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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 5/94; Case No. 10.574
Session: Eighty-Fifth Regular Session (31 January – 11 February 1994)
Title/Style of Cause: Elvis Gustavo Lovato Rivera v. El Salvador
Doc. Type: Report
Decided by: Chairman: Professor W. Michael Reisman;
First Vice-Chairman: Dr. Alvaro Tirado Mejía;
Second Vice-Chairman: Dr. Leo Valladares Lanza;
Members: Dr. Patrick Robinson; Dr. Oscar Luján Fappiano; Professor
Claudio Grossman; Ambassador John Donaldson.
Dated: 01 February 1994
Citation: Lovato Rivera v. El Sal., Case 10.574, Inter-Am. C.H.R., Report No. 5/94,
OEA/Ser.L/V.85, doc. 9 rev. (1993)

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BACKGROUND:

1. On May 21, 1990, the Inter-American Commission on Human Rights received a complaint based on the following:

On February 18, 1990, Elvis Gustavo Lovato Rivera was taken into custody by soldiers from the Armed Forces Engineers Military Garrison, on charges of being a guerrilla. He was taken to the Santa Maria Ostuna local command post, then to Section Two of the DMIFA, and still later to National Police Headquarters at Zacatecoluca. At all three places, he was tortured to force him to confess to being a guerrilla. Some of the tortures used were as follows: sitting him, half-naked and wet, inside a metal tub and applying electric shocks; standing on his body; beating him on the chest and abdomen; putting a hood over his head (so that he could not breathe), and burning him with lighted cigarettes. Finally, on March 2, he was brought before the First Military Tribunal of the First Instance and sent to the Mariona Prison that same day. He was finally released on March 7, 17 days after being seized and clearly more than the 72 hours that, by law, an individual can be held in custody. While at the DMIFA he was threatened that if he returned home they would see to it that he disappeared; as a consequence, he has been forced to leave his native town. After his departure, his house was broken into, the front door pulled off and the premises searched. All his clothing was thrown into a vacant lot.

2. On July 7, 1990, the Commission instituted the processing of this case by requesting that the Government of El Salvador supply the pertinent information on the facts reported in the communication, and any other information to apprise the Commission of the case history and enable it to determine whether the remedies under domestic law had been exhausted. The Government was given ninety days in which to reply to the request.

3. After those ninety days had expired, the Commission sent a note dated November 9, 1990, where it again asked the Government of El Salvador for information. This time it set a 60-day deadline for the

Government's reply.

4. Thereafter, on August 21, the petitioner sent a communication where he again asked that an investigation be conducted into the facts reported in his denunciation. The Commission sent another note to the Government of El Salvador, dated March 2, 1992, again requesting information.

5. On August 13, 1992, the Commission again asked the Salvadoran Government to provide information on the investigation conducted into the present case, warning of the possible application of Article 42 of the Commission's Regulations if, by the end of 30 days, no reply on the matter had been sent.

6. On November 10, 1992, the Commission sent the Government of El Salvador a list of the cases being processed and repeated its request for information. However thus far, no reply has been received.

7. On October 5, 1993, the Inter-American Commission on Human Rights, sitting at its 84th Regular Meeting considered this case and issued Report No. 17/93, pursuant to Article 50 of the American Convention on Human Rights.

8. The Inter-American Commission on Human Rights resolved to send the Report, on a confidential basis, to the Government of El Salvador, granting it three months to implement the recommendations contained therein.

9. The Government of El Salvador failed to answer the Commission's request of October 18, 1993.

ANALYSIS

1. Of the question of admissibility:

a. The petition satisfies the formal requirements for admissibility stipulated in Article 46 of the American Convention on Human Rights and in articles 31 and 32 of the Commission's Regulations.

b. The petition is not pending settlement in another procedure under an international organization and is not substantially the same as one previously studied by the Commission, as stipulated under Article 47 of the Convention.

