

REPORT N° 31/01
CASE 12.132
ERNESTINA and ERLINDA SERRANO CRUZ
EL SALVADOR
February 23, 2001

I. SUMMARY

1. On February 16, 1999, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the IACHR") received a complaint filed by the *Asociación Pro-Búsqueda de Niñas y Niños Desaparecidos (Asociación Pro-Búsqueda)* and the Center for Justice and International Law (CEJIL) (jointly "the petitioners"), alleging that the Republic of El Salvador ("the State") bears international responsibility for the forced disappearance of the minor sisters Ernestina Serrano Cruz and Erlinda Serrano Cruz and for the subsequent failure to investigate the matter and provide reparations. The petitioners allege that the events denounced violate several rights enshrined in the American Convention on Human Rights ("the American Convention"): the right to life (Article 4); right to personal integrity (Article 5); right to personal liberty (Article 7); right to a fair trial (Article 8); right to protect the family (Article 17); right to a name (Article 18); rights of the child (Article 19); and the right to judicial protection, all in violation of the general duty to respect and guarantee rights (Article 1(1)).

2. The complaint alleges that on June 2, 1982 the sisters Ernestina and Erlinda Serrano Cruz, ages seven and three respectively, were captured by members of the Salvadoran army's Atlacatl Battalion during a raid on the municipality of San Antonio La Cruz, in the Department of Chalatenango. The petition indicates that witnesses saw the Serrano Cruz sisters being transported by military helicopter to the city of Chalatenango, where they were handed over to Red Cross relief workers and then brought in a Red Cross vehicle to an unknown location. Eighteen years later, the girls' whereabouts is still unknown. All steps taken with the authorities to clarify the events, including a criminal complaint and writ of *habeas corpus*, have been fruitless; the petitioners therefore believe that the State is not willing to fulfill its obligation in that regard.

3. The State maintains that the authorities learned of the kidnapping of the minors when their mother, María Victoria Cruz Franco, filed a report on April 30, 1993. According to witness statements and to Mrs. Cruz Franco, if the Army removed the minors, they should have been immediately handed over to the Red Cross for protection. However, the judicial proceedings against members of the Atlacatl Battalion for the alleged kidnapping (*sustracción del cuidado personal*) of the minors are still open in the Court of First Instance of Chalatenango. The State argues that the investigation is not closed and must be continued further to determine to whom the minors were given. The State therefore requests that the IACHR find the case inadmissible for failure to exhaust domestic remedies.

4. Without prejudging the merits of the case, the IACHR concludes in this report that the case is admissible since it meets the requirements set forth in Articles 46 and 47 of the American Convention. The Inter-American Commission decided to notify the parties of that decision and to continue to examine the merits of the alleged violations of the American Convention.

II. PROCESSING BY THE COMMISSION

5. The Inter-American Commission assigned the case N° 12.132 and on April 14, 1999 requested information from the Salvadoran State on the pertinent parts of the complaint. On January 19, 2000 the petitioners requested a hearing at the 106th regular session of the IACHR, but the Commission informed them on February 7, 2000 that this was not possible. The earlier request for information was reiterated, and the State replied on February 25, 2000. On March 28, 2000 the petitioners presented observations on the information provided by the State.

6. The IACHR transmitted those observations to the State on April 12, 2000; it in turn submitted the corresponding information on July 11, 2000, the pertinent parts of which were sent to the petitioners on July 25, 2000. On August 22, 2000 the petitioners requested a hearing at the 108th regular session; they presented their observations on August 30, 2000. The IACHR called the parties to a hearing through a letter dated September 8, 2000.

7. On October 10, 2000 a hearing on the case was held at OAS headquarters, in the framework of the 108th regular session of the IACHR, at which it received updated information on the position of the parties regarding the admissibility and merits of the complaint. CEJIL, representatives of *Pro Búsqueda*, and Suyapa Serrano Cruz, the sister of the victims, participated in the hearing.

III. POSITION OF THE PARTIES

A. The petitioners

8. The complaint sent to the IACHR alleges that Ernestina and Erlinda Serrano Cruz were the victims of forced disappearance, allegedly at the hands of members of the Salvadoran army. Regarding the facts of the case, the petitioners maintain the following:

At the time of their detention/disappearance on June 2, 1982, the sisters Ernestina and Erlinda Serrano Cruz, ages seven and three respectively, were captured by the Salvadoran military during a raid by the Atlacatl Battalion on the municipality of San Antonio La Cruz, in the Department of Chalatenango.

