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| Institution: | Inter-American Court of Human Rights |
| Title/Style of Cause: | Anstram Villagran-Morales, Henry Giovanni Contreras, Federico Clemente Figueroa-Tunchez, Julio Roberto Caal-Sandoval and Jovito Josue Juarez-Cifuentes v. Guatemala |
| Alt. Title/Style of Cause: | Street Children v. Guatemala |
| Doc. Type: | Judgment (Preliminary Objections) |
| Decided by: | President: Hector Fix-Zamudio; Vice President: Hernan Salgado-Pesantes; Judges: Alejandro Montiel-Arguello; Maximo Pacheco-Gomez; Oliver Jackman; Alirio Abreu-Burelli; Antonio A. Cancado Trindade |
| Dated: | 11 September 1997 |
| Citation: | Villagran-Morales v. Guatemala, Judgment (IACtHR, 11 Sep. 1997) |
| Represented by: | APPLICANT: Jose Miguel Vivanco |
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In the Villagrán Morales et al. Case,

the Inter-American Court of Human Rights delivers, pursuant to Article 36(6) of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter the "Rules of Procedure"), the following Judgment on preliminary objections raised by the Republic of Guatemala (hereinafter "the State" or "Guatemala").

I.

1. The instant Case was submitted in English to the Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court") by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") on January 30, 1997. It originated in a petition (Nº 11.383) received at the Secretariat of the Commission on September 15, 1994.

2. In submitting the case to the Court, the Commission invoked Articles 50 and 51 of the American Convention on Human Rights (hereinafter "the Convention" or "the Inter-American Convention") and Article 32 et seq. of the Rules of Procedure. The Commission submitted this case in order for the Court to determine whether there had been a violation of the following articles of the Convention: 1 (Obligation to Respect Rights), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection). Those violations, according to the application, were the result of

the kidnapping, torture and murder of Henry Giovanni Contreras, Federico Clemente Figueroa-Túnchez, Julio Roberto Caal-Sandoval, and Jovito Josué Juárez-Cifuentes; the murder of

Ansträum Villagrán-Morales; and the failure of the State mechanisms to deal [appropriately] with those violations, and afford the victims' families access to justice.

As two of the victims, Julio Roberto Caal-Sandoval and Jovito Josué Juárez-Cifuentes, were minors when they were kidnapped, tortured and murdered, and Ansträum Villagrán-Morales was a minor when he was killed, the Commission claimed that Guatemala also violated Article 19 (Rights of the Child) of the American Convention. The Commission also requested that the Court order the State to take the necessary steps to conduct a prompt, impartial and effective investigation of the facts "so that they may be set forth in an officially authorized report" in order to determine individual responsibility for the violations, and that "the persons responsible be appropriately punished." It requested that the State "[vindicate] the names of the victims and make fair payment to those persons damaged by the violations of the aforementioned rights" and pay costs to the victims and their representatives. In its petition, the Commission also postulated the violation of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

3. The Inter-American Commission appointed John Donaldson and Claudio Grossman to act as its delegates and David J. Padilla and Elizabeth Abi-Mershed to serve as its attorneys. It appointed Ariel Dulitzky, Vivana Krsticevic, Alejandro Valencia-Villa, Francisco Cox-Vial, and José Miguel Vivanco to be their accredited assistants as the victims' representatives.

4. By note of March 6, 1997, the Secretariat of the Court (hereinafter "the Secretariat"), after a preliminary review of the application by the President of the Court (hereinafter "the President"), transmitted the application in English to the State, where it was received on the following day, and informed the State that it had four months in which to present its answer, two months to interpose preliminary objections, and one month to appoint an agent and alternate agent, all terms which would start from the date of notification of the application. By communication of the same date, the State was invited to designate a Judge ad hoc. The Spanish translation of the application was transmitted to the State on September 14, 1997.

