

# Claudina Isabel Velásquez Paiz et al. v. Guatemala

## ABSTRACT<sup>1</sup>

*This case is about the disappearance, sexual assault and murder of a nineteen years-old university student. State authorities committed several omission and mistakes during the investigation and prosecution failing to identify and convict the murderer. Eventually, the Court found the State in violation of several articles of the American Convention and the Convention of Convention of Belém do Pará.*

## I. FACTS

### A. Chronology of Events

#### 1. Facts Relating to the Disappearance and Subsequent Investigation

**November 21, 1985:** Claudina Isabel Velásquez Paiz is born in Guatemala City to Elsa Claudina Paiz Vidal and Jorge Rolando Velásquez Duran.<sup>2</sup> Her older brother is Pablo Andrés Velásquez Paiz.<sup>3</sup>

**August 12, 2005:** Nineteen-year-old Ms. Velásquez Paiz, now a student at the University of San Carlos of Guatemala,<sup>4</sup> and her brother leave their home at approximately 8:30 a.m. to study all day at the campus.<sup>5</sup>

Around 10 p.m. she calls her father to inform him of her plans to attend a party with a friend in *Colonia Panorama*, a gated community.<sup>6</sup> Throughout evening she contacts her parents and brother several more

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1. Shira Diamant Author; Shushan Khorozyan, Editor; Erin Gonzalez, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 307, ¶ 51 (Nov. 19, 2015) (Available only in Spanish). 004.

3. *Id.*

4. Velásquez Paiz et al. v. Guatemala, Report on Merits, Report No. 53/13, Inter-Am. Comm'n H.R., Case No. 12.777, ¶ 10 (Nov. 4, 2013).

5. *Id.*

6. *Id.*

times to let them know she is still at the party and that she will return home around midnight.<sup>7</sup> She calls them one last time around 11:45 p.m.<sup>8</sup>

**August 13, 2005:** Mr. Pedro Julio Samayoa Moreno, a friend of Ms. Velásquez Paiz who also attends the party, sees her leave alone around 12:30 a.m.<sup>9</sup>

At 2:12 a.m. the National Civil Police receive a call regarding a possible sexual assault in another gated community, the *Colonia Roosevelt*.<sup>10</sup>

Not seeing their daughter return home, the parents of Ms. Velásquez Paiz decide to go to *Colonia Panorama* to bring her back home. While awaiting entry Mrs. Paiz Vidal telephones the National Civil Police.<sup>11</sup>

At approximately 3:00 a.m., a patrol car arrives and Mr. Velásquez Duran and Mrs. Paiz Vidal brief officers on their daughter's disappearance.<sup>12</sup> The parents continue to search for their daughter around the main entrance of the gated community.<sup>13</sup> However, responding officers do not file a missing person's report because "nothing more could be done [but] they would continue to patrol."<sup>14</sup> The officers further indicate that 24 hours must elapse before the parents can report her as missing.<sup>15</sup>

Mr. Velásquez Duran and Mrs. Paiz Vidal continue to search.<sup>16</sup> Around 5:00 a.m., they attempt to file a disappearance report at the National Civil Police precinct in Ciudad San Cristobal.<sup>17</sup> However, officers at the precinct tell the parents once again that 24 hours must pass before they can file a missing person's report.<sup>18</sup>

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7. *Id.*; Velásquez Paiz et al. v. Guatemala, Admissibility Report, Report No. 110/10, Inter-Am. Comm'n H.R., Case No. 12.777, ¶ 8 (Oct. 4, 2010).

8. Velásquez Paiz et al. v. Guatemala, Report on Merits, ¶ 10.

9. *Id.* ¶ 11.

10. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, ¶ 52.

11. *Id.* ¶ 53; Velásquez Paiz et al. v. Guatemala, Report on Merits, ¶ 13.

12. *Id.*

13. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, ¶ 53.

14. *Id.*

15. Velásquez Paiz et al. v. Guatemala, Report on Merits, ¶ 13.

16. *Id.* ¶ 14. 007.; Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, ¶ 54.

17. Velásquez Paiz et al. v. Guatemala, Report on Merits, ¶ 14.

18. *Id.*

Around 5:30 a.m., the National Civil Police locate the corpse of a woman in Guatemala City.<sup>19</sup> Additional personnel arrive to the scene of the unidentified body, including an assistant district attorney, the medical examiner, and the technicians of criminal investigations of the Public Prosecutor's Office.<sup>20</sup> The body is found on the asphalt surrounded by blood and draped with a white sheet.<sup>21</sup> The investigators noted a strong smell of alcohol.<sup>22</sup> Additionally, the young woman's bra is shifted down between her pants and hip, her pants zipper is down, and her shirt is turned inside out.<sup>23</sup> At first glance, examiners view "a gunshot projectile wound on the forehead region."<sup>24</sup> Additionally, her lifeless body shows signs that she was subjected to extreme violence and rape.<sup>25</sup>

Around 7:30 a.m., the body is removed from the crime scene.<sup>26</sup> Ms. Velásquez Paiz's family, unaware of the discovery, finally file a missing person's report at 8:30 a.m. However, police do not immediately initiate a search.<sup>27</sup>

Around 10:30 a.m., Mr. Velásquez Duran receives a call stating that an "unidentified body" matching his daughter's description arrived at the morgue.<sup>28</sup>

Between 11:00 a.m. and noon, Mr. Velásquez Duran and Mrs. Paiz Vidal identify the body as their daughter.<sup>29</sup>

At 9:00 pm., a wake is held for Ms. Velásquez Paiz.<sup>30</sup> Officials from the Public Prosecution Service's Crime Scene Experts Group arrive at the funeral home to take Ms. Velásquez Paiz's fingerprints.<sup>31</sup> The Officials tell Mr. Velásquez Duran that if he does not allow the fingerprints to be taken, he will be "accused of obstructing an

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19. Velásquez Paiz et al v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 54.

20. *Id.* ¶ 55.

21. *Id.* ¶ 56.

22. *Id.*

23. *Id.*

24. *Id.*

25. Press Release, Inter-Am. Ct. H.R., IACHR Takes Case Involving Guatemala to the Inter-American Court (April 1, 2014), [http://www.oas.org/en/iachr/media\\_center/PReleases/2014/029.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/029.asp).

26. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, ¶ 57.

27. Velásquez Paiz et al. v. Guatemala, Report on Merits, ¶ 14. 007.

28. *Id.* ¶ 15.

29. *Id.*

30. *Id.* ¶ 16.

