

**REPORT No. 100/10<sup>1</sup>**  
DECISION TO ARCHIVE  
CASE 11.606  
OSCAR MANOLO OTZOY TUBAC  
GUATEMALA  
July 15, 2010

**ALLEGED VICTIM:** Oscar Manolo Otzoy Tubac

**PETITIONERS:** Human Rights Office of the Archiepiscopate of Guatemala in co-sponsorship with the International Human Rights Law Group

**ALLEGED VIOLATIONS:** Articles 1, 4, 5.1, 5.2, 7.1, 11.2, 11.3, 19, and 24 of the American Convention on Human Rights  
Articles 3.3, 6, 19.1, 28.2, and 37.a of the Convention on the Rights of the Child

**DATE PROCESSING BEGAN:** March 27, 1996

**I. POSITION OF THE PETITIONERS**

1. On March 27, 1996, the Inter-American Commission on Human Rights received a petition presented by the Human Rights office of the Archiepiscopate of Guatemala and the International Human Rights Law Group, against the State of Guatemala for the alleged violation of the rights established in articles 4, 5.1, 7.1, 11.2, 11.3, and 1.1 of the American Convention on Human Rights, to the detriment of the boy Oscar Manolo Otzoy Tubac. Subsequently, the petitioners also alleged violation of rights set forth in articles 5.2, 19, and 24 of the American Convention on Human Rights and in articles 3.3, 6, 19.1, 28.2, and 37.a of the Convention on the Rights of the Child.

2. In their petition, the petitioners alleged that the boy Oscar Manolo Otzoy Tubac, a 13-year-old student in the first grade of the Adolfo Venancio Hall Institute, died at 1:40 p.m. on August 23, 1991, as a result of a punishment imposed by Captain Rigoberto Ulises Herrera Villena, who made him run around the central courtyard for long periods of time.

3. They also said that domestic remedies were exhausted, because family members of the boy Oscar Manolo Otzoy Tubac filed an action against Captain Rigoberto Ulises Herrera Villena in the Central Zone Military Court on September 20, 1991. On July 28, 1995, that court acquitted the defendant. The decision was upheld on October 9, 1995 by the Fourth Chamber of the Court of Appeals.

**II. POSITION OF THE STATE**

4. The State of Guatemala, in responding to the petition, attached copies of the verdict of the Central Zone Military Court and the certification of the decision by the Fourth Chamber of the Court of Appeals. It said that the purpose of sending this documentation was to give the IACHR more information on the case submitted for its consideration.

5. The State said it did not violate the rights of the boy Oscar Manolo Otzoy Tubac, because the legal actions were carried out in accordance with domestic law. It also cited the report by the Guatemalan Human Rights Prosecutor on this case, which concluded that the corresponding investigation showed that the alleged victim's death was due to chronic heart damage and not to the physical activity demanded by the instructor.

---

<sup>1</sup> Commissioner Felipe González recused himself from the debate and the discussion in this case in accordance with the provisions of Article 17(2)(b) of the Rules of Procedure of the Commission.

### **III. PROCESSING BY THE IACHR**

6. On March 27, 1996, the Inter-American Commission on Human Rights received the petition dated March 26, 1996, and assigned it number 11.606. On April 3, 1996, it transmitted the pertinent parts to the State, requesting that within 90 days it provide the information it deemed appropriate, along with any other information that would enable the Inter-American Commission on Human Rights to understand the exhaustion of domestic remedies.

7. The State of Guatemala's reply was received on July 22, 1996, and the pertinent parts were forwarded to the petitioners on July 29, 1996. The petitioners presented their observations on July 2, 1997.

8. On December 18, 2002, the IACHR sent the parties a note informing them of the application of Article 37.3 of its Rules of Procedure, because during the processing of the petition the parties had ample opportunity to provide information on the petition and argue on its admissibility and merits.

9. On that occasion the IACHR asked the petitioners to make additional observations on aspects concerning the admissibility and merits of the matter, within a period of two months. In a communication of February 20, 2003, the petitioners asked for an extension to present their observations. However, they did not submit them.

10. In order to update the processing of the petition, on May 9, 2007, the IACHR asked the petitioners to send the information they deemed appropriate within 15 days, noting that if a reply were not received, the Commission could decide to archive the petition. To date the IACHR has not received the information needed to update the processing of the petition that was requested from the petitioners.

### **IV. BASIS FOR THE DECISION TO ARCHIVE**

11. Article 48.1.b of the American Convention on Human Rights and Article 42 of the Rules of Procedure of the IACHR stipulate that before the Inter-American Commission decides on admissibility, it shall ascertain whether the grounds for the petition exist or subsist. If it considers that they do not, it may decide to archive the file. In addition, Article 42.1.a of the Rules of Procedure provides that the IACHR may decide to archive the file whenever the information necessary for the adoption of a decision is unavailable.

12. In this case more than 14 years have elapsed since processing began in March 1996, and nearly three years since the request for updated information made to the petitioners on May 9, 2007, when they were notified of the possibility that the case would be archived.

13. The Commission thus lacks the necessary information to determine whether the grounds for the petition still exist and to reach a final decision on the alleged violation of human rights. Therefore, in accordance with Article 48.1.b of the Convention and Article 42 of the Rules of Procedure, the Commission decides to archive the present petition.

Done and signed in the city of Washington, D.C., on the 15<sup>th</sup> day of the month of July 2010. (Signed: Paulo Sérgio Pinheiro, Vice-President; Dinah Shelton, Second Vice-President; Luz Patricia Mejía Guerrero, María Siliva Guillén, José de Jesus Orozco Henríquez, and Rodrigo Escobar Gil, Members of the Commission).