5. On March 31, 1997, Guatemala informed the Court that it had designated Julio Gándara-Valenzuela, Ambassador of Guatemala to Costa Rica, as its agent.

6. On April 2, 1997, Guatemala presented a brief in which it raised four preliminary objections and requested the Court "to extend the term for responding to the petition until [the preliminary objection had been] resolved."

7. By Order of April 16, 1997, the Court declared "inadmissible the request by the State of Guatemala for an extension of the period for presenting its answer to the application" in the instant Case, and decided to "continue to process it in its respective procedural stages."

8. On April 18, 1997, the State informed the Court of an "error of substance in the brief on preliminary objections" and requested that the Court deem it "not to have been presented [and], therefore, to abrogate the Order of this Court of April 16, 1997."

9. By Order of April 18, 1997, the President decided "to deem the brief on preliminary objections of April 2, 1997, not to have been presented."

10. On May 6, 1997, pursuant to Article 36 of the Rules of Procedure, the State submitted, within the established term, a brief in which it raised preliminary objections (*supra*, para. 4).

11. On the following day the Secretariat transmitted Guatemala's brief to the Commission, which submitted its comments in English on June 6, 1997. The Spanish translation provided by the Commission was received on July 3, 1997, and transmitted to the State the next day.

12. On July 4 of the same year, the State presented its answer to the application.

II.

13. The Court summarizes the facts of the instant Case in the following paragraphs, in accordance with the application of the Inter-American Commission:

a. On the afternoon of June 15, 1990, in the area known as "Las Casetas" in Guatemala City, a pickup truck approached Henry Giovanni Contreras, 18 years of age; Federico Clemente Figueroa-Túnchez, 20 years of age; Julio Roberto Caal-Sandoval, aged 15, and Jovito Josué Juárez-Cifuentes, aged 17. Armed men got out of the vehicle and kidnapped the four young men, forcing them into the truck.

b. The bodies of young Juárez-Cifuentes and Figueroa-Túnchez were found in the San Nicolás Woods on June 16, 1990, and the corpses of young Contreras and Caal were discovered in the same place on the following day. The corpses showed signs of torture and the official cause of death in each case was gunshot wounds.

c. At about midnight on June 25, 1990, Anstrum Villagrán, aged 17, was shot dead in "Las Casetas". Eye-witnesses saw the victim enter a lane followed by two men. They spoke and minutes later when young Villagrán turned around to make his escape, one of the men shot him in the back, killing him.

d. Moments after the murder of Mr. Villagrán, the two murderers went to kiosk N° 29 and asked for two beers. Some street children approached the men and accused them of killing young Villagrán. The two men told them, "If you do not keep quiet, you will suffer the consequences."

e. The Commission maintains that "Las Casetas", and specifically the area near the "Pepsi" kiosk, was the scene of the kidnapping of the first four victims and the murder of the fifth. The five young men were friends, lived on the streets of Guatemala City and were known to many people in the area. According to the Inter-American Commission, during the period at which the "Las Casetas" events occurred, it was recognized as an area with a high delinquency and crime rate.

f. Ms. Julia Griselda Ramírez, who worked at kiosk N° 29 in "Las Casetas" (the "Pepsi" kiosk), at the time the kidnapping occurred and was there on June 15, 1990, stated that Ms. Rosa Trinidad Morales-Pérez, who was also working at the kiosk that day, hated the street boys and had made death threats to some of them. While they were eating, Ms. Morales-Pérez left the kiosk and moments later the pickup truck arrived with the armed men. Ms. Ramírez also said that she heard Ms. Morales-Pérez say that Anstrum, the fifth victim, "would be killed just as were his friends."

g. Ms. Ramírez furnished a detailed physical description of the men, who, she said, seemed to be members of the Fifth National Police Corps. She particularly identified ex-officer Samuel Váldez-Zúñiga and officer Nestor Fonseca-López. Another witness, Gustavo Adolfo Cisneros-Cóncaba ("Toby"), another street child who was with Ansträum on the night of the murder, described the two men in similar terms.