31. *Id.*

investigation and justice.”<sup>32</sup> Humiliated and full of dismay, the family permits the fingerprinting process to occur away from the viewing area.<sup>33</sup>

**August 13, 2005:** A criminal investigation begins following the identification of Ms. Velásquez Paiz’s body.<sup>34</sup> Evidence is collected at the scene of the crime, including a cap and a firearm projectile.<sup>35</sup>

The Judicial Branch’s forensic doctor performs an autopsy on the body and takes blood, urine, and liver samples.<sup>36</sup> He performs an additional examination testing for “alcohol and drug abuse, rectal and vaginal swabs, and nail scraping.”<sup>37</sup>

Additionally, an investigator from the Homicide Unit of the Criminal Investigation Service of the National Civil Police sends the investigation out to the district attorney (*fiscalía*) regarding the actions taken thus far.<sup>38</sup>

**August 16, 2005:** The forensic doctor presents his report addressing the Assistant Attorney General of Public Prosecution and the research technician sends out the fingerprints.<sup>39</sup> Additionally, the Investigation Technicians develop research reports and send them to the fiscal assistant.<sup>40</sup>

**August 23, 2005:** The Technician of Criminalistics Investigations of the Public Prosecutor’s Office forwards a photographic album and a sketch of the crime scene to the fiscal assistant.<sup>41</sup>

**August 30, 2005:** The medical examiner’s report is released and identifies Ms. Velásquez Paiz’s cause of death as a “perforating wound to the head caused by a firearm projectile and cerebral hemorrhage.”<sup>42</sup>

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32. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, ¶ 62.

33. Velásquez Paiz et al. v. Guatemala, Report on Merits, ¶ 16.

34. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, ¶ 57.

35. *Id.* ¶ 70.

36. *Id.* ¶¶ 57, 61.

37. *Id.* ¶ 65.

38. *Id.* ¶ 64(a).

39. *Id.* ¶ 62.

40. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 64(b).

41. *Id.*

42. *Id.* ¶ 60; Velásquez Paiz et al. v. Guatemala, Report on Merits, ¶ 60.

**September 4, 2005:** The assigned agent and assistant district attorney visit the “Mixco Zone 8 gas station” in an attempt to retrieve any video footage from August 12<sup>th</sup> and 13<sup>th</sup>.<sup>43</sup> However, the owner of the gas station informs the investigation team that the tapes no longer exist.<sup>44</sup>

**September 16, 2005:** An expert toxicology opinion is released and states that there is 1.4 grams of ethyl alcohol in the blood and 2.4 grams in the urine, but no trace of drugs present.<sup>45</sup>

**September 21, 2005:** The assistant district attorney asks the Department of Arms and Ammunition Control to report the existence of “current licenses for the carrying of weapons and the number of weapons with their ballistic fingerprints of about 51 people.”<sup>46</sup>

**September 23, 2005:** The Criminal Investigation Technician of the Ministry Public tests evidence, including the sweater worn by Ms. Velásquez Paiz at the time of death, for possible bloodstains.<sup>47</sup>

**September 26, 2005:** The Director of Criminal Investigations of the Ministry issues an opinion that there was semen in the victim’s vaginal cavity, but not in the rectal area.<sup>48</sup>

**October 14, 2005:** The ballistic laboratory of the General Directorate of the National Civil Police carries out ballistic examinations on the cap and projectile recovered from the scene of the crime.<sup>49</sup>

**October 18, 2005:** The assistant district attorneys make their first of many attempts to contact national telephone companies in hopes to obtain information related to incoming and outgoing calls, messages, and other data from the time of the victim’s disappearance.<sup>50</sup> However, following several inquiries, they are informed that: (1) text messages are not stored; (2) as more than two months had passed, they had no call log for the dates of August 12<sup>th</sup> or 13<sup>th</sup>; (3) the numbers provided did not correspond with the companies’ records as to who they belonged to; and

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43. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, ¶ 78.

44. *Id.*

45. *Id.* ¶ 65-66.

46. *Id.* ¶ 73.

47. *Id.* ¶ 71.

48. *Id.* ¶ 67.

49. *Id.* ¶ 72.

50. *Id.* ¶ 81.

(4) some of the numbers were linked to prepaid phones and thus the company did not have access to the telephone line.<sup>51</sup>

**November 4, 2005:** Upon investigating the registration and seizure of similar firearms, a revolver is recovered from a nearby residence. However, a ballistic survey proves negative and the caliber has a different projectile cap.<sup>52</sup>

**December 6, 2005:** One of the members of the Volunteer Corps of Firefighters adds additional information to the Report of the Voluntary Fire Brigade as to the findings at the crime scene.<sup>53</sup> The Department of Arms and Ammunition Control sends new information to the assistant district attorney related to its request for licensing information.<sup>54</sup>

**2006–2009:** The Public Ministry sends the blood samples of eight individuals who they believe may be the suspect following their extensive research to the Department of Legal Medicine of the University of Granada, Spain to test and “compare their genetic profiles with the genetic profile of semen found in the vaginal swab of Claudia Velásquez” on four separate occasions.<sup>55</sup> Each time, the University of Granada determines that the samples retrieved from the vaginal swabs do not match any of the male profiles.<sup>56</sup>

**2006–2009:** Mr. Velásquez Duran actively participates in the investigation into his daughter’s murder.<sup>57</sup> He makes “several observations, comments and recommendations in the investigation to the Attorney General of the Republic and the Head of the Public.”<sup>58</sup> Additionally, Mr. Velásquez Duran attends any meetings related to the pending investigation.<sup>59</sup>

**June 5, 2006:** The section prosecutors request the National Civil Police chiefs within the “competent territorial” area to report any information

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51. *Id.*

52. *Id.* ¶ 72.

53. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 63.

54. *Id.* ¶ 73.

55. *Id.* ¶ 67.

56. *Id.*

57. *Id.* ¶ 82.

58. *Id.*

59. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 82.

as to the number of weapons seized and used to commit crimes since the time of the murder.<sup>60</sup>

**June 21, 2006:** The Public Prosecution Service’s Medical Examiner states the correct time of death was 6:55 a.m., rather than the 8:10 a.m., as he indicated in his earlier report.<sup>61</sup> Additionally, the report indicates that her genital organs are “normal.”<sup>62</sup>

**June 30, August 18, and October 5, 2006:** Ballistic surveys are performed “by means of collation of diverse ballistic marks with the projectile and cap collected in the scene of the crime, all with negative results.”<sup>63</sup>

**September 13, 2007:** The investigation team receives a copy of the emergency call from the evening of August 13, 2005.<sup>64</sup>

**October 30, 2007:** The investigation team again visits “Mixco Zone 8 gas station,” looking for any invoices and forms of payment used on August 12<sup>th</sup> and 13<sup>th</sup>, 2005.<sup>65</sup>

**January 16, 2008:** A reward of 100,000.00 *quetzals* is offered to any individual who can provide information allowing for the “capture of those responsible for the death of Ms. Velásquez Paiz.”<sup>66</sup> This reward is published throughout the media.<sup>67</sup>

**October 27, 2010:** The Public Prosecutors Office requests its chief of analysis to perform a thorough analysis of any incoming or outgoing calls from the victim, and multiple other numbers, between August 10<sup>th</sup> and 15<sup>th</sup>, 2005.<sup>68</sup>

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60. *Id.* ¶ 74.

61. Velásquez Paiz et al. v. Guatemala, Report on Merits, ¶ 54.

62. *Id.* ¶ 60.

