

# Valenzuela Ávila v. Guatemala

## ABSTRACT\*

*This case is about a man who was accused of having killed a State prosecutor. His confession was extracted under torture and his prosecution and trial were extremely lacking. Eventually, he was sentenced to death. He escaped prison together with other inmates. The State launched an operation to recapture them, dead or alive. He was found dead, extrajudicially executed. The Court found Guatemala in violation of numerous provisions of the American Convention.*

## I. FACTS

### A. Chronology of Events

**May 20, 1998:** Ms. Silvia Jerez Romero de Herrera, a government prosecutor involved in the investigation of several kidnapping cases, is shot to death outside the city of Quetzaltenango, Guatemala.<sup>1</sup>

**May 27, 1998:** Mr. Tirso Román Valenzuela Ávila is accosted by four police officers at his residence in Quetzaltenango.<sup>2</sup>

According to Mr. Valenzuela Ávila, the officers forcibly transport him to an unknown location, where he is interrogated about the death of Ms. De Herrera.<sup>3</sup> Mr. Valenzuela Ávila is beaten and tortured by his captors.<sup>4</sup> The officers later return Mr. Valenzuela Ávila to his residence, where government authorities await his arrival with a warrant to search

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1. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 386, ¶ 72 n. 39 (Oct. 11, 2019). ; U.S. Dep't of State, Bureau of Democracy, H.R. and Lab., Guatemala Country Report on Human Rights Practices for 1998 ¶ 1.a (1999). Note: The Judgment on the Merits, Reparations and Costs issued by the Inter-American Court of Human Rights refers to Ms. Romero de Herrera as "SJR."

2. Valenzuela Ávila v. Guatemala, Admissibility Report, Report No. 24/04, Inter-Am. Comm'n H.R., Case No. 12.452, ¶ 9 (Feb. 26, 2004).

3. *Id.*

4. Valenzuela Ávila v. Guatemala, Report on Admissibility and the Merits, Report No. 132/17, Inter-Am. Comm'n H.R., Case No. 12.452, ¶¶ 30-31 (Oct. 25, 2017).

his property.<sup>5</sup> He reportedly witnesses a government agent plant weapons inside his residence, and is subsequently arrested for the possession of unlawful firearms.<sup>6</sup> He is detained by police officers and forced into a vehicle where is suffocated, beaten, and repeatedly raped until he confesses to the murder of Ms. De Herrera.<sup>7</sup> Following this confession, officers transport him to the Men's Preventative Detention Center in Quetzaltenango.<sup>8</sup> He arrives at the facility in a battered state, and is reportedly defecating blood and unable to sit or sleep due to the severity of his injuries.<sup>9</sup>

According to the State, Mr. Valenzuela Ávila is detained after authorities discovered a cache of illegal firearms within his residence.<sup>10</sup> The State contends that Mr. Valenzuela Ávila voluntarily confessed to the murder of Ms. De Herrera prior to questioning.<sup>11</sup>

**June 14, 1998:** Mr. Valenzuela Ávila escapes from custody at the Men's Preventative Detention Center.<sup>12</sup>

**April 10-21, 1999:** State authorities apprehend Mr. Valenzuela Ávila and subject him to further acts of torture before detaining him at the Juan José Ortega Hospital, in Coatepeque.<sup>13</sup> He remains hospitalized for eleven days before he is transferred back to the Men's Preventative Detention Center in Quetzaltenango.<sup>14</sup>

**May 31, 1999<sup>15</sup>:** The Public Prosecutor's Office of Guatemala issues an indictment charging Mr. Valenzuela Ávila with several offenses, including illegal possession of firearms, battery, kidnapping, murder, evasion, and fraud.<sup>16</sup>

5. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶¶ 71, 73.

6. *Id.* ¶¶ 73-74.

7. *Id.* ¶ 82.

8. *Id.*

9. *Id.*

10. *Id.* ¶¶ 72-73.

11. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 73.

12. *Id.* ¶ 83.