Like dozens of other families living in rural areas victimized by military attacks, the sisters fled their home for the mountains with their father, Mr. Dionisio Serrano (deceased); their sister, Suyapa Serrano Cruz, age 17, and their brother, José Enrique, age 12. The family sought refuge in the Los Alvarenga mountains, in the jurisdiction of Nueva Trinidad, in the Department of Chalatenango. On the third day, Mr. Serrano and his son José Enrique went to look for water, which is why they were separated from the girls when the soldiers detained them. The girls' older sister, Suyapa, hid in a thicket near the girls; the soldiers heard their cries. When they drew near, she became frightened and fled to another thicket. The older sister has testified that after the soldiers left she returned to the site where she had left the girls, but they were no longer there.

Witnesses say they saw the Serrano sisters being transported by military helicopter to the city of Chalatenango, where they were turned over to Red Cross relief workers and brought in a Red Cross vehicle to an unknown location. That was the last anyone knew of the girls' whereabouts.¹

9. Regarding the investigation, the petitioners claim that the different jurisdictions that intervened in El Salvador have been ineffective and insufficient. The girls' mother and sister went to several hospitals, orphanages, morgues, and other places looking for them, to no avail. On April 30, 1993, after the end of the domestic armed conflict in El Salvador, Mrs. María Victoria Cruz Franco filed a complaint against members of the Atlacatl Battalion with the Court of First Instance of Chalatenango for the kidnapping of her daughters.

10. The petitioners indicate that domestic proceedings began in June 1993, but were set aside on two occasions. The first was on September 22, 1993, for the following reasons: Since there has been sufficient review of this investigation and the individual(s) who kidnapped the minors Ernestina Serrano and Erlinda Serrano have not been identified, this investigation is closed; a note to that effect will be made in the respective register...²

¹ Letter from the petitioners dated February 16, 1999, pages 1 and 2.

² Letter from the petitioners dated March 28, 2000, page 1.

11. The case was reopened on March 14, 1996 at the instructions of the Constitutional Tribunal of the Supreme Court of Justice of El Salvador, after a *habeas corpus* appeal was lodged for the sisters. The Tribunal ordered the Court of First Instance of Chalatenango to continue to investigate the reported events. The case was quashed a second time on March 16, 1998 in folio N° 126, for the following reason:

There being no further steps to take in these criminal proceedings, the case is again shelved...³

12. On June 24, 1999, 15 months after the case was shelved, it was reopened a second time. According to the petitioners, this was because the IACHR had notified the Salvadoran State of the pertinent parts of the complaint. The only step taken in nine months by the prosecutor in charge of the case was to ask the main office of the International Committee of the Red Cross (ICRC) in Guatemala to report to whom the minors were given. In that regard, the petitioners indicate that they presented concrete proposals to redirect the investigation, which were transmitted to the prosecutor heading up the investigation.

13. In short, the petitioners maintain that domestic remedies available in El Salvador have been ineffective in investigating the events, determining the whereabouts of Ernestina and Erlinda Serrano Cruz, and providing reparations for the consequences of the alleged violations. They argue that over seven years have passed since the case was reported and that, in that time, the State's attitude has been exceedingly negligent and indifferent, even though these are public criminal proceedings. The petitioners therefore feel that the investigation was predestined to fail.

B. The State

14. The Salvadoran State is reproducing the information provided to the Ministry of Foreign Affairs by the Office of the Public Prosecutor of the Republic and maintains that those documents prove that the investigation is ongoing and that domestic remedies have not been exhausted, in conformity with generally-accepted principles of international law. The State adds that case N° 112/93 is being heard in the Court of First Instance of Chalatenango against members of the Atlacatl Battalion, for the alleged kidnapping of Ernestina and Erlinda Serrano Cruz. Finally, it states that the case presented to the Inter-American Commission is not closed and that the investigation must continue, since the whereabouts of other minors has been determined in similar cases.

15. The Salvadoran State concludes the following:

a. It learned of the kidnapping of the minors when their mother reported it on April 30, 1993.

b. That according to witnesses and to the mother's statement, if the army did take the minors, they were immediately turned over to the Red Cross for protection.

c. There are still steps to be taken in the judicial process, such as summoning witnesses and the President of the *Damas Voluntarias de la Cruz Roja* (Red Cross Lady Volunteers) and inspecting the organization's records.

16. The State maintains that in similar cases, the whereabouts of minors has been determined, with the valuable assistance of the *Asociación Pro-Búsqueda*, whose contact in the Prosecutor's Office is Ms. Margarita Estrada Vásquez.

17. Finally, the Salvadoran State maintains that the investigation is ongoing and domestic remedies have not been exhausted, in keeping with generally-accepted principles of international law. It therefore requests that the IACHR find the case inadmissible.

IV ANALYSIS

³ Idem.

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

18. This case alleges violations of rights recognized and enshrined in the American Convention that would have occurred within the territorial jurisdiction of El Salvador, at a time when the obligation to observe and guarantee all rights established in that instrument was in effect for that State.⁴ The IACHR is therefore competent *ratione personae, ratione materiae, ratione temporis*, and *ratione loci* to hear the merits of the complaint.