63. Velásquez Paiz et al v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 75.

64. *Id.* ¶ 86.

65. *Id.* ¶ 78.

66. *Id.* ¶ 85.

67. *Id.*

68. *Id.* ¶ 81.

**October 28, 2010 and November 8, 2011:** An individual reaches out to the Public Prosecutor's Office, "stating that he had information on the case and was interested in the reward."<sup>69</sup>

**March 6, 2012:** 500 additional reward posters are placed throughout the city.<sup>70</sup>

**April 20, 2012:** The individual who told the Public Prosecutor's Office he had information makes an official statement.<sup>71</sup> However, the information he provides amounts to nothing as it is deemed "not reliable and seemed to be gossip."<sup>72</sup>

**June 6, 2012:** The assistant district attorney finally requests that the National Institute of Forensic Sciences of Guatemala "collate the result of the genetic profile of a person most closely linked to other research, with that of the semen found."<sup>73</sup>

**July 3, 2012:** National Institute of Forensic Sciences of Guatemala informs the assistant district attorney that the genetic profiles do not overlap.<sup>74</sup>

**August 27, 2012–January 30, 2014:** The Investigation Technicians develop three additional research reports and sends them to the fiscal assistant.<sup>75</sup>

**March 26, 2014 and May 31, 2014:** The Department of Arms and Ammunition Control sends information to the assistant district attorney related to its request for licensing information.<sup>76</sup>

## *2. Exhaustion of Domestic Remedies*

**November 15, 2005:** Mr. Velásquez Duran requests a provisional intervention from the Court of Appeal.<sup>77</sup>

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69. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, ¶ 85.

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.* ¶ 67.

74. *Id.*

75. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, ¶ 64(b).

76. *Id.* ¶ 73.



**November 28, 2005:** The Court of Appeal grants Mr. Velásquez Duran’s request for a provisional intervention.<sup>78</sup>

**February 6, 2006:** Mr. Velásquez Duran files a complaint with the Guatemalan Human Rights Ombudsman regarding the investigation of his daughter’s death.<sup>79</sup>

**July 20, 2006:** The Office of the Attorney General issues a resolution stating “the violation of the duty to respect and guarantee the rights to life, personal security, justice within the time limit and the right to effective judicial protection of Claudina Isabel Velásquez Paiz and her right to be treated with dignity and respect.”<sup>80</sup>

Additionally, the Attorney General declares the following violations: (1) the assistant district attorney is liable for “ ‘not coordinating the functional direction of the investigation,’ ” and for interrupting Ms. Velásquez Paiz’s wake due to failure to “appropriately process the crime scene”<sup>81</sup>; (2) the Director of the Forensic Medical Service of the Judicial Branch is liable for enabling doctors to change and develop procedures “deficient to the performance of medical autopsies,” and for reporting inaccurate information;<sup>82</sup> and (3) the coroner of the judicial branch who performed the autopsy is found liable “for serious omissions and inexcusable deficiencies in performing the autopsy.”<sup>83</sup>

The Attorney General makes several recommendations to the Chief of the Public Director General of the National Civil Police, the Congressional Human Rights Commission of the Republic and to the Forensic Medical Service of the Judicial Body.<sup>84</sup>

**November 8, 2006:** The Disciplinary System Unit of the Human Resources System of the Judicial Branch (“Disciplinary Unit”) begins processing the Human Rights Ombudsman’s complaint relating to the autopsy.<sup>85</sup>

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77. *Id.*

78. *Id.* ¶ 82.

79. *Id.* ¶ 91.

80. *Id.*

81. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 92.

82. *Id.*

83. *Id.* ¶ 92.

84. *Id.*

85. *Id.* ¶ 94.

**November 29, 2006:** Upon processing the complaint, the Disciplinary Unit declares that the medical examiner negligently performed the autopsy.<sup>86</sup>

**December 7, 2006:** The medical examiner and Human Rights Prosecutor appeal the Disciplinary Unit's declaration.<sup>87</sup>

**January 17, 2007:** General Management of the Judicial Branch dismisses the medical examiner's appeal.<sup>88</sup> However, the appeal filed by the prosecutor is only partially dismissed because "the offenses committed were minor and of serious harm to the human rights of third parties and to the image of the Judicial Branch."<sup>89</sup> Consequently, the disciplinary unit imposes sanctions on the parties.<sup>90</sup> The medical examiner is given "a penalty of twenty days' suspension without salary."<sup>91</sup>

**February 21, 2007:** The medical examiner files an appeal against the decision to impose sanctions.<sup>92</sup>

**December 5, 2007:** The medical examiner terminates his employment with the judicial branch.<sup>93</sup>

**February 11, 2009:** Disciplinary action against the assistant district attorney is initiated and a "sanction of a written admonition" is imposed.<sup>94</sup>

### *B. Other Relevant Facts*

[None]

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86. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 94.

87. *Id.* ¶ 95.

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 95.

93. *Id.* ¶ 98.

94. *Id.* ¶ 93.

## II. PROCEDURAL HISTORY

*A. Before the Commission*

**December 10, 2007:** The Guatemalan Institute of Comparative Studies in Criminal Sciences presents a petition on behalf of Ms. Velásquez Paiz and her family to the Inter-American Commission on Human Rights.<sup>95</sup>

**October 4, 2010:** The Commission declares the petition admissible only in part.<sup>96</sup> Specifically, the Commission finds the petition inadmissible concerning Articles 11 (Right to Privacy) and 24 (Right to Equal Protection) of the American Convention to the detriment of Mr. Velásquez Duran, Mrs. Vidal Paiz and Mr. Velásquez Paiz.<sup>97</sup>

**November 4, 2013:** The Commission approves Merits Report Number 53/13.<sup>98</sup> It finds violations of Articles 4 (Right to Life), 5 (Right to Humane Treatment), 11 (Right to Privacy), and 24 (Right to Equal Protection) in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention to the detriment of Ms. Velásquez Paiz.<sup>99</sup>

The Commission finds a violation of Article 7 (Duty to Prevent, Punish, and Eradicate Violence Against Women) of the Convention of Belém do Pará to the detriment of Ms. Velásquez Paiz.<sup>100</sup>

The Commission finds violations of Articles 5(1) (Right to Physical, Mental, and Moral Integrity), 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), and 25 (Right to Judicial Protection) in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention to the detriment of Mr. Velásquez Duran, Mrs. Vidal Paiz and Mr. Velásquez Paiz.<sup>101</sup>

The Commission recommends that the State: (1) complete the investigation in a “timely, immediate, serious and impartial manner” and prosecute where appropriate; (2) adopt research protocols and

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95. Velásquez Paiz et al. v. Guatemala, Admissibility Report, ¶ 1 (The petition is also brought on behalf of her father, Mr. Velásquez Duran, her mother, Ms. Vidal Paiz, and her brother, Mr. Pablo Velásquez).

96. *Id.* ¶¶ 38-40.