13. Valenzuela Ávila v. Guatemala, Report on Admissibility and the Merits, ¶ 39; Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 84.

14. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 84.

15. Note: The Judgment on the Merits, Reparations and Costs issued by the Inter-American Court of Human Rights lists the date of indictment as June 1, 1999. However, the Merits and Admissibility Report submitted by the Inter-American Commission of Human Rights indicates that the indictment was submitted to the court on May 31, 1999. See Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 75; Valenzuela Ávila v. Guatemala, Report on Admissibility and the Merits, ¶ 53.

16. Valenzuela Ávila v. Guatemala, Report on Admissibility and the Merits, ¶ 53.

**July 2, 1999:** The Criminal Court of First Instance dismisses the battery charge against Mr. Valenzuela Ávila and admits the remaining charges.<sup>17</sup>

**July 8, 1999:** Mr. Valenzuela Ávila’s attorney submits a pre-trial brief to the court, alleging that his client endured torture and maltreatment while in government custody and requests that the government provide him with immediate access to medical care.<sup>18</sup>

**September 1999:** Mr. Valenzuela Ávila is transferred to a maximum security prison, nicknamed “El Infiernito” (little hell), located in the southern region of Escuintla.<sup>19</sup>

**October 21, 1999:** The Criminal Court of First Instance renders a judgment, acquitting Mr. Valenzuela Ávila of kidnapping but finding him guilty of the remaining charges.<sup>20</sup> The Court sentences Mr. Valenzuela Ávila to death for the murder of Ms. De Herrera, on the basis that he is a “danger” to society.<sup>21</sup> The Court cites Mr. Valenzuela Ávila’s criminal record, escape from prison, possession of unlawful weapons, and murder of a government employee as serious indicators of “social danger,” and find no mitigating factors to reduce his sentence.<sup>22</sup> Article 132 of the Guatemalan Penal Code states that the death penalty may be imposed in place of a prison sentence if a consideration of circumstantial factors indicate that the defendant poses a danger to society.<sup>23</sup>

**November 3, 1999:** Mr. Valenzuela Ávila appeals the conviction on a procedural and substantive basis, alleging that the death sentence must be reconsidered for several reasons.<sup>24</sup> The appeal argues that the court failed to adequately state its reasoning and that the conviction was based on unsubstantiated evidence.<sup>25</sup> The court failed to consider that Mr. Valenzuela Ávila’s confession was made under duress and elicited through the use of torture.<sup>26</sup> Lastly, the appeal argues that the court based their

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17. Valenzuela Ávila v. Guatemala, Report on Admissibility and the Merits, ¶ 53.

18. *Id.* ¶ 40.

19. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 84.

20. *Id.* ¶ 76.

21. Valenzuela Ávila v. Guatemala, Report on Admissibility and the Merits, ¶ 55.

22. *Id.*

23. *Id.* ¶ 65.

24. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 125.

25. *Id.* ¶ 77.

26. *Id.*

determination on presumptions of Mr. Valenzuela Ávila's character in order to classify him as a "social danger."<sup>27</sup>

**August 7, 2000:** The Seventh Chamber of the Court of Appeals finds the appeal inadmissible, citing "formulaic deficiencies" and the lack of an "intelligible thesis."<sup>28</sup> The Court alleges that the appeal erroneously focuses on delegitimizing the evidence utilized to convict Mr. Valenzuela Ávila, rather than pointing to actual deficiencies in the Court's conduct.<sup>29</sup> Mr. Valenzuela Ávila files a petition to appeal the Seventh Chamber's ruling.<sup>30</sup>

**December 1, 2000:** The Criminal Chamber of the Supreme Court of Justice finds Mr. Valenzuela Ávila's appeal inadmissible on the basis that the appeal did not state sufficient reasoning for why the Seventh Chamber's decision should be reassessed.<sup>31</sup>

