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Doc. Type: Decision
Decided by: Chairman: Helio Bicudo;
Second Vice-Chairman: Juan E. Mendez;
Commissioners: Robert K. Goldman, Peter Laurie, Julio Prado Vallejo
Dated: 4 December 2000
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Represented by: APPLICANT: Mexican Commission for the Defense and Promotion of Human Rights.
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I. SUMMARY

1. On March 1, 1999, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or the “IACHR”) received a petition filed by María Guadalupe Muñoz Guzmán and the Mexican Commission for the Defense and Promotion of Human Rights (jointly “the petitioners”), in which it was alleged that the United Mexican States (hereinafter “the State”) bore international responsibility for the forced disappearance of Miguel Orlando Muñoz Guzmán, as well as for its subsequent failure to investigate and provide compensation for the said acts. The petitioners allege that the acts that are the subject of the complaint violate several of the rights enshrined in the American Convention on Human Rights (hereinafter the “American Convention”), namely, the right to life (Article 4); right to humane treatment (Article 5); right to personal liberty (Article 7); right to a fair trial (Article 8); and right to judicial protection (Article 25), in accordance with the general obligation provided for in Article 1(1) of the aforementioned international instrument.

2. According to the petition, Mr. Miguel Orlando Muñoz Guzmán, a lieutenant in the Mexican army, disappeared on May 8, 1993, at the age of 25. His fellow soldiers in the 26th Battalion of Ciudad Juárez, state of Chihuahua, Mexico, just before he went on leave last saw him on that date. The petitioners state that Lieutenant Muñoz Guzmán has not communicated with them since the date of his disappearance and that he was a dedicated career officer, a fact that lent no credibility to the army’s official version of events, which was that he had deserted from the army and traveled to the United States. The petitioners further state that they contacted the military authorities on numerous occasions and also filed the appropriate complaint but that to date no serious investigation has been carried out in Mexico to ascertain his whereabouts and to punish those responsible for his forced disappearance. They argue that the irregularities

surrounding this case—including falsification of Lieutenant Muñoz Guzmán’s signature in a document that was used to prove his alleged interest in deserting—have been deliberate and intended to cover up for those responsible. They also allege that they began to receive anonymous threats, which they attribute to military personnel, from the time that they brought the complaints.

3. The State maintains that a serious investigation has been carried out in Mexico and that it produced no evidence whatsoever that Orlando Muñoz Guzmán might have been the victim of criminal acts committed by members of the army or other agents of the State. Based on the foregoing, the State is requesting the IACHR to declare the case inadmissible on the grounds that domestic legal remedies have not been exhausted and that no violations of human rights have taken place.

4. Without prejudice to the substance of the complaint, the IACHR concludes in this report that the petition is admissible, since it meets the requirements set out in Articles 46 and 47 of the American Convention. Consequently, the Inter-American Commission decides to notify the parties of its decision and to continue its substantive consideration of the alleged violations of Articles 4, 5, 7, 8, and 25 of the American Convention.

II. PROCESSING BY THE COMMISSION

5. The Inter-American Commission assigned case number 12.130 to the petition and requested information from the State of Mexico in response to the pertinent parts of the petition of April 12, 1999. The State’s response was submitted on July 12, 1999, and supplemented by additional information on August 4 of the same year. On October 1, 1999, a communication was received in which the Center for Justice and International Law (CEJIL) was included as a co-petitioner and observations on the information provided by the State were submitted.

6. The IACHR transmitted the observations to the State on October 20, 1999. The State submitted the required information on November 18, 1999, the pertinent parts of which were transmitted to the petitioners on December 2, 1999. After an extension that had been requested by the petitioners and granted by the Inter-American Commission, on March 10, 2000, the petitioners submitted their observations, which were forwarded to the State on March 23, 2000. On May 1, 2000, the IACHR granted the State an extension of 30 days within which to provide information. The information was submitted on June 1, 2000, and communicated to the petitioners on June 6 of the same year.

7. On October 10, 2000, a hearing was held on the petition at the headquarters of the General Secretariat of the OAS, at which updated information was received on the positions of the parties regarding the admissibility and substance of the petition. María Guadalupe Muñoz Guzmán and Mrs. María Guadalupe Guzmán Romo, the sister and mother, respectively, of the alleged victim, participated in the hearing.