97. *Id.* ¶ 39.

98. Velásquez Paiz et al. v. Guatemala, Report on Merits, ¶ 52. 007; Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 3.

99. Velásquez Paiz et al. v. Guatemala, Admissibility Report, ¶ 38.

100. *Id.*

101. *Id.*

expert services “to be used in all crimes related to disappearances, sexual violence and homicides of women”; (3) provide compensation to Ms. Velásquez Paiz’s relatives; (4) implement necessary measures to ensure non-repetition; (5) strengthen the “institutional capacity to fight impunity in cases of violence against women through effective criminal investigations with a gender perspective”; (6) create and implement a system “for the production of adequate statistical information,” allowing for the design and evaluation of public policies regarding prevention, punishment, and overall elimination of violence against women”; (7) adopt reforms in the State’s educational programs; and (8) adopt public policies “designed to eliminate discriminatory stereotypes about the role of women.”<sup>102</sup>

**February 5, 2014:** The State objects to the conclusions of the Commission’s report regarding international responsibility, indicating that there is no precedent to award measures of reparation in favor of the relatives of the victim.<sup>103</sup>

*B. Before the Court*<sup>104</sup>

**March 5, 2014:** The Commission submits the case to the Court after the State failed to adopt its Recommendations.<sup>105</sup>

**April 21-22, 2015:** The Court convenes both parties to a public hearing.<sup>106</sup>

**May 26, 2015:** The State submits a letter reporting that Velásquez Duran was arrested and detained because an investigation was ordered against him after he testified at the April 21-22 public hearing.<sup>107</sup> The State further states that he will be released without delay once his legal situation is corroborated, “highlighting that there would be no retaliation against him.”<sup>108</sup>

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102. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 5. 004; *See also* Press Release, IACHR Takes Case Involving Guatemala to the Inter-American Court.

103. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 5..

104. *Id.* ¶ 6.

105. Velásquez Paiz et al. v. Guatemala, Petition to the Court, Inter-Am. Comm’n H.R., Case No. 12.77, (March 5, 2014).

106. *Id.* ¶ 10.

107. *Id.* ¶ 12.

108. *Id.*

**June 11, 2015:** Mr. Velásquez Duran appears before the Eighth Criminal Court, Drug Trafficking and Crimes against the Environment.<sup>109</sup> This Court verifies that an arrest warrant was *not* in force and orders its revocation.<sup>110</sup>

**November 16, 2015:** The Court begins its deliberation on this Judgment.<sup>111</sup>

### 1. Violations Alleged by Commission<sup>112</sup>

To the detriment of Ms. Velásquez Paiz:

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 11 (Right to Privacy)

Article 24 (Right to Equal Protection)

*all in relation to:*

Article 1(1) (Obligation of Non-Discrimination) of the American Convention.

Article 7 (Duty to Prevent, Punish, and Eradicate Violence Against Women) of the Convention of Belém do Pará.

To the detriment of Mr. Velásquez Duran, Mrs. Paiz Vidal, and Mr. Velásquez Paiz:

Article 5(1) (Right to Physical, Mental, and Moral Integrity)

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)

Article 25 (Right to Judicial Protection)

*all in relation to:*

Article 1(1) (Obligation of Non-Discrimination) of the American Convention

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109. Velásquez Paiz et al. v. Guatemala, Report on Merits, ¶ 52. 007; Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, ¶ 12.

110. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 12.

111. *Id.* ¶ 14.

112. Velásquez Paiz et al. v. Guatemala, Admissibility Report, ¶ 38.

2. Violations Alleged by Representatives of the Victims<sup>113</sup>

Same violations alleged by the Commission.

**November 19, 2016:** The State objected before the Court that Ms. Velásquez Paiz's representatives failed to exhaust domestic remedies.<sup>114</sup> The State argued that the Velásquez Paiz family was never denied access to justice, nor were they prevented from exhausting such remedies.<sup>115</sup> Additionally, the State contended that the failure to identify and "solve" Ms. Velásquez Paiz's murder was not due to a lack of will by the State, but rather to the complexity of the case. Further, the State alleged that the "reasonable time" requirement has not been breached due to the complexity of the case at hand.<sup>116</sup>

The Court discussed that Article 46(1) requires petitioners to exhaust domestic remedies.<sup>117</sup> However, the Court reasoned that the present case fell under the Article 46(2)(c) exception, which states that the exhaustion of domestic remedies is not required if there is an unjustified delay in the decision of the available sources.<sup>118</sup> The Court reasoned that the State failed to meet its obligation to specify the available internal resources that Ms. Velásquez Paiz's representatives failed to exhaust.<sup>119</sup> Additionally, the State was required to demonstrate that such available resources were adequate and effective.<sup>120</sup>

Thus, the Court dismissed the preliminary objections because the State "made no mention of which domestic remedies had not been exhausted nor did it prove that those that were available were adequate, fit, and effective."<sup>121</sup>

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113. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, ¶¶ 3; 7. 004 Mr. Carlos Antonio Pop AC, the Association of Mayan Lawyers and Notaries of Guatemala, and the Robert F. Kennedy Center for Justice and Human Rights served as representatives for Ms. Velásquez Paiz. *Id.* ¶ 7.

114. *Id.* ¶¶ 19-20.

115. *Id.*

116. *Id.*

117. *Id.* ¶ 23.

118. *Id.* ¶¶ 23; 25.

119. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, ¶ 24.

120. *Id.*

121. *Id.* ¶ 28.

## III. MERITS

A. *Composition of the Court*<sup>122</sup>

Humberto Antonio Sierra Porto, President  
 Roberto F. Caldas, Vice President  
 Manuel E. Ventura Robles, Judge  
 Diego García-Sayán, Judge  
 Alberto Pérez Pérez, Judge  
 Eduardo Vio Grossi, Judge  
 Eduardo Ferrer Mac-Gregor Poisot, Judge

Pablo Saavedra Alessandri, Secretary,  
 Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

**November 19, 2016:** The Court issues its Judgment on Merits, Reparations, and Costs.<sup>123</sup>

The Court found unanimously that the State had violated:

Article 4(1) (Prohibition of Arbitrary Deprivation of Life) and Article 5(1) (Right to Physical, Mental, and Moral Integrity) in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention as well as Article 7 (Duty to Prevent, Punish, and Eradicate Violence Against Women) of the Convention of Belém do Pará, to the detriment of Ms. Velásquez Paiz,<sup>124</sup> because:

*Article 1(1) (Obligation of Non-Discrimination) requires States to respect and ensure the rights as they are recognized therein.<sup>125</sup> Particularly, this obligation creates a special duty with regards to the rights to life, personal integrity, and honor and dignity.<sup>126</sup> This enhanced duty requires that States not only respect these specific rights, but further places an obligation on States to adopt appropriate*

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122. See generally *id.* Judge Roberto F. Caldas and Judge L. Patricio Pazmino Freire were not a part of the deliberation of the signature of the resolution because of force majeure. Thus, Judge Eduardo Ferrer MacGregor Poisot exercise presidency in this resolution.