**June 17-19, 2001**<sup>32</sup>: Along with seventy-seven other prisoners, Mr. Valenzuela Ávila stages an escape attempt from "El Infiernito."<sup>33</sup> Mr. Valenzuela Ávila is unsuccessful in his efforts to flee the facility and is immediately recaptured.<sup>34</sup>

Following recapture, Mr. Valenzuela Ávila is temporarily transferred to the Men's Preventative Detention Center in Quetzaltenango, where he is violently beaten, burned with cigarettes, and subjected to acts of sexual violence.<sup>35</sup> Mr. Valenzuela Ávila composes a letter to his attorney relaying the details of the torture and indicates that although he was provided access to medical care, the physician disregarded his symptoms and failed to provide adequate treatment.<sup>36</sup>

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27. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 77.

28. Valenzuela Ávila v. Guatemala, Report on Admissibility and the Merits, ¶ 58.

29. *Id.* ¶ 59.

30. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 79.

31. *Id.*

32. Note: Admissibility Report No. 24/04 issued by the Inter-American Commission on Human Rights states that Mr. Valenzuela Ávila was recaptured on July 11, 2001. *See* Valenzuela Ávila v. Guatemala, Admissibility Report, ¶ 15. However, both the Judgment issued by the Inter-American Court on Human Rights and the Report on Admissibility and the Merits issued by the Inter-American Commission on Human Rights indicate that Mr. Valenzuela Ávila was captured immediately after his escape attempt, on June 17, 2001. *See* Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 85; Valenzuela Ávila v. Guatemala, Report on Admissibility and the Merits, ¶¶ 42-43.

33. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 85.

34. *Id.*

35. *Id.* ¶¶ 85-86.

36. Valenzuela Ávila v. Guatemala, Report on Admissibility and the Merits, ¶ 43.

**July 11, 2001:** Mr. Valenzuela Ávila files a claim of “personal exhibition” against the Director of the National Civil Police, the Director of the Criminal Investigative Service Department, and the Director of the Men’s Preventative Detention Center, alleging that he has been subjected to acts of torture and denied medical care.<sup>37</sup> The claim is based on Article 82 of the Law on Protection, Personal Exhibition, and Constitutionality, which provides detainees with the right to petition the court in the instances of harassment or maltreatment.<sup>38</sup>

**July 30, 2001:** The Third Chamber of the Court of Appeals dismisses Mr. Valenzuela Ávila’s claim of “personal exhibition,” finding that his petition did not meet the legal requirements imposed by Article 82 of the Law on Protection, Personal Exhibition, and Constitutionality.<sup>39</sup>

**June 10, 2002:** Mr. Valenzuela Ávila files a new petition, seeking a re-valuation of the death sentence issued by the Court of the Criminal Court of First Instance.<sup>40</sup>

**July 5, 2004:** The Criminal Chamber of the Supreme Court of Justice finds Mr. Valenzuela Ávila’s June 2002 appeal inadmissible.<sup>41</sup> The Court indicates that a review of the conviction was unnecessary, citing the existence of previous judgments on the matter and the lack of any new exculpatory evidence.<sup>42</sup>

**September 9, 2004:** Mr. Valenzuela Ávila submits a petition for clemency, requesting that the President of Guatemala commute his death sentence to the immediate lesser sentence of a fifty-year prison term.<sup>43</sup>

**February 25, 2005:** Dr. Carlos Guillermo Quijada Sandoval, Coordinator of the Medical Services of the Guatemalan Penitentiary System, performs a medical examination on Mr. Valenzuela Ávila.<sup>44</sup> The physician alleges that Mr. Valenzuela Ávila did not exhibit any signs of physical abuse and further claims that Mr. Valenzuela Ávila verbally denied experiencing any physical maltreatment while in custody.<sup>45</sup>

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37. Valenzuela Ávila v. Guatemala, Report on Admissibility and the Merits, ¶ 44.

38. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶¶ 88, n.64.

39. *Id.* ¶ 88.

40. *Id.* ¶ 80.

41. *Id.*

42. *Id.*

43. *Id.* ¶ 81.

