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Title/Style of Cause: Edgar Lesther Garcia Fajardo v. Guatemala
Doc. Type: Decision to Archive
Decided by: First Vice President: Victor Abramovich;
Second Vice President: Felipe Gonzalez;
Commissioners: Sir Clare K. Roberts, Florentin Melendez, Paolo G. Carozza.
Dated: 12 November 2009
Citation: Garcia Fajardo v. Guatemala, Petition 11.005, Inter-Am. C.H.R., Report No. 128/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)

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ALLEGED VICTIM: Edgar Lesther García Fajardo

PETITIONER: Edgar Antonio García Barreda

ALLEGED VIOLATIONS: Articles 4, 5 and 8 de la American Convention on Human Rights

DATE PROCESSING BEGAN: April 10, 1992

I. POSITION OF THE PETITIONER:

1. On March 21, 1992, the Inter-American Commission on Human Rights received a petition lodged by Edgar Antonio García Barreda, for the alleged violation of the right to life and to inhumane treatment of his son Edgar Lesther García Fajardo, by the State de Guatemala. The petitioner alleges that on December 31st, 1991, his son, who was in the company of a friend who was a cadet at the Polytechnic Military School, was assaulted and killed by five intoxicated officers of the Guatemalan National Police. Despite being gravely wounded by police bullets, this cadet's life was saved. He indicated that those responsible are protected by the Ministry of Government and the director of the National Police, thereby maintaining impunity in Guatemala.

2. Regarding the internal investigation, the petitioner states that three autopsies were performed. In the first autopsy, the results were ready 32 days after it was completed. The second was done without court authorization; and the third was done because the results of the second favored those responsible, who were in reclusion on National Police installations, despite the nature of the crime committed. The petitioner adds that the case file in the criminal investigation of his son's murder was lost and he was not notified of any judgments of the merits, such as the decision that modified the provisional detention, despite the fact that the Judicial Act obliges the

judges to notify at the residence through an exhorto. The petitioner also expressed in the claim that he feared for his life, for the safety of his family and that of his property.

II. POSITION OF THE STATE:

3. Responding to the claim filed, the State indicates that the case is still pending before the First Instance Criminal Court of Escuintla, case number 88-92, and that a number of steps have already been taken. In addition, it notes that the judge released the accused on bail and that the investigation is still open. There has also been no decision to revoke bail for the accused by the Twelfth Chamber of the Court of Appeals. It also notes that the accused, as members of a police institution are subject to the internal regulations of the same, which stipulate that agents under criminal investigation, failing a conviction, should be held at the installations of their institution. It notes that notification of provisional arrest reform, bail or the open hearing was not done with the claimant because, to date, he has not provided a new address. Likewise, it notes that COPREDEH has sent the Public Ministry a request to speed up the process and in particular to find a way to keep the claimant informed of the legal process.

4. Finally, on June 7th, 2007, the State asked for the case to be archived, since the last IACHR communication was from August 3rd, 2002. The State argued that the conditions that motivated the petitioner to resort to the Inter-American system no longer existed, as “the State has not had contact with the petitioners, nor has it received communications from neither the petitioners nor the Commission.”

III. PROCESSING BY THE IACHR:

5. The petition was received by the Commission on March 21st, 1992. On April 10th, 1992, the IACHR informed the petitioner that his claim was being processed and asked him to keep the IACHR aware of the progress of the criminal investigation. On the same day, the State of Guatemala was notified of the claim, so it could respond to the allegations within 90 days and report whether or not internal remedies has been exhausted. The State’s response was received on November 18th, 1992.

6. Additionally, IACHR received additional information from the petitioner on the following dates: May 11th, 1992, May 27th, 1992, January 25th, 1993, November 9th, 1993 and February 22nd, 1994. These communications were duly forwarded to the State.

7. The IACHR received the State’s observations on the following dates: September 8th, 1993, September 30th, 1993, and March 11th, 1994. These communications were duly forwarded to the petitioner.

8. On March 23rd, 1994, the IACHR requested the petitioner for his observations on the information provided by the State on March 11th, 1994. On September 7th, 1994 it reiterated to the petitioner this request for information, noting that “should it not receive the requested information within 60 days, the Commission may suspend its consideration of the case”. On August 3rd, 2000, the IACHR placed itself at the disposal of the parties concerned, with a view to reaching a friendly settlement on the matter. It did not receive a response from either party.

9. On December 13th, 2002 the IACHR requested the petitioner for updated information on the case, noting that “in light of the lack of information related to the case since 1994, the Commission would have to consider the case to be under the provisions of article 48 of the Convention, regarding instances in which updated or complimentary information is not received”. On February 10th, 2004, the IACHR reiterated its December 13th, 2003 request for information from the petitioner. On June 7th, 2007 the State of Guatemala asked that this petition be archived.

IV. BASIS FOR THE DECISION TO ARCHIVE:

1. 10. Article 48.b) of the American Convention on Human Rights and Article 30.6 of the Rules of Procedure of the Inter-American Commission on Human Rights establish that after the period set has elapsed with no observations received, the Commission shall verify whether the grounds for the petition exist or subsist. If it considers that they do not exist or subsist, it shall order the case archived.

11. To date, the petitioner has failed to respond the repeated requests for information from the IACHR regarding the events that took place on February 22nd, 1994. The Commission therefore lacks the necessary elements to determine whether the grounds for the original petition subsist or to reach a decision on the alleged human rights violations, and pursuant to Article 48.b of the Convention and Article 30.6 of the IACHR Rules of Procedure decides to archive this petition.

Done and signed in the city of Washington, D.C., on the 12th day of the month of November, 2009. (Signed): Víctor Abramovich, First Vice-President; Felipe González, Second Vice-President; Sir Clare K. Roberts, Florentín Meléndez, and Paolo G. Carozza, members of the Commission.