123. *Id.*

124. *Id.* “Operative Paragraphs” ¶ 3.

125. *Id.* ¶ 106.

126. *Id.*

preventative measures to “guarantee them.”<sup>127</sup> The Court has previously established that “the obligation to guarantee the rights to life and personal integrity presupposes the duty of States to prevent violations of such rights.”<sup>128</sup> The Court explained that the duty of prevention covers legal, political, and administrative measures.<sup>129</sup> Additionally, such measures must “ensure that any violations thereof are effectively taken into account and treated as an unlawful act.”<sup>130</sup>

More specifically, the Court notes that Article 7 (Duty to Prevent, Punish, and Eradicate Violence Against Women) of the Convention of Belém do Pará establishes additional obligations with respect to the rights enshrined in Articles 4 (Right to Life) and 5 (Right to Humane Treatment) of the American Convention for the State to “prevent, punish and eradicate violence against women.”<sup>131</sup> With these two instruments working hand-in-hand, “the Court has established that States must take comprehensive measures to comply with the due diligence in cases of violence against women.”<sup>132</sup> To fulfill this obligation, the State must have a comprehensive prevention strategy to ensure that they are willing and able to “provide an effective response to cases of violence against women.”<sup>133</sup> Overall, the Court asserts that where there is a case of violence against women, the State is responsible not only for complying with the generic obligations of the American Convention, but with the more specific obligations of the Convention of Belém do Pará.<sup>134</sup> Based on the foregoing, the Court concluded that the State did not take adequate measures, and failed to act with due diligence to prevent Ms. Velásquez Paiz’s death.<sup>135</sup> The Court reasoned that State officials were on notice and aware of such complaints of violence against women, and therefore had the capacity and proper training to understand the context of the violence.<sup>136</sup>

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127. *Id.*

128. *Id.* ¶ 107.

129. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, ¶ 107.

130. *Id.*

131. *Id.* ¶ 108.

132. *Id.*

133. *Id.*

134. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, Judgment, ¶ 108.

135. *Id.* ¶ 133.

136. *Id.*



However, the Court then clarified that not all acts or omissions are immediately attributable to a State.<sup>137</sup> Rather, to establish a State's breach of duty to the rights enshrined in Articles 4 (Right to Life) and 5 (Right to Humane Treatment) of the American Convention, two elements are required: (1) authorities knew or should have known that there was an immediate threat of the life or personal integrity to a specific individual or group of individuals; and (2) those authorities did not act reasonably by failing to take the required measures that would be expected to prevent or avoid the risk at hand.<sup>138</sup>

Therefore, the Court decided that in the present case, there were two periods in which this duty of prevention must be analyzed: first, the time before Ms. Velásquez Paiz's disappearance; and second, the subsequent investigation and procedure taken prior to locating her body.<sup>139</sup> In the Court's view the "endemic nature" of violence against women in the State requires police to make reports of a woman's disappearance with strict due diligence, within the first few hours of the disappearance.<sup>140</sup>

Regarding the first time period, before Ms. Velásquez Paiz's disappearance, the Court concluded that the State had a general duty to prevent the disappearances and subsequent homicides of women.<sup>141</sup> The Court discussed the fact that, by December 2001, "there was a context of increasing homicidal violence against women in [the State]."<sup>142</sup> Further, the Court discussed an increase in the violence against women occurring between 2004 and 2005.<sup>143</sup> Therefore, the Court reasoned that at the time Ms. Velásquez Paiz disappeared in August 2005, the State was on notice for some time as several international and national organizations had alerted the State.<sup>144</sup> Additionally, the Court notes that in January 2003, the Office of the Human Rights Procurator "already

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137. *Id.* ¶ 109.

138. *Id.*

139. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparations and Costs, ¶ 110.

140. Lucia Mazzuca and Keina Yoshida, *Velásquez Paiz et al v Guatemala: Gender Stereotypes and Lack of Justice – Part I*, OxHRH Blog (Aug. 9, 2016), <http://ohrh.law.ox.ac.uk/Velásquez-paiz-et-al-v-guatemala-gender-stereotypes-and-lack-of-justice-part-i/>.

141. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, ¶ 110.

142. *Id.* ¶ 111.

143. *Id.*

144. *Id.*

*linked the existence of violent acts committed against women in 2001 to 'the discrimination, culturally rooted in ... society.'*"<sup>145</sup>

*In response to the State's argument that they had various measures in place to address the problem of violence against women, the Court notes that "various reports from agencies or organizations at international and national levels criticized the effectiveness of those measures and states institutions."<sup>146</sup> Although the State took actions aimed at addressing the problem of violence against women in August of 2005, the measures were ineffective and insufficient to solve the actual problem.<sup>147</sup>*

*Regarding the second period (investigation and prosecution), the Court reasoned that it needed to consider the first moment in which "State authorities knew or should have known of a real and immediate risk to the life and integrity of Ms. Velásquez Paiz."<sup>148</sup> The Court found that State authorities had reason to know of the risk of danger to Ms. Velásquez Paiz when her family telephoned the police around 2:50 a.m. and a patrol car subsequently arrived at 3:00 a.m.<sup>149</sup> The Court reasoned that, at this time, authorities were informed by Ms. Velásquez Paiz's family that she was missing. Thus, considering the context of the increased rate of violence against women, the authorities had ample knowledge that there was "a real and immediate risk that Ms. Velásquez Paiz was sexually assaulted, subjected to sexual harassment, and/or murdered."<sup>150</sup> Additionally, the Court stated that "the authorities must presume that the missing person is still alive until an end to the uncertainty of the fate of the victim."<sup>151</sup> Therefore, the Court concluded that the authorities' response to reports of Ms. Velásquez Paiz's disappearance was insufficient.<sup>152</sup>*

*Overall, the Court concluded that the State violated Ms. Velásquez Paiz's Right to Life and Right to Humane Treatment by failing to act reasonably in accordance with the "context of the case and the*

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145. *Id.*

146. *Id.* ¶¶ 113; 118.

147. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, ¶ 120.

148. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, ¶ 121.

149. *Id.*

150. *Id.*

151. *Id.* ¶ 122.

152. *Id.* ¶ 126.