III. POSITIONS OF THE PARTIES

A. The petitioners

8. The petition received by the IACHR alleges that Miguel Orlando Muñoz Guzmán was the victim of a forced disappearance, presumably at the hands of members of the Mexican army. With regard to the facts of the case, the petitioners allege the following:

Since May 8, 1993, no news or information has been received about the whereabouts of Lieutenant Muñoz. While army communications allege that he deserted, his family refutes this contention because he has never contacted them since. They claim, moreover, that if he deserted this meant that he did so empty-handed since he left all his belongings behind in the barracks. Since his disappearance, the army has treated the case as a desertion and has refused to carry out a serious investigation of the acts, despite the request of his family and the evidence that suggests that Muñoz could have been made to “disappear” by members of the armed forces.

At the time of his disappearance, Muñoz was a member of the 26th Battalion, which was headquartered in Ciudad Juárez, Chihuahua. He had arrived six months before from Nuevo Laredo, Tamaulipas, where he had received his commission. Mr. Muñoz disappeared on May 8, 1993, one and a half months after returning from a vacation with his family.

On the day of his disappearance Mr. Muñoz spoke with his parents by telephone from the military barracks. During the conversation, he told them how happy he was because he would shortly be taking his examinations to enter the War College (Escuela Superior de Guerra).

The Muñoz Guzmán family, from San Julián, Jalisco, first became suspicious about his disappearance on May 10, 1993, because he did not call as he had promised them he would two days previously. Up to May 16, the family telephoned the Battalion and was told that Orlando had “deserted.” On May 18, Orlando’s parents went to the headquarters of the Battalion in Ciudad Juárez and were again told that Orlando had deserted.[FN1]

[FN1] Communication from the petitioners dated February 24, 1999, pp. 1 and 2.

9. Regarding the investigation, the petitioners allege that the various instances that took action in Mexico were inefficient and inadequate. They claim, for example, that the Military Judicial Police drew up a document on May 11, 1993, implicating Lieutenant Muñoz Guzmán as it “considers him to be the probable perpetrator of the crime of desertion.” This was done although his family had explained to the military authorities why they thought it unlikely that he had deserted, since he was an honorable and dedicated soldier and it would be more useful to investigate a captain by the name of Morales García, who had frequently and unjustifiably punished Mr. Muñoz Guzmán. The Office of the Military Prosecutor initiated a Preliminary Investigation No. SC/139/93-V of the alleged desertion of Muñoz Guzmán, whose file was declared closed on March 22, 1995, and handed over to the Office of the Public Prosecutor of Chihuahua (“PGJ”).

10. In addition, the petitioners on July 14, 1993 contacted the Mexican National Human Rights Commission (“CNDH”) and filed a complaint over the disappearance of Miguel Orlando

Muñoz Guzmán. According to the petitioners, the CNDH informed them in 1997 that it would not be possible to make a recommendation because the Office of the Public Prosecutor of Chihuahua had lost the file.

11. On June 7, 1993, the family of lieutenant Muñoz Guzmán filed a request for amparo in the lower criminal court of the state of Jalisco, which was rejected on the grounds that the application failed to indicate the place of detention or the authorities who were allegedly responsible.

12. In sum, the petitioners contend that the domestic legal remedies available in Mexico are ineffective in investigating the acts, determining the whereabouts of Miguel Orlando Muñoz Guzmán, and remedying the consequences of the violations alleged. They argue in that connection that the investigation has undergone an unwarranted delay, that it has depended exclusively on the activity of the victims to move the process forward, and that from the outset it has been doomed to failure.

B. The State

13. For its part, the State of Mexico alleges that Lieutenant Muñoz Guzmán was not on duty or wearing his military uniform at the time of his alleged disappearance and that therefore investigation of the acts was essentially a civilian responsibility. It reviews the action taken by the Office of the Military Prosecutor and then by the Office of the Public Prosecutor of Chihuahua, which issued the “reservation agreement” in the file of September 5, 1995, on grounds that “no evidence whatsoever had been found to support the presumption that a crime had been committed against Mr. Muñoz.” Lastly, it notes that the CNDH has opened a file on this case as part of its Program on Alleged Disappearances.