44. Valenzuela Ávila v. Guatemala, Report on Admissibility and the Merits, ¶ 48.

45. *Id.*

**June 15, 2005:** Dr. Edna Karina Vaquerano Martínez issues a medical report detailing the results of her examination of Mr. Valenzuela Ávila.<sup>46</sup> Doctor Vaquerano Martínez concludes that Mr. Valenzuela Ávila exhibits physical and mental symptoms consistent with those of individuals who suffered extensive physical abuse.<sup>47</sup> The report further documents the presence of wounds and scars upon the body of Mr. Valenzuela Ávila that are consistent with forms of torture.<sup>48</sup> Psychologist Juan Cristóbal Aldana Alfaro examines Mr. Valenzuela Ávila, concluding that he exhibits characteristics indicative of repeated exposure to physical and psychological torture.<sup>49</sup>

**October 22, 2005:** Mr. Valenzuela Ávila stages a third escape with eighteen other prisoners, fleeing from custody at “El Infiernito” via a manmade tunnel.<sup>50</sup> In response to this prison break, government authorities initiate “Operation Galiván,” an extrajudicial campaign formulated for the purpose of recapturing or eliminating “El Infiernito” fugitives in order to maintain social order.<sup>51</sup>

**December 8, 2006:** More than a year after his escape from “El Infiernito,” Mr. Valenzuela Ávila’s dead body is discovered in the town of La Gomera, Escuintla.<sup>52</sup> Eyewitness statements indicate that Mr. Valenzuela Ávila and a fellow fugitive were pursued by several armed individuals before both were fatally shot.<sup>53</sup> Mr. Valenzuela Ávila’s execution was reportedly ordered by State authorities acting under the directives of “Operation Galiván.”<sup>54</sup>

The State conducts an autopsy, finding that the body belonged to an “unknown male.”<sup>55</sup> The cause of death is attributed to cerebral laceration and multifragmentary fracture of the skull.<sup>56</sup>

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46. Valenzuela Ávila v. Guatemala, Report on Admissibility and the Merits, ¶ 49.

47. *Id.*

48. *Id.*

49. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 191.

50. Valenzuela Ávila v. Guatemala, Report on Admissibility and the Merits, ¶ 79.

51. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶¶ 89, 92.

52. *Id.* ¶ 96.

53. *Id.*

54. Valenzuela Ávila v. Guatemala, Report on Admissibility and the Merits, ¶ 92.

55. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 98.

56. *Id.*

**December 10, 2006:** Relatives attempt to collect Mr. Valenzuela Ávila's body from State custody but are denied access on the basis of his criminal record and a need to conduct further tests on the body.<sup>57</sup>

**December 26, 2006:** The State conducts a fingerprint analysis on Mr. Valenzuela Ávila's body, confirming his identity.<sup>58</sup>

**June 21, 2007:** The Municipality of La Gomera issues a death certificate incorrectly identifying the body of Mr. Valenzuela Ávila as an "unknown male."<sup>59</sup>

**November 16, 2007:** After an intervention by the Public Prosecutor's Office, the Municipality of La Gomera reissues a death certificate that correctly identifies Mr. Valenzuela Ávila's body.<sup>60</sup>

**September 28, 2009:** Authorities from Escuintla inform the Public Prosecutor's Office that Mr. Valenzuela Ávila's grave was found in the municipal graveyard.<sup>61</sup>

**December 6, 2011:** The International Commission Against Impunity in Guatemala requests that Mr. Valenzuela Ávila's case be transferred to the Special Prosecutor's Office Against Impunity, so that it may be joined with the remaining cases concerning the murders of "El Infiernito" fugitives committed under Operation Galiván.<sup>62</sup>

**February 15, 2012:** State authorities testify before the Court of the First Criminal Instance, Drug Trafficking, and Crimes Against the Environment of Guatemala, divulging that Operation Galiván required State actors to hunt down and execute fugitives convicted of serious crimes.<sup>63</sup>

**August 8, 2013:** The State pursues convictions against several individuals for their participation in the extrajudicial killings carried out under "Operation Galiván."<sup>64</sup> Mr. Victor Hugo Soto Diéguez, the former Commissioner of the National Police, is sentenced to thirty-three years in

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57. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶¶ 167, n.130; Valenzuela Ávila v. Guatemala, Report on Admissibility and the Merits, ¶ 82.

58. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 99.

59. *Id.*

60. *Id.*

61. *Id.* ¶ 100.

62. *Id.* ¶ 102.

63. *Id.* ¶ 92.

64. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 170.

prison for his leading role in the extrajudicial executions of “El Infier-nito” fugitives, carried out between 2005 and 2006.<sup>65</sup>

**December 12, 2018:** The Special Prosecutor’s Office Against Impunity issues a statement on the status of Mr. Valenzuela Ávila’s murder inves-tigation, noting that the inquiry is ongoing but remains unsolved.<sup>66</sup>

B. *Other Relevant Facts*

[None]

II. PROCEDURAL HISTORY

A. *Before the Commission*

**October 5, 2001:** The Institute of Public Criminal Defense of Guatemala (“petitioner”) files a petition on behalf of Mr. Valenzuela Ávila with the Inter-American Commission on Human Rights.<sup>67</sup>

**November 7, 2001:** Petitioner requests that the Commission include the Center for Justice and International Law (*Centro por la Justicia y el Derecho Internacional*, “CEJIL”) as a co-petitioner.<sup>68</sup>

**February 26, 2004:** The Commission issues Admissibility Report No. 24/04, finding the petition admissible.<sup>69</sup> The Commission concludes that the State failed to investigate Mr. Valenzuela Ávila’s allegations of tor-ture.<sup>70</sup> However, the claims concerning conditions of detention are deter-mined inadmissible because domestic remedies have not been fully pur-sued.<sup>71</sup>

**March 30, 2007:** Petitioners inform the Commission that Mr. Valenzuela Ávila has been extrajudicially executed.<sup>72</sup>

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65. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 170.

66. *Id.* ¶ 103.

67. Valenzuela Ávila v. Guatemala, Admissibility Report, ¶ 1.

68. *Id.* ¶ 5.

69. *Id.* ¶ 3.

70. *Id.* “Decides” ¶ 50.

71. *Id.*

72. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 2, n.3.



**October 25, 2017:** The Commission issues Admissibility and Merits Report No. 132/17.<sup>73</sup> In addition to the previous allegations of torture, the Commission finds the petition admissible because the State failed to properly investigate Mr. Valenzuela Ávila's murder or disprove allegations that his death was extrajudicially ordered.<sup>74</sup>

The Commission finds that the State is responsible for violating the rights provided in Articles 4(1) (Prohibition of Arbitrary Deprivation of Life), 4(2) (Limitations on Death Penalty), 5(1) (Right to Physical, Mental, and Moral Integrity), 5(2) (Prohibition of Torture, and Cruel, Inhuman or Degrading Treatment), 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), 8(2)(g) (Right Not to Self-Incriminate), 8(2)(h) (Right to Appeal), 8(3) (A Confession is Valid Only if Not Coerced), 9 (Freedom from *Ex Post Facto* Laws), 11 (Right to Privacy), and 25(1) (Right of Recourse Before a Competent Court), all in relation to Articles 1(1) (Obligation of Non-Discrimination), and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, and Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture), 8 (Obligation to Investigate and Prosecute), and 10 (Statements Obtained Through Torture Are Inadmissible) of the Inter-American Convention to Prevent and Punish Torture to the detriment of Mr. Valenzuela Ávila.<sup>75</sup>

The Commission finds that the State is responsible for violating the rights provided in 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(1) (Right of Recourse Before a Competent Court), all in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention to the detriment of Mr. Valenzuela Ávila's relatives.<sup>76</sup>

In respect to the foregoing violations, the Commission recommends that the State: (1) remedy both the material and immaterial human rights violations declared within the report by providing compensatory redress or rehabilitation to Mr. Valenzuela Ávila's relatives; (2) effectively investigate the acts of torture suffered by Mr. Valenzuela Ávila in a timely manner and penalize the perpetrators; (3) effectively investigate the extrajudicial execution of Mr. Valenzuela Ávila in a timely manner and bring the perpetrators of his murder to justice; (4) ensure that the government continues to abstain from the practice of the death penalty and work towards complete abolition; (5) take the necessary legislative and

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73. Valenzuela Ávila v. Guatemala, Report on Admissibility and the Merits, ¶ 4.