B. Other admissibility requirements

a. Exhaustion of domestic remedies and filing deadline

19. The State alleges that this case is inadmissible because domestic remedies in El Salvador have not been exhausted. To that end, it cites the investigations in criminal case N° 112/93, the appointment of a Special Prosecutor for the investigation, and its contact with the *Asociación Pro-Búsqueda*.

20. The petitioners, in turn, claim that although domestic remedies are ineffective, they have nonetheless pursued all possible means to determine the whereabouts of Ernestina and Erlinda Serrano. The petitioners stress that nearly eight years have passed since the case was reported and that Salvadoran authorities have done absolutely nothing to guarantee an effective investigation or determine who the perpetrators were, punish them and provide reparations to the victims or their family. Although the case remains open, the Salvadoran authorities have not conducted an exhaustive investigation to determine the sisters' whereabouts. As alleged by the petitioners, the inactive role of the Prosecutor's Office shows that the domestic remedies available are merely a formality.

21. The information provided to the Commission by both parties in this case agrees that—at the request of the victims' mother—a criminal investigation began on April 30, 1993 and that, after being closed twice, it was reopened on June 24, 1999. Furthermore, on November 13, 1995 Mrs. María Cruz Franco filed a habeas corpus appeal for her daughters, which was suspended with no results.

22. In this case, members of the Salvadoran Army are allegedly responsible for the forced disappearance of two minors during the internal armed conflict in El Salvador. That era was characterized by systematic human rights violations and impunity, given the inefficacy of the Salvadoran judicial system.⁵ Given the specific circumstances in this case and the aforementioned context, the Commission feels that the requirement for the timely presentation of the petition in question was met.

23. As of the date this report was adopted, domestic remedies had not operated with the effectiveness required to investigate a complaint of forced disappearance—a category of serious human rights violations. In fact, nearly eight years have passed since the first complaint was lodged with the authorities in El Salvador, with no definitive finding of how the events transpired.

⁴ The Salvadoran State deposited the instrument of ratification of the American Convention on June 23, 1978.

⁵ In its annual reports published during the armed conflict, the IACHR issued statements on several occasions about the violence and lack of effective judicial protection of rights. For example: The right to justice has been profoundly affected by the state of emergency that reigns in El Salvador, as indicated earlier. Here it is worth reiterating the Commission's remarks from its last Annual Report: the American Convention does not authorize the suspension of judicial guarantees that are essential for protecting basic rights, particularly not for prolonged periods, as has been the case in El Salvador. In addition, there is a lack of judicial independence and authority; members of the judiciary have themselves been the target of criminal acts. The marked limitations on judicial guarantees, as stated previously, have left many proceedings unresolved, causing the population to lose confidence in the judicial system. IACHR, Annual Report 1983-1984, Chapter IV "Human Rights Situation in Several States: El Salvador", para. 6.

24. Based on the foregoing, the Inter-American Commission will apply to this case the exception set forth in part two of Article 46(2)(c) of the American Convention. As a result, the requirements set forth in the Convention on the exhaustion of domestic remedies and the six-month deadline for lodging a petition are not applicable.

25. Finally, it should be noted that the invocation of the exceptions to the rule on exhaustion of domestic remedies set forth in the American Convention is closely linked to the finding of potential violations of rights enshrined in the Convention, such as effective judicial protection. Article 46(2) of the American Convention is independent of other substantive provisions of that instrument. The determination of whether or not the exceptions to the exhaustion of domestic remedies are applicable to this case must be made beforehand, separate from the analysis of the merits. This is because the analysis of the exceptions uses different standards of assessment from those used to determine violations of Articles 8 and 25 of the American Convention.

b. Duplication of proceedings and *res judicata*

26. The Salvadoran State did not oppose the exceptions provided for in Article 46(1)(d) and Article 47(d) of the American Convention, nor does such opposition emerge from the information in the case file.

c. Characterization of the alleged events

27. The IACHR finds that the alleged events, if true, would constitute violations of rights enshrined in the American Convention.

V. CONCLUSIONS

28. The Inter-American Commission concludes that it is competent to hear this case and that the petition is admissible, pursuant to Articles 46 and 47 of the American Convention.

29. Based on the foregoing *de facto* and *de jure* arguments and without prejudging the merits of the case,

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
DECIDES:**

1. To declare this case admissible for the alleged violation of rights enshrined in Articles 4, 5, 7, 8, 17, 18, 19 and 25 of the American Convention.
2. To notify the parties of this decision.
3. To continue to examine the merits of the case.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed by the Inter-American Commission on Human Rights in Washington, D.C., on February 23, 2001. (Signed): Claudio Grossman, Chairman; Juan E. Méndez, First Vice-Chairman; Marta Altolaguirre, Second Vice-Chair; Commissioners: Robert K. Goldman, Peter Laurie, Julio Prado Vallejo, and Hélio Bicudo.