2. Of the Commission's competence in the instant case:

a. The Commission is competent in the instant case because as it concerns violations of rights recognized in the American Convention on Human Rights, chiefly Article 5 on the right to humane treatment, Article 7 on the right to personal liberty, Article 8 on the right to a fair trial, and Article 22 on freedom of movement and residence, as provided in Article 44 of that Convention, of which El Salvador is a State Party.

b. Article 1.1 of the American Convention, which is binding upon El Salvador, states the following: The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

3. Of the content of the petition:

a. Despite the fact that more than 3 years have passed since the events in question occurred and despite the seriousness of the charges made, the Government of El Salvador has not responded to the

claims made by the petitioner concerning the inquiry into the facts, trial of those responsible and compensation to the victim for the unlawful deprivation of his freedom and the torture to which he was subjected. Nor has it responded to the matter of measures to protect the victim from those who might carry out the threats to which he was subjected during his detention.

4. Of other matters related to the processing of this case:

a. The facts prompting the petition in this case are not such that they can be resolved through recourse to the friendly settlement procedure provided for in Article 48.1.f of the Convention and Article 45 of the Commission's Regulations and neither the Government nor the petitioner has requested that the Commission apply this procedure.

b. Since the friendly settlement procedure does not apply, the Commission must carry out the provisions of Article 50.1 of the Convention and issue its opinion and conclusions in the matter placed before it for consideration.

c. All legal and statutory procedures established in the American Convention and in the Commission's Regulations have been exhausted, and extensions beyond the stipulated time periods have been allowed.

5. With regard to exhaustion of the remedies under domestic law:

a. In the instant case, it is obvious that petitioner has not been able to secure effective protection from the courts. Hence, in the instant case Article 46 paragraph a does not apply, as will be explained below.

b. 1990, the year in which the events denounced occurred, was described in the Commission's Annual Report for 1990-1991 as one of widespread "irregularities surrounding the actual apprehension or arrest, followed by various forms of mistreatment and torture while in police custody. The maximum period of time one can be held without a court order is 72 hours, unless a state of emergency exists when individual guarantees are suspended, in which case the maximum allowable period is 15 days. According to the reports provided to the Inter-American Commission, it is during that period which self-incriminating confessions are extracted. Often those confessions are the only grounds used to deny the individual his freedom."

c. And the Commission added that "During the period covered in this annual report (1990), the Inter-American Commission on Human Rights has received abundant information on the observance of the right to a fair trial and due process of law in El Salvador and how those rights have had a bearing on the exercise of the right to personal liberty. According to the reports the Commission has received and transmitted to the Government of El Salvador--though as of this writing no response has been received--there are 192 people in El Salvador being held for political reasons. The irregularities reported in the case of these people involve a failure to comply with legal formalities at the time they were arrested; irregularities in the way the arrests were executed; mistreatment and torture while in custody ..."

d. For its part, concerning the requirement that the individual exhaust the remedies under domestic law to have the facts denounced investigated, a recent finding by the Inter-American Court of Human Rights is fully relevant to the instant case. According to the Court, "If a person, for a reason such as the one stated above (a general fear in the legal community of a given country) is prevented from availing himself of the domestic legal remedies necessary to assert a right which the Convention guarantees, he cannot be required to exhaust those remedies. The State's obligation to guarantee such remedies is, of course, unaffected by this conclusion." [FN1]

[FN1] Advisory Opinion OC-11/90, August 10, 1990: "Exceptions to the exhaustion of domestic remedies (Art. 46(1), 46(2)(a) and 46(2)(b) of the American Convention on Human Rights) requested by the Inter-American Commission on Human Rights. Paragraphs 33 et seq.

e. The Court concluded, in that opinion, "that if his indigence or a general fear in the legal community to represent him prevents a complainant before the Commission from invoking the domestic remedies necessary to protect a right guaranteed by the Convention, he is not required to exhaust such remedies."

f. In the instant case, the victim was unable to avail himself of the remedies established under the Salvadoran legal system, because of two factors: one subjective and the other purely objective. The subjective factor was a well-founded fear of filing a complaint alleging the violation of rights of which he was victim; the objective factor was a dysfunctional judiciary unable to resolve his situation.

g. The subjective aspect is obvious, because the victim had a well-founded fear of reliving the experience which he had when he was arrested, torture, interrogation, threats, was remanded to the First Military Court of First Instance and finally imprisoned, a fear compounded by the fact that he was even told not to return to his own home, which was broken into and searched, and his clothes were thrown into a vacant lot.

h. As for the inefficacy of the judiciary, its most serious problems have been corruption and its lack of independence. This situation was described at length both by the Inter-American Commission on Human Rights and, more recently, in the Report of the Truth Commission and successive reports of ONUSAL's Human Rights Division.

i. In the specific case of Mr. Elvis Gustavo Lovato Rivera, his well-founded fear of filing a complaint and the questions raised about the judiciary's independence and corruption, are grounds for allowing the exceptions made in Article 46.2 of the American Convention on Human Rights concerning the requirement to exhaust the remedies under domestic law, stipulated in Article 46.1 of that Convention.