*circumstances of the facts.*<sup>153</sup> *The Court emphasized that the seriousness of this violation was elevated, given the “context known to the State – which places women at special risk.”*<sup>154</sup> *The Court concluded that the State “did not adopt necessary measures within the scope of its powers which, judged reasonably, could be expected to prevent or avoid the violation of the rights to life and integrity of Ms. Velásquez Paiz.”*<sup>155</sup>

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), Article 25(1) (Right of Recourse Before a Competent Court) and Article 24 (Right to Equal Protection), in relation to Articles 1(1) (Obligation of Non-Discrimination) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention as well as Article 7 (Duty to Prevent, Punish, and Eradicate Violence Against Women) of the Convention of Belém do Para, to the detriment of Jorge Rolando Velásquez Duran, Elsa Claudina Paiz Vidal, and Pablo Andrés Velásquez Paiz, as the relatives of Ms. Velásquez Paiz,<sup>156</sup> because:

*States are required to “provide effective judicial remedies to victims of human rights violations.”*<sup>157</sup> *The Court has previously established that “the duty to investigate is an obligation of means and not of result, which the State must assume as a duty and not as a simple formality.”*<sup>158</sup>

*The Court discussed the various shortcomings and issues with the handling of the crime scene, the subsequent investigation, and domestic proceedings.*<sup>159</sup> *In the present case, there was a lack of “collection, documentation, and preservation of evidence,” as well as irregularities in the practices of both forensic medical examinations and autopsy, alongside questionable documentation.*<sup>160</sup> *The Court reasoned that the shortcomings lead to an “irreparable” investigation when paired with the loss of evidence.*<sup>161</sup> *Thus, the State breached its duty to investigate*

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153. *Id.* ¶ 120.

154. *Velásquez Paiz et al. v. Guatemala*, Preliminary Objections, Merits, Reparation and Costs, ¶ 133.

155. *Id.* ¶ 132.

156. *Id.* “Operative Paragraphs” ¶ 4.

157. *Id.* ¶ 142.

158. *Id.* ¶ 143.

159. *Id.* ¶ 200.

160. *Velásquez Paiz et al. v. Guatemala*, Preliminary Objections, Merits, Reparation and Costs, ¶ 201.

161. *Id.*

*Ms. Velásquez Paiz's death as a matter of possible manifestation of gender violence.*<sup>162</sup>

*The Court further stressed the effects of the undue delay and length of the investigation, reasoning that they have been "late, repetitive and have been prolonged over time."<sup>163</sup> Further, since over ten years passed since Ms. Velásquez Paiz's death with authorities no closer to solving the case, the Court stated that this delay in investigation and result was "still in the most absolute impunity, outside any reasonable period of time."<sup>164</sup>*

*The Court reasoned that the investigative failures directly resulted from the biased investigating authorities and their stereotyping of the victim.<sup>165</sup> Thus, the Court concluded that the investigation into the murder of Ms. Velásquez Paiz "had not been conducted with a gender perspective according to the special obligations imposed by the Convention of Belém do Pará".<sup>166</sup>*

*Based on the foregoing, the Court held that the State failed to fulfill its obligation to investigate the Ms. Velásquez Paiz's death because the existence of gender stereotypes present in the State caused the investigation to lack due diligence and rigor.<sup>167</sup> Therefore, the Court concluded, the facts "constituted violence against women and a form of discrimination in access to justice for reasons of gender."<sup>168</sup> Overall, the Court reasoned that the State's "fundamental lack of due diligence" throughout the ongoing investigation, "deprived the family of access to justice in violation of Articles 8(1) [(Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal)] and 25 [(Right of Recourse Before a Competent Court)]."<sup>169</sup>*

Article 5(1) (Right to Physical, Mental and Moral Integrity) and Article 11 (Right to Privacy) in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, to the detriment of

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162. *Id.* ¶ 198.

163. *Id.* ¶ 201.

164. *Id.*

165. *Id.* ¶ 201.

166. *Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs*, ¶ 199.

167. *Id.*

168. *Id.*

169. *Mazzuca and Yoshida, supra* note 242.

Jorge Rolando Velásquez Duran, Elsa Claudina Paiz Vidal, and Pablo Andrés Velásquez Paiz,<sup>170</sup> because:

*First, the Court explained that occasionally the “next of kin” of the victim of a human rights violation may themselves become a victim as well.<sup>171</sup> Thus, under that concept, the Court has the discretion to hear matters of the sufferings of psychological and moral integrity that have occurred as a result of the actions or omissions of the State.<sup>172</sup>*

*The Court first considered the alleged violation of the personal integrity of Ms. Velásquez Paiz’s family members.<sup>173</sup> The Court discussed the authorities fingerprinting Ms. Velásquez Paiz at her own wake, and stated the importance of the family feeling “hurt, offended and humiliated.”<sup>174</sup> The Court further noted that the Velásquez Paiz family “had to suffer indifference, lack of interest, and lack of knowledge of the prosecutors – with subsequent pain and emotional damage to their relatives.”<sup>175</sup>*

*Based on the foregoing, the Court concluded that “the State violated the personal integrity of the family members of Ms. Velásquez Paiz.”<sup>176</sup> The Court attributed this conclusion to the handling of the investigation of the case.<sup>177</sup> Specifically, the Court mentioned the authorities’ disruption of Ms. Velásquez Paiz’s wake, and stated that they were “rating her as a person whose death did not deserve to be investigated.”<sup>178</sup> Additionally, the Court reasoned that the “irregularities and deficiencies” spanning the investigation constituted a further violation of Article 5(1) (Right to Physical, Mental, and Moral Integrity) to the detriment of Ms. Velásquez Paiz’s parents and brother.*

*Second, regarding the Right to Privacy, the Court noted that Article 11 “establishes that every person has the right to respect for his honor and recognition of his dignity.”<sup>179</sup> The Court further noted that this*

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170. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, “Operative Paragraphs” ¶ 5.

171. *Id.* ¶ 209.

172. *Id.*

173. *Id.* ¶ 211.

174. *Id.* ¶¶ 211-12.

175. *Id.* ¶ 217.

176. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, ¶ 218.

177. *Id.*

178. *Id.*

179. *Id.* ¶ 219.

*requirement prohibits an illegal attack upon an individual's honor or reputation, thus imposing a duty upon the State to provide protection.*<sup>180</sup> *The Court clarified that the right to honor was to be understood and interpreted as it relates to one's self-esteem or self-worth.*<sup>181</sup> *The Court discussed its previous holdings that establish "caring for the remains of a person is a form of observance of the right to human dignity."*<sup>182</sup> *Further, the Court noted that an individual's mortal remains "deserve to be treated with respect before their relatives."*<sup>183</sup> *By disrupting Ms. Velásquez Paiz's wake, the public prosecutors "broke into an intimate and painful moment in order to manipulate, again, the mortal remains" of Ms. Velásquez Paiz.*<sup>184</sup> *Therefore, the Court concluded that the State violated the relatives of Ms. Velásquez Paiz's right to respect honor and recognition of dignity.*<sup>185</sup>

The Court did not rule on:

Article 13 (Freedom of Thought and Expression) and Article 22 (Freedom of Movement and Residence) in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention,<sup>186</sup> because:

*The Court found that the above violations had already been "duly considered" and therefore did not require to be addressed separately*<sup>187</sup>

### *C. Dissenting and Concurring Opinions*

#### 1. Concurring Opinion of Judge Eduardo Vio Grossi

In a separate concurring opinion, Judge Vio Grossi addressed the majority's ruling on the preliminary objections relating to the admissibility of Ms. Velásquez Paiz's petition to the Court.<sup>188</sup> Judge Vio Grossi emphasized that the State's reply to the petition did not mention

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180. *Id.*

181. *Id.*

182. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, ¶ 220.