74. *Id.* ¶¶ 169-70, 174-75.

75. *Id.* ¶ 176.

76. *Id.*

administrative steps to ensure convicted criminals have access to an appeal process before a hierarchal authority; and (6) train security forces to refrain from torture tactics, provide training and guidance on the use of force for the capture of escaped detainees, and strengthen the administrative processes for investigating, prosecuting, and punishing State actors who inflict torture and violence upon escaped fugitives.<sup>77</sup>

### *B. Before the Court*

**April 19, 2018:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>78</sup>

**December 17, 2018:** The State partially acknowledges international responsibility for the failure to investigate the alleged acts of torture suffered by Mr. Valenzuela Ávila at the hands of government officials.<sup>79</sup> The State opposes the remaining claims alleged by the Commission and submits three objections.<sup>80</sup>

The Court concludes that the objections raised by the State do not concern admissibility or dispute the jurisdiction of the Court and therefore will be addressed as prior issues rather than preliminary objections.<sup>81</sup> The State argued that the petitioner's brief included an expanded account of facts that were previously omitted from the Merits Report.<sup>82</sup> On this basis, the Court concluded that the additional facts would be excluded from the Court's analysis.<sup>83</sup>

Further, the State argued that the Commission's failure to include the names of relatives seeking reparations in the Merits Report violated the principle of legal certainty.<sup>84</sup> The State requested that the Court dismiss the claims of the additional victims and establish Mr. Valenzuela Ávila as the sole victim in the case.<sup>85</sup> The Court agreed that the Merits Report must identify the names of the victims seeking redress and therefore, deemed it appropriate to dismiss the claims of Mr. Valenzuela

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77. Valenzuela Ávila v. Guatemala, Report on Admissibility and the Merits, "Recommendations" ¶ 177.

78. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 3.

79. *Id.* ¶ 7.

80. *Id.*

81. *Id.* ¶ 36.

82. *Id.* ¶¶ 41-42.

83. *Id.* ¶ 43.

84. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 47.

85. *Id.*

Ávila's relatives<sup>86</sup> and to consider Mr. Valenzuela Ávila the sole victim in this case.<sup>87</sup>

### 1. Violations Alleged by Commission<sup>88</sup>

Article 4(1) (Prohibition of Arbitrary Deprivation of Life)

Article 4(2) (Limitations on Death Penalty)

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

Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment)

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

Article 8(2)(g) (Right Not to Self-Incriminate)

Article 8(2)(h) (Right to Appeal)

Article 8(3) (A Confession is Valid Only if Not Coerced)

Article 9 (Freedom from *Ex Post Facto* Laws)

Article 11 (Right to Privacy)

Article 25(1) (Right of Recourse Before a Competent Court)

*all in relation to:*

Article 1(1) (Obligation of Non-Discrimination) and

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Inter-American Convention on Human Rights

Article 1 (Obligation to Prevent and Punish Torture)

Article 6 (Obligation to Take Effective Measures and Punish Torture and Cruel, Inhuman, and Degrading Treatment)

Article 8 (Obligation to Investigate and Prosecute)

Article 10 (Statements Obtained Through Torture Are Inadmissible) of the Inter-American Convention to Prevent and Punish Torture.