h. In their report of March 25, 1991, the police investigators indicated police officer Néstor Fonseca-López and former police officer Samuel Váldez-Zúñiga as being allegedly implicated in the kidnapping, torture and murder of the aforementioned young men, and Rosa Trinidad Morales-Pérez as an accomplice to the commission of those acts.

i. On April 17, 1991, the investigation proceedings concerning the crimes committed against the five young men were joined and submitted to the jurisdiction of the Second District Court's Penal Branch of Guatemala City, which brought homicide charges against the two police officers and one civilian. In its ruling of December 26, 1991, the District Court of Guatemala City threw out important testimony regarding the identity of the accused in the case. The judgment declared that the accused had denied any involvement in the crimes, that the type of weapon issued to those officers had never been ascertained and that some witnesses could not identify the accused at the identity parade. As a result, the District Court "acquitted the accused on the ground of insufficient evidence to prove that they had been involved" in the events. On March 25, 1992, the Fourth Chamber of the Appeals Court upheld the judgment of the trial court. On May 5, 1992, the General Attorney's Office filed an appeal on points of law against the previous order, and on July 21, 1993, the Supreme Court upheld the judgment of the District Court.

j. The Commission alleges that the crimes committed against the five victims "constitute an example of the serious violations of human rights of which Guatemalan street children were victims during the period covered in the petition relating to this case." It added that although six years have elapsed since the murder of those young men, the State has not "made any serious effort to take action in regard to such crimes."

III.

14. The Court is competent to hear the preliminary objections submitted by the State. Guatemala has been a State Party to the American Convention since May 25, 1978, and accepted the contentious jurisdiction of the Court on March 9, 1987.

IV.

15. In its brief of May 6, 1996, the State raised a single preliminary objection, which it characterized as: "INCOMPETENCE OF THE HONORABLE INTER-AMERICAN COURT OF HUMAN RIGHTS TO HEAR THE INSTANT CASE" (capital letters in the original.) The arguments on which the State based that objection may be summarized as follows:

a. That objection is based on the Guatemalan constitutional principle that judgments rendered by its Justice Tribunals, "which have the authority of a final judgment may only be subject to judicial review" by the Supreme Court of Justice and the other competent domestic courts and that "[n]o other authority may intervene in the administration of justice."

b. It added that the case on which the application presented by the Commission is based was the subject of judgments of the courts of first and second instance and the court of judicial review, "in which the criminal charge against the accused was decided" and, consequently, the Court lacks the "jurisdictional powers to hear this Case, since it would necessarily involve the creation of a new jurisdictional instance."

c. According to the State's brief, the Commission's application conflicts with Article 8(4) of the American Convention, which provides that an "accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause," and Article 25(2)(c) of the Convention, which establishes that the State has the duty to guarantee enforcement of any decision in which a remedy is granted. It also considered that a review of the instant case by the Court would violate Articles 1, 2, 3, 9, 11, 12, 16, 17 and 18 of the Charter of the Organization of American States with regard to the sovereignty of States and the legitimate independence and guarantee of the separation of powers and their proper exercise, and would contravene Resolutions 40/32 of November 29, 1985, and 40/146 of December 13, 1985, of the General Assembly of the United Nations on the basic principles relating to the independence of the Judiciary.

d. In support of its position, the State cited the jurisprudence of the Court and the Reports of the Inter-American Commission to the effect that the mere fact that an investigation produced no satisfactory results does not per se imply a violation of the Convention. In the case referred to in the application, the State pointed out that "the competent organs acted at once and produced the evidence needed to set in motion the criminal process against the accused" and made its pronouncement.

e. The State requested that the Court, in accordance with its jurisprudence and the aforementioned principles, deliver in due course an opinion on the objection interposed.