14. The State of Mexico alleges that:

The investigating authorities have carried out their work in a serious manner. No evidence emerges from these investigations or from the statements of the petitioners that Orlando Muñoz may have been the victim of a crime committed by army personnel or by any public servant.

Thus far, moreover, no evidence exists of the threats that the family of Miguel Orlando Muñoz is alleged to have received or that these threats might have been made by public servants.

With regard to the request for amparo that has been filed, that remedy applies in cases of detention or illegal deprivation of freedom, in which the authorities are involved. It is for these reasons that amparo was not the appropriate remedy in this case and that the decision of the court to disallow it was proper.

15. On the basis of these arguments, the Mexican State maintains that the family of Mr. Muñoz should have filed an appeal for review of the decision of the judge who dismissed the request for amparo if they were not in agreement with it. The State is of the view that, since the petitioners did not appeal the aforementioned decision, they had no right to question the effectiveness of the remedy of amparo in the present case. It adds that it has fulfilled its

responsibility to indicate the appropriate domestic legal remedy available to the petitioners, but that the petitioners have not demonstrated the ineffectiveness of that remedy or the applicability of the exceptions provided for in the American Convention.

16. The State declares its “willingness to continue with such investigations as may be necessary to determine the whereabouts of Miguel Orlando Muñoz and, as the case may be, whether any public officials or army personnel were involved in any way.” It then states that “the investigations of the case in civil court have provided no evidence to support such a finding and have suggested, on the contrary, the likely participation of Mr. Muñoz in the commission of a number of crimes.”

17. Lastly, the State of Mexico contends that the allegations contained in the petition do not constitute violations of the human rights set out in the American Convention and that domestic legal remedies have not been exhausted. Consequently, it requests the IACHR to declare the case inadmissible.

IV. ANALYSIS

A. Competence *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione loci* of the Inter-American Commission

18. The written arguments in this case describe acts which, if proven, would constitute violations of several of the rights recognized and enshrined in the American Convention and which are alleged to have occurred within the territorial jurisdiction of Mexico, at a time when the obligation to respect and guarantee all the rights set out in that instrument was in force for the said State.[FN2] Consequently, the IACHR is competent *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione loci* to hear the substance of the complaint.

[FN2] The State of Mexico deposited its instrument of ratification of the American Convention on April 3, 1982.

B. Other requirements for the admissibility of the petition

a. Exhaustion of domestic legal remedies

19. The Inter-American Court of Human Rights has provided the following regarding the rule governing the prior exhaustion of domestic legal remedies:

States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Art. 25), remedies that must be substantiated in accordance with the rules of due process of law (Article 8(1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized in the Convention to all persons subject to their jurisdiction (Art. 1).[FN3]

[FN3] Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment on Preliminary Objections, June 26, 1987, paragraph 91.

20. The information provided by the two parties in the present case is consistent with regard to the fact that a military investigation was launched and then closed and transferred to the general jurisdiction. The Office of the Public Prosecutor of Chihuahua subsequently launched its preliminary investigation of the acts alleged, closed the file in 1995 for lack of evidence, and reopened it to investigate the theft of a briefcase belonging to Miguel Orlando Muñoz Guzmán. In that investigation, the Office of the Public Prosecutor decided to institute criminal proceedings against two officers who had forged documents in order to conceal the disappearance of the above mentioned briefcase.[FN4]

[FN4] In this regard, the State of Mexico explains as follows:

It is also alleged that there were several contradictions regarding the briefcase owned by Orlando Muñoz Guzmán and which was claimed by the family members. This was indeed true and was one of the reasons for the reopening of investigation SC/139/93/V, filed under number SC/003/98-E. That investigation determined that the briefcase did exist and had been misplaced. However, a document was prepared to certify that the briefcase did not exist in the full knowledge that a false statement was being made, and this was the reason why First Infantry Captain Víctor Gallegos Bernardino and a lieutenant from the same branch, Filiberto Ortiz Ibáñez, were charged on suspicion of having forged documents, as provided for in Articles 243 and 244, section VII, of the Federal Criminal Code.

