

REPORT No. 110/10
PETITION 1560-07
ADMISSIBILITY
CLAUDINA ISABEL VELASQUEZ PAIZ ET AL
GUATEMALA
October 4, 2010

I. SUMMARY

1. On December 10, 2007, the Inter-American Commission on Human Rights (hereinafter "Commission," "Inter-American Commission," or "IACHR") received a petition lodged by the Guatemalan Institute of Comparative Studies in Criminal Sciences [*Instituto de Estudios Comparados en Ciencias Penales*] and Jorge Rolando Velásquez Durán (hereinafter "the petitioners"), on behalf of Claudina Isabel Velásquez Paiz, Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal de Velásquez, and Pablo Andrés Velásquez Paiz (hereinafter the "alleged victims"). The petition was lodged against the State of Guatemala (hereinafter the "State," "Guatemalan State," or "Guatemala"), for failure to investigate the murder of Claudina Isabel Velásquez in August 2005 in Guatemala City, allegedly committed during a time of systematic violence against women.

2. The petitioners allege that the Guatemalan State is responsible for violation of the rights established in Articles 4 (right to life), 5 (right to humane treatment), 8 (right to a fair trial), 11 (right to privacy), 24 (right to equal protection), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter the "Convention" or "American Convention"), considered in accordance with the general obligation set forth in Article 1.1 of that international instrument, and the violation of Articles 1, 3, and 7 of the Inter-American Convention to Prevent, Punish, and Eradicate Violence against Women (hereinafter the "Convention of Belém do Pará), to the detriment of Claudina Isabel Velásquez Paiz. They further allege the violation of the rights enshrined in Articles 5 (humane treatment), 8 (fair trial), 11 (privacy) 24 (equal protection), and 25 (judicial protection) of the American Convention on Human Rights (hereinafter the "Convention" or "American Convention"), considered in accordance with the general obligation set forth in Article 1.1 of said international instrument, to the detriment of the next of kin of Claudina Isabel Velásquez: Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal de Velásquez, and Pablo Andrés Velásquez Paiz.

3. The State for its part maintains that appropriate domestic remedies have not been pursued and exhausted, and that consequently the petition should be declared inadmissible. It further contends that the investigation has not been concluded, that the Public Ministry is still pursuing the investigation, and that it has information on alleged suspects against whom charges may be filed.

4. Without prejudice to the merits of the case, after examining the positions of the parties, and in compliance with the requirements stipulated in Articles 46 and 47 of the American Convention, the Commission has decided to declare the case admissible for the purpose of examining the possible violation of the rights established in Articles 4, 5, 11, and 24, in accordance with Article 1.1, of said instrument, and Article 7 of the Convention of Belém do Pará, to the detriment of Claudina Isabel Velásquez Paiz. In addition, it has decided to declare the case admissible with regard to the alleged violation of the rights enshrined in Articles 5.1, 8.1, and 25, in accordance with Article 1.1, of that instrument with respect to Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal de Velásquez, and Pablo Andrés Velásquez Paiz. The IACHR decided to declare the petition inadmissible regarding alleged violations of the rights provided in Articles 11 and 24 of the American Convention with respect to Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal de Velásquez and Pablo Andrés Velásquez Paiz. The Commission has further decided to notify the parties of this decision, and to publish it and include it in its Annual Report to the OAS General Assembly.

II. PROCEDURES BEFORE THE COMMISSION

5. On December 10, 2007, the Commission received the petition and assigned it number 1560-07. On March 16, 2010, the IACHR forwarded the pertinent parts of the petition to the State of Guatemala, requesting it to submit its response within two months, in accordance with the provisions of Article 30.2 of the Commission's Rules of Procedure. The response of the State was received on May 19, 2010. That communication was duly forwarded to the petitioners.

6. The IACHR received further information from the petitioners on March 19, 2010. That information was duly forwarded to the State.

III. POSITION OF THE PARTIES

A. The petitioners

7. The petitioners allege that the State of Guatemala failed in its duty to investigate with due diligence the murder of Claudina Isabel Velásquez, a 19-year old law student, and they contend that the case continues to go unpunished. They report that the murder of the alleged victim is part of a general situation of impunity and denial of justice faced by women who are victims of violence in Guatemala, and that it has been documented both nationally and internationally.