183. *Id.*

184. *Id.*

185. *Id.*

186. *Id.* "Operative Paragraphs" ¶ 6.

187. *Id.*

188. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, Concurring Opinion of Judge Eduardo Vio Grossi.

which resources Ms. Velásquez Paiz’s representatives had not yet been exhausted nor did they demonstrate any available, adequate, suitable, and effective remedies.<sup>189</sup>

## 2. Separate Opinion of Judge Eduardo Ferrer Mac-Gregor Poisot

Judge Eduardo Ferrer Mac-Gregor Poisot discussed the duty to prevent gender violence articulated in the Convention of Belém do Pará.<sup>190</sup> He stated that 32 of the 35 states that make up the Organization of American States have “subscribed and ratified or adhered to” the Convention.<sup>191</sup> Also, he focused on the ongoing persistence of femicide problems in the State and that “it is urgent to pay special attention to the ‘duty of prevention.’”<sup>192</sup>

Judge Mac-Gregor Poisot discussed the duty of prevention and the “two moments” discussed in prior cases this Court decided.<sup>193</sup> He explained that the State’s duty to prevent such acts from occurring plays a fundamental role that States must pay special attention to.<sup>194</sup> Further, this duty of prevention “is an assumption indispensable for the guarantee of the rights to life and personal integrity.”<sup>195</sup> This right consists of political, legal, and administrative measures to promote the safeguarding of individual human rights and thus further ensure “the eventual violations to them are effectively considered and treated as an illicit act.”<sup>196</sup>

Judge Mac-Gregor Poisot opines that the Convention of Belém do Pará requires States to also “punish and eradicate violence against women.”<sup>197</sup> Although the State attempted to take steps to address the increase in violence towards women, “the inadequacy and inefficiency of these measures has resulted in the fact that it does not yet exist in that country as a mechanism.”<sup>198</sup> Further, the State’s lack of available preventative measures causes women to continue “to face a situation of

189. *Id.*

190. *Velásquez Paiz et al. v. Guatemala*, Preliminary Objections, Merits, Reparation and Costs, Reasonable Vote Opinion of Judge Eduardo Ferrer MacGregor Poisot, ¶ 1.

191. *Id.*

192. *Id.* ¶ 4.

193. *Id.*

194. *Id.* ¶ 51.

195. *Id.*

196. *Velásquez Paiz et al. v. Guatemala*, Preliminary Objections, Merits, Reparation and Costs, Reasonable Vote Opinion of Judge Eduardo Ferrer MacGregor Poisot, ¶ 51.

197. *Id.* ¶ 52.

198. *Id.* ¶ 55.

constant risk, where the guarantee of their rights is nullified and, that of their relatives, as happened in the present case.”<sup>199</sup>

Judge Mac-Gregor Poisot intended “to highlight some relevant issues in the study and analysis of the State’s duty to prevention in the present case.”<sup>200</sup> He further emphasized that “this analysis must have been different from that the Inter-American Court made in previous cases, giving greater relevance to the ‘first moment’ of said duty.”<sup>201</sup> The spotlight of his opinion discussed “the culture of discrimination and violence against women is a phenomenon that persists to this day, nullifying dignity, as well as the enjoyment and exercise of human rights of women in the Americas.”<sup>202</sup> The fulfillment of the State’s general duty to prevent “must be observed by the States with special care and in accordance with the requirements of the obligations established by the American Convention on Human Rights and the Convention of Belém do Pará.”<sup>203</sup>

### 3. Partially Dissenting Opinion of Judge Roberto F. Caldas

In a separate, partially dissenting opinion, Judge Caldas stated that he did not find it necessary to issue a statement regarding the alleged Article 11 (Right to Privacy) violation to the detriment of Ms. Velásquez Paiz.<sup>204</sup>

Judge Caldas stated the State also violated Article 13(1) (Freedom of Expression) and Article 22(1) (Right of Movement or Freedom to Come and Go), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention.<sup>205</sup> Judge Caldas explained that he formed this opinion because the police issued erroneous assumptions regarding Ms. Velásquez Paiz solely based upon her appearance and clothing.<sup>206</sup> Judge Caldas further explained that the assumptions authorities made of the value of her life negatively affected the investigation, thus constituting a violation of her right to freedom of expression through clothing, as enshrined in Article 13(1) (Freedom of Expression).<sup>207</sup> Further, Judge Caldas concluded that since

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199. *Id.* ¶ 56.

200. *Id.* ¶ 4.

201. *Id.* ¶ 5.

202. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, Reasonable Vote Opinion of Judge Eduardo Ferrer MacGregor Poisot, ¶¶ 50-52.

203. *Id.* ¶ 58.

204. *Id.* ¶ 5.

205. *Id.* ¶ 2.

206. *Id.* ¶ 3.

207. *Id.* 004.



Ms. Velásquez Paiz’s body was recovered in a lower middle class neighborhood, that the investigation was “carelessly carried out,” in violation of Article 22(1) (Right of Movement or Freedom to Come and Go).<sup>208</sup>

Although dissenting, Judge Caldas agreed with the majority’s conclusion that “the most damning criticisms of the investigation process were directed at the culture of gender bias prevalent within both the...police force and the prosecuting authorities.”<sup>209</sup> He also concurred with the Court on that “the Prosecutor’s attitude was not isolated or exclusive to the authorities leading the investigation but, rather, reflected a general tendency among all officials to discredit the victims and shift the blame onto them by pointing to factors such as their lifestyle or clothing.”<sup>210</sup>

Overall, Judge Caldas saw issues with the victim’s clothing as a further reflection of discrimination against women by State authorities.<sup>211</sup> Judge Caldas reasoned that “the security of the woman who simply seems to exteriorize, by means of their clothing, a specific sexual or cultural identity, as well as their belonging to certain women’s collectives,” was at risk.<sup>212</sup> Therefore, Judge Caldas’ partial dissent suggests that the State additionally violate Article 13 (Freedom of Expression) and Article 22(1) (Right of Movement or Freedom to Come and Go), against the decision of the majority to exclude an opinion on these two articles.<sup>213</sup>

#### IV. REPARATIONS

The Court ruled unanimously that the State had the following obligations:

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208. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, Reasonable Vote Opinion of Judge Eduardo Ferrer MacGregor Poisot, ¶ 3.

209. Mazzuca and Yoshida, *supra* note 242.

210. *Id.*

211. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, Partially Dissenting Opinion of Judge Roberto F. Caldas, ¶ 4.

212. *Id.*

213. *Id.* ¶ 27.