Communication from the State, dated November 19, 1999, p. 5.

21. The State of Mexico alleges that not all domestic legal remedies have been exhausted and refers in that connection to the military investigations, the investigations of the Office of the Public Prosecutor of Chihuahua, and the investigations carried out by the CNDH which include the study of the remains discovered in Ciudad Juárez, Chihuahua, in late November 1999.

22. The petitioners allege that the domestic legal remedies are ineffective, but that they have nevertheless used all possible means to ascertain the whereabouts of Lieutenant Muñoz Guzmán. They claim that the authorities are not conducting the investigations in an effective manner, but as isolated questions, thus making it impossible to establish the facts. They also express concern that the State is not exploring the relationship between crimes against health (drug trafficking), the acts of forgery that were investigated, and the disappearance of Miguel Orlando Muñoz Guzmán.

23. The Commission considers that the family of Mr. Muñoz Guzmán had access to the legal remedies that were available under the domestic jurisdiction in Mexico and that they used them in a timely and proper manner. Thus far, however, those remedies had not operated with the effectiveness required to investigate a complaint of forced disappearance, which constitutes a serious violation of human rights. Indeed, more than seven years have passed since the first

complaint was made to the authorities in Mexico without, up to the date of the adoption of this report, any definitive determination of how the events occurred. These questions will be examined during the appropriate stage of the proceeding, together with the other submissions concerning rights to a fair trial and to judicial protection.[FN5]

24. The Inter-American Commission concludes that for a number of reasons it has not been possible to exhaust the domestic legal remedies available in Mexico, despite the fact that more than seven years have elapsed since the acts took place and were denounced to the authorities responsible for investigating them. Consequently, the IACHR applies to the present case the exception provided for in the second part of Article 46 (2) (b) of the American Convention. The causes and effects that prevented the exhaustion of the domestic remedies will be examined in the report to be adopted by the IACHR on the substance of the complaint, in order to determine whether violations of the American Convention have taken place.

b. Deadline for submission of the petition

25. The Commission has noted in this case that, after more than seven years, no definitive ruling has been made on the alleged forced disappearance of Miguel Orlando Muñoz Guzmán and has established that this constitutes unwarranted delay in rendering a judgment under the domestic remedies. Since Article 46(2)(c) of the American Convention is being applied to this case, there is no need to examine the requirement of Article 46(1)(b) of the aforementioned international instrument. The Inter-American Commission is of the view that, under the circumstances examined, the petition was presented within a reasonable period from the date on which the acts had been denounced in Mexico.

c. Duplication of procedures and res judicata

26. The exceptions provided for in Articles 46(1)(d) and 47(d) of the American Convention have not been objected to by the Mexican State nor do they derive from the information contained in the file on the present case.

[FN5] The Inter-American Court has provided in this regard as follows:

When certain exceptions to the rule of non-exhaustion of domestic remedies are invoked, such as the ineffectiveness of such remedies or the lack of due process of law, not only is it contended that the victim is under no obligation to pursue such remedies, but, indirectly, the State in question is also charged with a new violation of the obligations assumed under the Convention. Thus, the question of domestic remedies is closely tied to the merits of the case.

Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgments on Preliminary Objections cited above, paragraph 91.

c. Characterization of the acts alleged

27. The Inter-American Commission considers that, should they be proven, the acts alleged would constitute violations of the rights guaranteed in Articles 4, 5, 7, 8, and 25 of the American Convention.

V. CONCLUSIONS

28. The Inter-American Commission concludes that it has competence to hear this case and that the petition is admissible in accordance with Articles 46 and 47 of the American Convention.

29. Based on the arguments of fact and of law set out above and without prejudice to the merits of the question,

THE INTERAMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present case admissible insofar as it involves alleged violations of rights protected in Articles 4, 5, 7, 8, and 25 of the American Convention.
2. To notify the parties of this decision.
3. To continue its deliberation on the substance of the question, and
4. To publish this decision and to include it in its annual report to the General Assembly of the Organization of American States.

Done and signed by the Inter-American Commission on Human Rights in the city of Washington, D.C., on December 4, 2000. (Signed): Hélio Bicudo, Chairman; Juan E. Méndez, Second Vice-Chairman; Members: Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.