8. They report that Claudina Isabel Velásquez disappeared on August 12, 2005. They indicate that the last communication with her family was at 11:45 pm on that day, when she told them that she was at a party and that she would be home after midnight. They further state that when she did not arrive home, the parents of Claudina Isabel Velásquez began looking for her. They tried to file a complaint at 3 am and at 5 am on August 13, but the agents of the National Civilian Police refused to receive them, advising them that they had to wait until 24 hours had passed following her disappearance. Moreover, they told the parents that she had most likely gone off with her boyfriend. The authorities agreed to accept the complaint at 8:30 am, but did not initiate a search for Claudina Isabel Velásquez.

9. According to the petitioners, the parents, next-of-kin, and friends continued to search for Claudina Isabel Velásquez, when at 10:30 am on that same day, family members received a call from a friend who reported that an unidentified body with the characteristics of Claudina Isabel Velásquez was at the morgue of the Judiciary's Forensic Medical Service. The family members went to the morgue, where they identified their daughter. They withdrew her body to make preparations for her funeral, with the authorization of the officials of the Forensic Medical Service, who told them that there were no further investigative procedures to be conducted. They contend that the alleged victim had been beaten, raped, and murdered by a shot to the forehead.

10. They report that during the wake, officials of the Public Ministry belonging to the Group of Crime Scene Specialists appeared to take the fingerprints of the corpse. They indicate that the family felt offended and humiliated by this, since this type of evidence should have been taken earlier.

11. As regards an investigation into the facts, they report that there was no inquiry or investigative measures during the first forty-eight hours. They maintain that the Public Ministry interviewed the parents of the alleged victim forty days after the event, and that it did not immediately identify the persons who accompanied or communicated with Claudina Isabel Velásquez on the night that the events occurred. They further contend that the investigative process was slow and driven by pressure from Claudina Isabel's father, who, acting as co-complainant, demanded that an investigation be conducted and pointed out the errors committed during the process.

12. They point to a series of irregularities in the investigation into the case on the part of the government agencies, that gave rise to the continued impunity. They maintain that the body was located on August 13, 2005 at 5:30 am in zone 11 of Guatemala City by agents of the National Civilian Police who had responded to an anonymous telephone call. In the processing at the crime scene, the body was identified as XX, without any efforts made to identify the victim. At an unspecified time, the corpse was transported to the morgue of the Judiciary's Forensic Medical Service in a common unit rather than a refrigerated vehicle. They further report a lack of precision as to the duration of the investigative

procedure at the crime scene, and a failure to take statements from the agents who had access to the body. In addition, they report a failure to gather, secure, and seek evidence, as the only piece of evidence collected was a sweater, and not all of the clothing worn.

13. They add that the forensic medical report submitted 17 days after the fact had a series of defects including the following ones: no determination of the time of death; failure to note blood spots and wounds reported in the photographs; no indication of the position of the body; failure to gather evidence. They further contend that similar deficiencies had been noted in the examination and report of the Judiciary's forensic specialist, including the following: failure to identify the agents who participated in the autopsy; failure to identify the body; and, errors in determining the approximate time of death, among others. They maintain that there were also shortcomings in the treatment of the evidence by scientific experts and that there was an error in the dates in the ballistic report.

14. They point out that these deficiencies were largely due to the fact that the persons responsible for investigating the scene of the crime did not feel that they had to pursue an investigation, because in their opinion the alleged victim—due to the lower middle class neighborhood where her body was found, and the fact that she wore sandals, a necklace, and a ring in her navel—fit the profile of a person who had provoked, encouraged, or induced her death. As a result of this discriminatory approach, they allege that the alleged victim was labeled as a possible member of a youth gang or a sex worker, and so they had no interest in conducting a serious, professional investigation.

15. They argue that the murder of the alleged victim is not an isolated incident, but is part of a pattern of violence against women in Guatemala, which in recent years has led to a dramatic increase in the number of murders for reasons of gender. They indicate that since 2001, over 3,000 women and girls have been murdered, and the murder rate continues to rise. They explain that many of the murders have been exceptionally brutal, and that many victims have been sexually violated, mutilated, and cut into pieces. They report that despite the fact that this situation has caused great concern on a national and international level, women and girls continue to be murdered with total impunity in Guatemala.

16. They contend that the irregularities in the investigation into the murder of Claudina Isabel were reported to the Supervisory Office of the Public Ministry, which issued a report in May 2006 acknowledging that the victim, her parents, and her next of kin were treated inappropriately. They indicate that these failings were also pointed out in a report filed by the Human Rights Prosecutor on the deficiencies in the investigation of this case, which was issued on October 24, 2006.

17. As for the family of Claudina Isabel, they contend that it has encountered a justice system that has done everything it could to make them desist in their efforts to find the guilty parties. Since the start of the investigation, they report that the family of the alleged victim has been subjected to a secondary victimization: first, when the agents of the Public Ministry went to the funeral chapel to take the victim's fingerprints, while the family was maintaining its vigil over the remains of Claudina Isabel Velásquez; and subsequently, when the family was subjected to the indifference, contempt, and lack of interest of prosecutors and officials involved in the case, as a result of which they were forced to give the same facts countless times.

18. With regard to the exhaustion of domestic remedies, they allege that a number of years have gone by since the murder of Claudina Isabel Velásquez and the case continues to be in the investigative stage. Despite the family's efforts, and especially those of her father, who became a co-complainant in the case, they report that there is no interest in conducting an investigation or in determining the perpetrators of the crime. For these reasons, they argue that the rule of prior exhaustion of domestic remedies is not applicable, by virtue of Article 46.2 of the American Convention.

B. The State

19. The State alleges that the death of Claudina Isabel Velásquez occurred on Saturday August 13, 2005, between 2:12 am and 5:00 am, based on a call made to the 110 number of the National Civilian Police reporting a possible rape, and on the statement of Mrs. Concepción de María Méndez,

who reported that she had heard a shot fired outside her residence, in front of the place where the body later identified as Claudina Isabel Velásquez Paiz was found. At 5:00 am, her body was discovered with a bullet wound in the left frontal region of the cranium, on 10ª Avenida, in front of 8-87 "A" Roosevelt neighborhood, zone 11, of the capital.

20. Between the time of the disappearance and death of Claudina Velásquez and now, the State reports that various steps have been taken by the Public Ministry and different lines of investigation have been followed. The State maintains that the Public Ministry performed its proper functions from the time it first learned of the death of Claudina Isabel Velásquez. The judicial assistants who discovered the murder in 2005 took urgent steps to collect evidence, steps "that were not welcomed by the Velásquez Paiz family, and so the judicial assistants were punished accordingly."

21. It indicates that among the activities carried out by the Presidential Commission coordinating the Executive Policy on Human Rights, COPREDEH, it met with the prosecutor's office in charge of the case and determined the procedures carried out, checking the evidentiary documents sent by Mr. Velásquez, and that the prosecutor stated that since he had learned of the death, the investigation had been constantly moving forward and was now at a key stage involving the filing of charges as part of a domestic criminal proceeding.¹

22. It alleges that there are investigative activities that cannot be mentioned, since they would slow down the investigation being conducted by the prosecution. However, the steps taken by the Public Ministry so far demonstrate the State's interest and the line of investigation pursued to identify the principal perpetrators of the death of Claudina Isabel Velásquez, and these activities are reported to Jorge Rolando Velásquez on a monthly basis.

23. With regard to the issue of exhaustion of domestic remedies, the State argues that domestic remedies have not been exhausted, and consequently the petition should be declared inadmissible. The State argues that the criminal investigation is still under way.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence of the Commission *ratione personæ, ratione loci, ratione temporis* and *ratione materiæ*

24. In principle, petitioners are authorized to lodge petitions with the Commission under Article 44 of the American Convention. The petition indicates that the alleged victims are four individuals in respect of whom the State of Guatemala pledged to respect and guarantee the rights established in the American Convention. With regard to the State, the Commission points out 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. Moreover, Guatemala has been a party to the Convention of Belém do Pará since April 4, 1995. Consequently, the Commission has personal jurisdiction to examine the petition. It also has territorial jurisdiction to examine the petition, since it contains allegations of the violation of rights protected by the American Convention that took place in Guatemala territory, a state party to that instrument.

25. The Commission has temporal jurisdiction, since the obligation to respect and guarantee the rights protected in the American Convention and the Convention of Belém do Pará was already in effect for the State on the date that the acts alleged in the petition occurred. Finally, the Commission has subject matter jurisdiction, because the petition refers to possible violations of human rights protected by the American Convention and the Convention of Belém do Pará.

B. Other requirements for admissibility of the petition

¹ Communication of the State dated May 17, 2010.

1. Exhaustion of domestic remedies

26. Article 46.1 of the American Convention establishes that, in order for a petition lodged with the Inter-American Commission to be admissible pursuant to Article 44 of the Convention, remedies under domestic law must have been pursued and exhausted, in accordance with generally recognized principles of international law. The purpose of this requirement is to enable national authorities to take cognizance of an alleged violation of a protected right and, if appropriate, to have an opportunity to settle the case before it is referred to an international jurisdiction. Article 46.2 of the Convention in turn establishes three circumstances in which the rule of exhaustion of domestic remedies does not apply: a) when the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; b) when the party alleging violation of his rights has been denied access to the remedies under domestic law, or has been prevented from exhausting them; and c) when there has been unwarranted delay in rendering a final judgment under the aforesaid remedies. These exceptions do not refer only to the formal existence of such remedies, but also to the fact that they are adequate and effective.

27. In the present case, the State argues that the remedies under domestic law have not been pursued and exhausted, and that the criminal investigation is still open. Whenever a state alleges that remedies under domestic law have not been exhausted, it has the burden of indicating what remedies should be exhausted and of demonstrating their effectiveness. In that case, it is then the responsibility of the petitioners to demonstrate that such remedies were exhausted, or that one of the exceptions stipulated in Article 46.2 of the American Convention applies.

28. The petitioners indicate that five years have lapsed since the murder of Claudina Isabel Velásquez, and that the case is still in the investigation stage. This, despite the efforts on the part of the family, and especially her father, who became a co-complainant in an effort to move the investigation forward. However, they report that these efforts were not enough to arouse interest in the investigation and in determining the perpetrators of the crime. Consequently, they argue that an exception to the rule of prior exhaustion of domestic remedies applies under Article 46.2 of the American Convention.

29. Without going into an analysis of the arguments put forward by the parties with regard to the alleged violation of the right to a fair trial and judicial protection, the Commission notes that during the five years that have elapsed between the time Claudina Isabel Velásquez was found dead and the drafting of this report, the State's representatives have not provided any concrete information on the conclusion of the process or on steps taken to move it beyond the initial stage of investigation. Nor has the State reported to the Commission any recent measures adopted by it or progress made in clarifying the facts and in punishing the responsible parties. The Guatemalan State has merely mentioned that it is involved in a fundamental stage in the line of investigation, but it has not given any specific information that would enable one to conclude that the investigation is adequate and effective, for the purposes of the present analysis on the requirement of prior exhaustion.

30. The Inter-American Commission further notes that the petitioners allege that the facts of this case have occurred in a situation in which there have been numerous murders and disappearances of women in Guatemala, and that most of these cases have not been solved by the government authorities, thereby perpetuating the impunity of acts of violence against women.

31. Consequently, the Inter-American Commission establishes, for purposes of admissibility, that with respect to the facts of this petition, there has been an unwarranted delay on the part of the Guatemalan judicial organs. Thus the IACHR concludes that the exception to the exhaustion of remedies under domestic law stipulated in Article 46.2.c of the American Convention applies to this case.

2. Deadline for filing the petition

32. According to the requirement stipulated in Article 46.1.b of the Convention, according to which the petition must be lodged within six months following the date on which the victim was notified of the final decision that exhausted the domestic remedies, the Commission does not consider that

compliance with this deadline is applicable, since the petition was presented within the reasonable period of time referred to in Article 32.2 of its Rules of Procedure for cases in which a final judgment is not issued prior to the filing of the petition.

3. Duplication of international procedures and *res judicata*

33. The case records do not show that the subject of the petition is pending other international settlement procedures, or that it replicates a petition already examined by this or another international organization. Therefore, the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention are considered as having been met.

4. Characterization of the alleged facts

34. The Commission is of the view that at this stage of the procedure, it is not appropriate for it to decide whether or not alleged violations occurred to the detriment of the alleged victims. For purposes of admissibility, at this point the IACHR must determine only if the acts described would, if proven, tend to establish violations of the American Convention, as stipulated in Article 47(b) therein, and if the petition is “manifestly groundless” or is “obviously out of order,” pursuant to the terms of subparagraph (c) of that Article.

35. The standard for evaluation of these points of law is different from that required in deciding the merits of a petition. In a *prima facie* evaluation, the Commission must determine whether the petition establishes the basis for an apparent or potential violation of a right guaranteed by the Convention, but not whether it establishes the existence of a violation.² This evaluation involves a summary analysis that does not entail a prejudgment or advance opinion on the merits. The very Rules of Procedure of the Commission, by establishing two separate stages of admissibility and merits, reflect this distinction between the evaluation that the Commission must perform for the purposes of declaring a petition admissible and the analysis required to establish the State’s responsibility for a human rights violation.³

36. In this regard, the IACHR considers that the alleged facts pertaining to Claudina Isabel Velásquez, if proven true, would characterize potential violations of the rights guaranteed in Articles 5, 11, and 24 of the American Convention, considered in conjunction with Article 1(1) of that international instrument. The Commission further considers that the facts set forth could characterize a violation of Article 4 of the American Convention with respect to the prevention and protection duties of the State, in light of the general guarantee obligations of the State established in the American Convention and in the Convention of Belém do Pará. Moreover, the IACHR is of the view that the facts set forth could characterize possible violations of Article 7 of the Convention of Belém do Pará.

37. The IACHR further decides to declare the case admissible insofar as the alleged violation of the rights established in Articles 5.1, 8.1, and 25 are concerned, considered in accordance with Article 1.1 of that instrument, in respect of Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal de Velásquez, and Pablo Andrés Velásquez Paiz. The IACHR observes that the information does not provide sufficient elements to characterize a violation of the rights protected under Articles 11 and 24 of the American Convention with respect to Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal de Velásquez and Pablo Andrés Velásquez Paiz.

V. CONCLUSIONS

² See IACHR, Report No. 128/01, Case 12367, *Mauricio Herrera Ulloa and Fernán Vargas Rohmoser of “La Nación”* newspaper (Costa Rica), December 3, 2001, para. 50; Report No. 4/04, Petition 12324, *Rubén Luis Godoy* (Argentina), February 24, 2004, para. 43; Report No. 32/07, Petition 429-05, *Juan Patricio Marileo Saravia et al* (Chile), April 23, 2007, para. 54.

³ See IACHR, Report No. 31/03, Case 12195, *Mario Alberto Jara Oñate et al* (Chile), March 7, 2003, para. 41; Report No. 4/04, Petition 12324, *Rubén Luis Godoy* (Argentina), February 24, 2004, para. 43; Petition 429-05, *Juan Patricio Marileo Saravia et al* (Chile), April 23, 2007, para. 54; Petition 581-05, *Víctor Manuel Ancalaf LLaupe* (Chile), May 2, 2007, para. 46.

38. The Inter-American Commission concludes that it is competent to examine the merits of this case and that the petition is admissible, in accordance with Articles 46 and 47 of the American Convention, and decides to continue with an analysis of the merits regarding the alleged violation of Articles 4, 5, 11, and 24, considered in accordance with Article 1.1 of that instrument, and of Article 7 of the Convention of Belém do Pará, to the detriment of Claudina Isabel Velásquez Paiz. It further decides to declare the case admissible with respect to the alleged violation of the rights enshrined in Articles 5.1, 8.1, and 25 of the American Convention, considered in accordance with Article 1.1 of said instrument, to the detriment of Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal de Velásquez, and Pablo Andrés Velásquez Paiz.

39. It also concludes that the petition is inadmissible regarding alleged violations of the rights enshrined in Articles 11 and 24 of the American Convention, with respect to Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal de Velásquez and Pablo Andrés Velásquez Paiz.

40. On the basis of the above-mentioned arguments of fact and law,

THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS,

DECIDES:

1. To declare the present petition admissible insofar as it concerns alleged violations of the rights recognized in Articles 4, 5, 11, and 24 of the American Convention, considered in relation to Article 1.1 of that instrument, and violation of Article 7 of the Convention of Belém do Pará, to the detriment of Claudina Isabel Velásquez Paiz. It further decides to declare the case admissible with regard to the alleged violation of the rights established in Articles 5.1, 8.1, and 25 of the American Convention, considered in accordance with Article 1.1 of said instrument, to the detriment of Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal de Velásquez, and Pablo Andrés Velásquez Paiz.

2. To declare the petition inadmissible regarding alleged violations of the rights provided for by Articles 11 and 24 of the American Convention, with respect to Jorge Rolando Velásquez Durán, Elsa Claudina Paiz Vidal de Velásquez and Pablo Andrés Velásquez Paiz.

3. To notify the parties of this decision.

4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Approved on the 4th day of the month of October, 2010. (Signed): Felipe González, President; Paulo Sérgio Pinheiro, First Vice-President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, Commissioners.