*A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

1. Implement Educational Programs

The State must implement educational programs aimed at the general population to prevent discrimination against women.<sup>214</sup> Specifically, the State must incorporate an education program on the need to eliminate gender discrimination, gender stereotypes and violence against women.<sup>215</sup>

2. Strengthen Investigation Procedures

The State must strengthen its institutional investigation process in cases of violence against women.<sup>216</sup> The State must implement permanent programs and courses for public officials in the Judicial Branch, Public Ministry, and National Civil Police that provide educational tools for investigating homicides of women.<sup>217</sup> These tools should be aimed at prevention, eventual sanctions, and eradication of homicides of women, and should train public officials on the right application of the international regulations and jurisprudence.<sup>218</sup>

3. Implement Domestic Strategies to Address Procedures for Finding Missing Women

State must adopt a national strategy, system, mechanism or program, through legislative or other measures, to achieve the effective and immediate search for missing women, and to ensure that authorities receive such complaints immediately.<sup>219</sup> Further, the adopted strategy, system, mechanism, or program should initiate actions that allow proper authorities to locate and prevent the violation of the rights to life and personal integrity of prospective victims.<sup>220</sup>

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214. *Id.* ¶ 247.

215. *Id.* ¶ 248.

216. *Id.* ¶ 258.

217. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, ¶ 258.

218. *Id.*

219. *Id.* ¶ 266.

220. *Id.*

*B. Compensation*

The Court awarded the following amounts:

## 1. Pecuniary Damages

The Court awarded \$10,000 to Mr. Velásquez Duran for lost profits, as “he was forced to abandon his company” following the loss of his daughter.<sup>221</sup> Additionally, the Court awarded \$145,500 in favor of Ms. Velásquez Paiz for loss of future profits due to her status as a law student.<sup>222</sup> Ms. Velásquez Paiz’s damage award was to be divided equally amongst Mr. Velásquez Duran, Mrs. Paiz Vidal, and Mr. Velásquez Paiz.<sup>223</sup>

The Court awarded \$9,000 to Mr. Velásquez Duran, Mrs. Paiz Vidal, and Mr. Velásquez Paiz for damages arising from the expenses the family incurred from funeral expenses and from psychological assessments and treatment related to the facts of the case and investigation.<sup>224</sup>

## 2. Non-Pecuniary Damages

The Court awarded \$60,000 to Ms. Velásquez Paiz, \$18,000 to Mr. Velásquez Duran, \$15,000 to Mrs. Paiz Vidal, and \$12,000 to Mr. Velásquez Paiz.<sup>225</sup> The Court ordered that the \$60,000 awarded to Ms. Velásquez Paiz was to be divided equally amongst Mr. Velásquez Duran, Mrs. Paiz Vidal, and Mr. Velásquez Paiz.<sup>226</sup> The Court reasoned that the various deficiencies of the investigation into Ms. Velásquez Paiz’s murder affected “access to justice and declared a violation of the rights to personal integrity and respect for the honor and recognition of the dignity of her relatives.”<sup>227</sup> Additionally, the Court rewarded Mr. Velásquez Duran’s efforts to remain active within the domestic investigation.<sup>228</sup>

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221. *Id.* ¶ 278.

222. *Id.*

223. *Velásquez Paiz et al. v. Guatemala*, Preliminary Objections, Merits, Reparation and Costs, ¶ 278.

224. *Id.* ¶ 279.

225. *Id.* ¶ 274.

226. *Id.*

227. *Id.*

228. *Id.*

### 3. Costs and Expenses

The Court awarded \$5,000 to Mr. Velásquez Duran for any expenditures he made since November of 2005, related to the investigation and domestic proceedings, as well as expenses incurred related to obtaining legal representation.<sup>229</sup> Additionally, the Court awarded \$10,000 to Carlos Pop for his work as legal representation.<sup>230</sup> The Court also awarded \$5,000 to the Association of Mayan Lawyers and Notaries and an additional \$5,000 to the Robert F. Kennedy Center for Justice and Human Rights.<sup>231</sup>

### 4. Total Compensation

\$234,500

### C. Deadlines

The State must provide an annual report on its implemented educational programs and their satisfied objectives for three years.<sup>232</sup>

The State must strengthen its investigation of female homicide cases and establish proper State policies in a reasonable amount of time.<sup>233</sup>

The State must make all compensation of payments for material and immaterial damage as well as reimbursement of costs and expenses within one year of the notification of the judgment.<sup>234</sup> Additionally, the payments must be made equivalent to United States dollars.<sup>235</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

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229. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, ¶ 283.

230. *Id.*

231. *Id.*

232. *Id.* ¶ 258.

233. *Id.* ¶¶ 266; 290.

234. *Id.* ¶ 284.

235. Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, ¶ 284.

## VI. COMPLIANCE AND FOLLOW-UP

**October 2014:** The Court begins its monitoring of the State's compliance and execution of the judgment.<sup>236</sup>

**May 23, 2017:** The State fully complied with its obligation to publish and disseminate the judgment.<sup>237</sup> Additionally, the State fully complied with its obligation to pay reparation measures in relation to the payment of damages as well as the reimbursement of costs to the respective individuals.<sup>238</sup>

## VII. LIST OF DOCUMENTS

### A. *Inter-American Court*

#### 1. Preliminary Objections

[None]

#### 2. Decisions on Merits, Reparations, and Costs

[Velásquez Paiz et al. v. Guatemala, Preliminary Objections, Merits, Reparation and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 307 \(Nov. 19, 2015\) \(Available only in Spanish\).](#)

#### 3. Provisional Measures

[Velásquez Paiz et al. v. Guatemala, Order of the President, Inter-Am. Ct. H.R. \(ser. E\) \(March 19, 2015\) \(Available only in Spanish\).](#)

#### 4. Compliance Monitoring

[Velásquez Paiz et al. v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(May 23, 2017\) \(Available only in Spanish\).](#)

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236. Velásquez Paiz et al. v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R., ¶ 1 (May 23, 2017) (Available only in Spanish).

237. *Id.* “Operative Paragraphs” ¶¶ 1-5.

238. *Id.* “Operative Paragraphs” ¶ 2.

*B. Inter-American Commission*

## 1. Petition to the Commission

[Not Available]

## 2. Report on Admissibility

[Velásquez Paiz et al. v. Guatemala, Admissibility Report, Report No. 110/10, Inter-Am. Comm'n H.R., Case No. 12.777 \(Oct. 4, 2010\).](#)

## 3. Provisional Measures

[None]

## 4. Report on Merits

[Velásquez Paiz et al. v. Guatemala, Report on Merits, Report No. 53/13, Inter-Am. Comm'n H.R., Case No. 12.777 \(Nov. 4, 2013\).](#)

## 5. Application to the Court

[Velásquez Paiz et al. v. Guatemala, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.77 \(March 5, 2014\) \(Available only in Spanish\).](#)

## VIII. BIBLIOGRAPHY

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Lucia Mazzuca and Keina Yoshida, *Velásquez Paiz et al v Guatemala: Gender Stereotypes and Lack of Justice – Part 1*, OxHRH Blog (Aug. 9, 2016), <http://ohrh.law.ox.ac.uk/Velásquez-paiz-et-al-v-guatemala-gender-stereotypes-and-lack-of-justice-part-i/>.