16. In its reply to Guatemala's brief on preliminary objections, the Commission made the observations summarized below by the Court:

a. The objection raised by the State has no foundation in law. It considered that the arguments adduced by the State presuppose an evaluation of the merits of the application, and that the evidence presented in an attempt to affirm the efficacy of its judicial system and of the judgment rendered by the domestic courts in the case, "does not constitute preliminary objections and should not be admitted as such."

b. Citing the Judgment of the Court on preliminary objections in the Blake case, it claimed that the State's arguments -to the effect that the domestic rulings meet the requirements of the Convention, which it is not contravened by the negative result of the proceeding- cannot be considered to be a preliminary objection; that, on the contrary, it is an important pleading of substance which should be examined together with the merits of the Case. With reference to the State's arguments on the obligations established in the OAS Charter to respect the independence of the Judiciary, and that the Court may not therefore tamper with its rulings, the Commission pointed out that "the mere fact that the matter has [already] been processed and decided in the national courts [does not] oust the jurisdiction of the supervisory organs of the system, [this being] an erroneous interpretation of the objectives and procedures of the system."

c. As regards the State's arguments that the Court lacks jurisdictional powers to hear this case because it implies the creation of a "fourth instance" of jurisdictional review, the Commission maintained that these arguments were not raised in *limine litis* before it and that,

consequently, the objection must not be allowed to be raised at this advanced stage of the proceedings. Moreover, the Commission pointed out that the State never challenged the jurisdiction of the Commission.

d. The Commission pointed out that it was neither seeking the application of the State's domestic law to the facts of the instant Case, nor had it made such a request of the Court; its aim was for the Court to "evaluate, in the light of the Convention, the acts of kidnapping, torture, and murder, the deficiencies of the response to those acts, and the resulting impunity."

e. The Commission declared, however, that should the Court decide to take account of the State's substantive arguments, it considers that it has clearly demonstrated in its application that the State has violated the American Convention with regard to the kidnapping, torture, and murder of street children and that justice has been denied in the pertinent domestic proceedings. Although the domestic courts had the opportunity to resolve, rectify and repair these violations, the Commission considered that it had proven that this had not been done. It declared that the investigation and the internal judicial process conducted in this Case "were so deficient as to deny the victims' families due process and justice."

f. The Commission requested that the Court "[r]eject the preliminary objection raised by the State of Guatemala" and that it "examine the merits of the case."

V.

17. The only preliminary objection of any substance brought by Guatemala is essentially that alleging this Court's lack of jurisdiction to examine as a "fourth instance" the judgment rendered by that country's Supreme Court of Justice on July 21, 1993, which upheld the ruling of the Second District Court's Penal Branch of the State of Guatemala of December 26, 1991, acquitting the accused of the murder of the victims indicated by the Commission, with a decision at the highest judicial level, which acquired the authority of a final judgment.

18. This Court considers that the petition submitted by the Inter-American Commission does not seek to review the judgment of the Supreme Court of Guatemala, but seeks a pronouncement that the State violated several precepts of the American Convention through the death of the aforementioned persons, which it imputes to members of the police force of that State, and that the State is therefore responsible.

19. Consequently, and as the Commission affirmed in its reply to the brief on preliminary objections, it is a question that concerns the merits of the case; hence the Court considers that the objection is not preliminary, but rather a question directly linked to the merits of the controversy.

20. The Court therefore considers that this preliminary objection should be dismissed as inadmissible.

VI.

Now, therefore,

THE COURT,

DECIDES:

unanimously,

1. To dismiss as inadmissible the preliminary objection brought by the State of Guatemala.
2. To continue to examine the case.

Done in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on this eleventh day of September, 1997.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes
Alejandro Montiel-Argüello
Máximo Pacheco-Gómez
Oliver Jackman
Alirio Abreu-Burelli
Antônio A. Cançado Trindade

Manuel E. Ventura-Robles
Secretary

Read at a public session at the seat of the Court in San José, Costa Rica, on this twentieth day of September, 1997.

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary