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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 127/09; Petition 10.965
Session: Hundred Thirty-Seventh Regular Session (28 October – 13 November 2009)
Title/Style of Cause: Juan Pablo Lemus Silva 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: Lemus Silva v. Guatemala, Petition 10.965, Inter-Am. C.H.R., Report No. 127/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by: APPLICANT: the Human Rights Commission of Guatemala
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ALLEGED VICTIM: Juan Pablo Lemus Silva

PETITIONER: The Human Rights Commission of Guatemala

ALLEGED VIOLATIONS: Articles 5 and 7 of the American Convention on Human Rights

DATE PROCESSING BEGAN: December 30th, 1991

I. POSITION OF THE PETITIONER:

1. On November 28th, 1991, the Inter-American Commission on Human Rights, received a claim presented by the Human Rights Commission of Guatemala, (hereafter the “petitioner”), for the alleged detention of and aggression against Juan Pablo Lemus Silva, by agents of the Guatemalan National Police.

2. In the claim, the petitioner noted that on November 20th, 1991, Juan Pablo Lemus Silva was detained by agents of the National Police, who beat him until he was semi-conscious. He was later transferred to the 4° Corps of the National Police in zone 19, where he was beaten again. Finally, the victim, who was the head of the International Food Workers Union, was taken by the police to the San Juan de Dios hospital.

II. POSITION OF THE STATE:

3. In response to this claim, the State indicates that Juan Pablo Lemus Silva presented himself on November 21st, 1991 before the Second Criminal Peace Court of the Mixco Municipality, to claim that the previous day, as he walked near the “Forests of Saint Nicholas”

colony; he was attacked by members of the National Police. It adds that the judge ordered pertinent investigations to establish the involvement of two police officers, as those responsible for the crime, due to a lack of witnesses other than the claimant.

4. It also indicates that due to the norms established by the Criminal Processing Code, in effect since July 1st, 1994, the case was transferred to the district attorney of Mixco municipality, so they may conduct the pertinent investigations. It adds that the petition is inadmissible as internal remedies have not been exhausted; and, that the judgment and a sanction would be undertaken by impartial and independent judges answerable only to the Constitution and the law.

III. PROCESSING BY THE IACHR:

5. On November 28th, 1991, the Commission received the Human Rights Commission of Guatemala's petition and gave it case number 10.965. On December 30th, 1991, it sent the pertinent parts to the State, asking it to provide the necessary information and to inform whether or not internal remedies had been exhausted. The State's response was received on March 10th, 1992.

6. On March 13th, 1992, the IACHR asked the petitioner for its observations on the State's response and on December 2nd, 1993 it asked the State for additional information related to the claim, reiterating the request for information made on June 9th, 1994. On September 28th, 1994 the State presented the requested information, which was then sent to the petitioner on October 3rd, 1994, so that it may present its observations as well as any new or complimentary information it deemed necessary. On October 2nd, 1995, the IACHR again asked the petitioner for information, and let the petitioner know that, failing a response within 60 days, the case could be archived.

7. Finally, 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.

IV. BASIS FOR THE DECISION TO ARCHIVE:

8. 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.

9. The claim was presented on November 28th, 1991 without any information on the exhaustion of internal remedies. Accordingly, the petitioner has not presented observations to the information provided by the State of Guatemala, despite repeated requests to do so from the IACHR.

10. To date, more than 18 years have passed since the claim was filed by the petitioner, and without new and complimentary information the IACHR, 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.