” The State’s consent to pursue this avenue is evidence of its good faith in fulfilling the purposes 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. It 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 in cases involving various countries has proven to be a useful vehicle that both parties can use for the settlement of disputes.

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

VI. CONCLUSIONS

22. Based on the foregoing considerations and under the procedure provided for in articles 48 (1)(f) and 49 of the American Convention, the Commission wishes to reiterate its deep appreciation for the efforts made by the parties and its satisfaction that a friendly settlement has been reached in the instant case consistent with the object and purpose of the American Convention.

23. By virtue of the considerations and conclusions set forth 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 January 9, 2004.
2. To continue to monitor and oversee compliance with each of the points in the friendly settlement agreement and, in that context, to remind the parties of their commitment to inform IACH, every 3 months, of their compliance with the provisions of the present friendly settlement agreement.
3. To make this report public and 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 11th day of March, 2004. Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Susana Villarán, Second Vice-President; Commissioners: Evelio Fernández Arévalo, Paulo Sérgio Pinheiro, Freddy Gutiérrez Trejo, Florentín Meléndez.