REPORT Nº 25/94
CASE 10.508
GUATEMALA
September 22, 1994

BACKGROUND

1. On January 3, 1990, the Inter-American Commission on Human Rights received a complaint concerning the illegal arrest of Roberto Lissardi and Dino Rossi carried out, according to the complaint, by members of the Guatemalan Army. This complaint was expanded to include additional information on March 9, 1990, and both were sent for reply to the Government on February 1 and March 15, 1990, respectively.

According to the complaint, Lissardi and Rossi were kidnapped on September 25, 1989 in the town of Tecún-Unán, in the Department of San Marcos, Guatemala, by an armed group dressed as civilians, and after a number of incidents, including mistreatment during their detention, were released through diplomatic intervention.

2. According to the complaint, the kidnapping took place in the presence of numerous witnesses in the hotel where the complainants were living. The kidnappers, who arrived in a white microbus, pointed a submachine gun at them, beat them, and violently forced them into the microbus, after which they were driven at high speed out of the city along a dirt road. The victims were put in another vehicle, and their belongings were taken from them. Later they were forced to walk a long way to a place where they were ordered to go to sleep. Removing the blindfolds that had been placed on their eyes, they saw they were in a concrete room. There were guards there who talked about "recruits," and they noted other features of their quarters.

3. The following morning, the victims said they heard the roll being called by number for 23 detainees. Their captors interrogated them about their knowledge of other persons and groups, including alleged drug traffickers, and asked them if they would serve as informants. The victims refused, saying that they had no information to give.

4. The following morning, they again heard the roll called by number, this time for 24 persons, and in their room there were 4 handcuffed men. One of the kidnappers, who appeared to be the leader, said they were going to be released and killed. The complainants said that the food given them was served with military utensils, and that they were again questioned about their activities in Guatemala.

5. In the night, the victims were taken in vehicles (a pick-up truck and a Volkswagen Golf GT type) and released in a deserted place after their blindfolds were removed. Returning to the hotel, they learned that while they had been kidnapped, the hotel had been attacked by a number of armed civilians, and on that same day two

bodies were found hanging by the side of the road to Tilapa. The bodies turned out to be those of two captives who had been locked up with them the previous day (see paragraph 4). The victims noticed that men in civilian clothes were beginning to watch them, while driving back and forth in front of the hotel in vehicles whose license tags the plaintiffs reported to the Commission.

6. The victims concluded that they had been held in the nearby "La Montañita" military barracks, and that coincidentally a few days later the captain of the G2 in Malacatán, who presumably was in charge of the kidnapping, was relieved of his command. There were many kidnappings in the San Marcos department, and the only persons who had succeeded in getting out alive were the claimants, thanks to their Italian nationality and diplomatic intervention in their behalf. For days after they left the hotel, five to seven security guards visited the shops near the hotel asking about them.

7. The Government did not reply to the complaints that were forwarded to it in this case, despite the Commission's repeated requests dated July 19, 1990 and January 28, 1991. The latter communication pointed out the possible application of article 42 of the IACHR Regulations, on the presumption that the complainants' accusations were true.

CONSIDERATIONS REGARDING THE JURISDICTION

1. COMPETENCE. An analysis of the background information reveals that this matter falls within the competence of the Commission, since it deals with the facts that involve violation of the human rights recognized by the American Convention on Human Rights, such as the Right to Personal Liberty (Article 7 of the Convention), the Right to Humane Treatment (Article 5 of the Convention), and the Right to Judicial Protection (Article 25 of the same legal instrument).

2. ADMISSIBILITY. The complaint about the incident was submitted in accordance with the terms and conditions prescribed in Article 46.1 of the Convention, fully pursuant to Article 46.2 c of the same legal instrument. At the same time, there is no allegation or information whatever in this Commission showing that the matter that generated the petition is pending in another international proceeding for settlement (Article 46.1.c of the Convention).

3. EXHAUSTION OF REMEDIES. Despite the formal complaint submitted to the court--containing information that is public knowledge, reported in the periodical, "Prensa Libre," of September 29, 1989 and in the daily newspaper, "El Gráfico," of September 28, 1989--,the State of Guatemala has demonstrated that it is unable or unwilling to carry out the inquiry and the due legal proceedings required, in order to pursue those responsible for the illegal act regarding which the complaint was filed, despite the extensive existing evidence and testimony. In view of the length of time

that has elapsed without steps being taken in any judicial inquiry and given that the Government has not provided information to the Commission regarding the existence of any appropriate remedy to resolve the matter under examination, the Commission considers that the requirement for the exhaustion of remedies under domestic law mentioned in Article 46.1 of the Convention has been met.