6. Other considerations:

a. As provided in the Inter-American Convention to Prevent and Punish Torture, of which El Salvador is a signatory State, torture constitutes "an offense against human dignity and a denial of the principles set forth in the Charter of the Organization of American States and in the Charter of the United Nations" (both of which El Salvador signed and ratified).

b. Despite three years of repeated overtures from the Inter-American Commission during which as many as three different deadlines have been given, the Government of El Salvador has not replied to the facts denounced in this petition.

c. The transition period that El Salvador is experiencing demands utter cooperation from its government to develop a genuine atmosphere of national reconciliation and reconstruction.

7. With regard to noncompliance with Report 17/93 of October 1993

The three-month deadline given to the Government of El Salvador has elapsed and it has not complied with the Commission's recommendations in Report No. 17/93, nor has it answered the communication of October 18, 1993, notifying it that the report was adopted and sending it a text thereof.

CONCLUSIONS:

1. The Inter-American Commission on Human Rights presumes as true the facts reported in the communication received by the Commission on May 21, 1990, concerning Mr. Elvis Gustavo Lovato Rivera, who was arrested by DMIFA soldiers and held in custody for 17 days, during which time he was taken first to the Santa Maria Ostuna local command post, then to Section Two of the DMIFA, and then finally to the Zacatecoluca National Police Headquarters. He was tortured at all three places. In addition, at the DMIFA he was told that if he returned home he would be made to disappear; consequently, he has been forced to move from his hometown.

2. The Inter-American Commission on Human Rights, therefore, finds that the Government of El Salvador is responsible for the facts reported in the communication of May 21, 1990.

3. It further finds that the Government of El Salvador has violated Article 5 on the right to humane treatment, Article 7 on the right to personal liberty, Article 8 on the right to a fair trial, and Article 22 on freedom of movement and residence of the American Convention on Human Rights, in relation to Article 1.1 thereof, to which El Salvador is a State Party.

4. It makes the following recommendations to the Government of El Salvador:

a. That it conduct a thorough, rapid and impartial investigation of the facts denounced to identify those responsible for the unlawful arrest and subsequent torture of Mr. Elvis Gustavo Lovato Rivera and the soldiers from the Armed Forces Engineers Military Garrison who threatened him, and that it bring them to trial so that they may receive the punishments that such egregious conduct demands.

b. That it make reparations for the violations of the aforementioned rights and pay the injured party a fair compensation.

c. That it adopt the measures necessary to avoid the commission of similar acts hereinafter, particularly the following:

That it demand respect for the rules contained in Art. 8.2 of the American Convention on Human Rights, Article 10 of the Inter-American Convention to Prevent and Punish Torture, and Article 12 of the Constitution of El Salvador, which stipulate that any confession obtained through torture shall be invalid; and that pursuant to the recommendations of the Truth Commission, it enact the necessary legal measures to deny any legal validity to confession obtained through extrajudicial means.

That it establish clear and precise legislation prohibiting torture and other forms of cruel, inhuman or degrading punishment or treatment, ascertain those responsible, punish them as appropriate, and compensate the victims.

5. It invites the Government of El Salvador to accept the jurisdiction of the Inter-American Court of Human Rights in this specific case which is the subject of this report.

6. It invites the Government of El Salvador to ratify the Inter-American Convention to Prevent and Punish Torture.

7. It requests the Government of El Salvador to report the legislative, judicial, administrative and other measures taken to guarantee absolute prevention and punishment of the crime of torture.

8. To publish this report pursuant to Article 48 of the Commission's Regulations and Article 53.1 of the Convention, because the Government of El Salvador did not adopt measures to correct the situation denounced within the time period.