4. FRIENDLY SETTLEMENT. Although petitioners have declared that they are ready to reach a friendly settlement, the Government did not take any action on their proposal.

CONSIDERATIONS REGARDING THE SUBSTANCE OF THE MATTER RAISED

THE FACTS

WITH RESPECT TO THE ILLEGAL ARREST OF SEPTEMBER 25, 1989

1. That from the statement made by the victims, which has not been denied by the Government, it is clear that the victims were kidnapped and taken to military barracks called "La Montañita," near the town of Tecún-Unán in San Marcos district.

2. That from the statement made by the victims, not rebutted by the Government, it is clear that during their captivity, they were able to gain evidence, from numerous details on the type of establishment and furniture and from the appearance, equipment, and language of their captors, that soldiers were involved.

3. That during the kidnap and arrest, they were threatened with death and kept in a situation of intimidation and harassment.

4. That the ease with which the kidnappers carried out the abduction, with a large deployment of forces and vehicles, as well as the type of detention establishment and the open surveillance of the hotel and the victims following their release, strengthen the conviction that those responsible were agents of the state's security forces.

5. That the accusers' kidnapping comes at the same time as a series of disappearances, which remain unsolved, in the San Marcos district in question; and that, indeed, the intervention of the Embassy of Italy seems to have been the cause of the release of the victims, who are nationals of that country.

WITH RESPECT TO THE PROCEEDINGS

6. That notwithstanding the charges brought by the accusers and the ample

information existing concerning the facts, the State of Guatemala has not carried out any inquiry, nor has it initiated appropriate judicial proceedings in order to clarify the matter, or identify and bring those responsible to justice.

7. That although almost four years have elapsed since the incident and despite the fact that the Commission has repeatedly requested information from the Government of the Republic of Guatemala, the latter has not indicated that there has been any progress in the inquiry, nor has it replied concerning the violations with which its agents were charged in the complaint.

WITH RESPECT TO THE RIGHT

8. That the illegal arrest of persons constitutes an act in violation of the American Convention on Human Rights (Article 7 of the Right to Personal Liberty).

9. That the forced causing--even temporary--of the disappearance of persons by agents of the state constitutes a complex form of human rights violation, which should be fully considered and dealt with. Both the General Assembly of the OAS and the Commission have repeatedly referred to this practice and urged its eradication (see Inter-American Court, Case of Velásquez Rodríguez, pp. 149-152).

10. That the treatment endured by the victims and the threats made against their lives constitute a violation of Article 5 of the Convention that recognizes the right to humane treatment.

11. That as stated in the aforementioned ruling of said Court,

> The practice of causing persons to disappear, in addition to violating directly various provisions of the Convention,...constitutes a direct abandonment of the values emanating from the concept of human dignity and from the most fundamental principles of the inter-American system and of the Convention. The existence of this practice, more still, indicates contempt for the obligation of the state to organize itself in such a manner as to guarantee the rights recognized in the Convention (Case of Velásquez Rodríguez, p. 158).

12. That, had the victims been accused of any crime, they should have been brought to trial legally, in accordance with the provisions of the national legislation and Article 8 of the Convention.

13. That among the guarantees that a state must provide for its inhabitants are inquiries, legal proceedings, and the effective punishment of those responsible for violations of human rights, which is contrary to what occurred in this case, as indeed there is no evidence that steps have been taken to remedy or compensate for said violations.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

RESOLVES:

1. That the facts that were the subject of a complaint filed by letter of January 3, 1990 concerning the illegal arrest of Roberto Lissardi and Dino Rossi, the treatment meted out them while they were being held, and the subsequent denial of justice are the responsibility of the agents of the state and subsequently represent violations of the state's obligation to respect and guarantee the Right to Personal Liberty (Article 7), of Article 5 (Right to Humane Treatment), and of the Right to Judicial Protection (Article 25), guaranteed in the American Convention on Human Rights, in relation to Article 1.1. of said legal instrument.

2. To recommend to the Government of Guatemala, that it carry out an in-depth and impartial inquiry as soon as possible, for the purpose of clarifying responsibilities for both the illegal arrest and the treatment of the victims, as well as the subsequent denial of justice, which, in turn, requires a separate inquiry and eventual punishment of those responsible.

3. To recommend to the Government of Guatemala that it grant the victims appropriate compensation, as required by law.

4. To recommend to the Government of Guatemala that it take the necessary measures of principle to ensure that the practice cease of illegal arrests and refusal of judicial protection.

5. To publish this report, pursuant to Article 48 of the Commission's Regulations and Article 51.3 of the Convention, because the Government of Guatemala did not adopt measures to correct the situation denounced within the time period.