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86. Note: Though the names of Mr. Valenzuela Ávila's relatives were omitted from the Merits Report, representatives later identified the relatives seeking redress as: (1) Florinda López de López; (2) Ludim Azucena Ruiz López; (3) Luis Fernando Valenzuela Ruiz; (4) Jorge Luis Valenzuela Ruiz; (5) Tirso Román Valenzuela Ruiz; and (6) Rosa Maria Mendoza López. Two of Mr. Valenzuela Ávila's children were additionally identified as relatives seeking redress; however, their names were omitted from the record due to safety concerns. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, at ¶ 49.

87. *Id.* ¶¶ 51-52.

88. Valenzuela Ávila v. Guatemala, Report on Admissibility and the Merits, ¶ 176.

## 2. Violations Alleged by Representatives of the Victims<sup>89</sup>

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(1) (Right of Recourse Before a Competent Court)

*all in relation to:*

Article 1(1) (Obligation to Respect Rights) of the American Convention.

### III. MERITS

#### A. Composition of the Court<sup>90</sup>

Eduardo Ferrer Mac-Gregor Poisot, President

Eduardo Vio Grossi, Vice-President

Humberto Antonio Sierra Porto, Judge

Elizabeth Odio Benito, Judge

Patricio Pazmiño Freire, Judge

Ricardo Pérez Manrique, Judge

Pablo Saavedra Alessandri, Secretary

#### B. Decision on the Merits

**October 11, 2019:** The Court issues its Judgment on the Merits, Reparations, and Costs.<sup>91</sup>

The Court found unanimously that Guatemala had violated:

Articles 8(2) (Right to Be Presumed Innocent), 8(2)(g) (Right Not to Self-Incriminate), and 8(2)(h) (Right to Appeal) in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, to the detriment of Mr. Valenzuela Ávila,<sup>92</sup> because:

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89. Valenzuela Ávila v. Guatemala, Resolution of the President of the Inter-Am Ct. H.R., Inter-Am. Ct. H.R., ¶ 1, n.1. Representatives of the victims: The Institute of Comparative Studies in Criminal Sciences (*El Instituto de Estudios Comparados en Ciencias Penales de Guatemala*, “ICCPG”) and the Institute of Criminal Public Defense (*El Instituto de la Defensa Pública Penal*, “IDPP”).

90. Judge Eugenio Raúl Zaffaroni excused himself from participating in the processing and deliberation of this case, in accordance with the provisions of Article 21 of the Court. *See generally* Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, n.\*.

91. *Id.* ¶ 1.

92. *Id.* “Declares” ¶ 1.

*The Court noted that Article 8 of the Convention functions to protect the procedural due process of rights of the individual.<sup>93</sup> Due process protects an individual's right to freely participate in his own defense, whether by choosing to actively engage or to remain silent.<sup>94</sup>*

*Thus, the use of torture to obtain a confession is a complete violation of due process, as it compels an individual to forcibly testify against oneself.<sup>95</sup>*

*Based on these considerations, the Court points to the inadmissibility of the incriminating statement made by Mr. Valenzuela Ávila in the midst of enduring horrific acts of torture at the hands of State authorities.<sup>96</sup> The Court concluded that the State violated due process obligations by forcing the victim to testify against himself.<sup>97</sup> Thus, the State violated Articles 8(2) (Right to Be Presumed Innocent), 8(2)(g) (Right Not to Self-Incriminate) by coercing the victim to incriminate himself.<sup>98</sup>*

*Additionally, the Court determined that the State violated Article 8(2)(h) (Right to Appeal) by failing to provide Mr. Valenzuela Ávila with a fair and effective appellate review.<sup>99</sup> The Court noted that the Seventh Chamber of Appeals dismissed Mr. Valenzuela Ávila's November 1999 appeal without a consideration of any factual or evidentiary issues.<sup>100</sup> The appeal contested procedural aspects of the lower court's ruling, yet the Appeals Chamber reiterated the statements of the previous judgment without assessing the accuracy of the verdict.<sup>101</sup> Thus, the Court concluded that the arbitrary dismissal of Mr. Valenzuela Ávila's appeal violated the right of due process.<sup>102</sup>*

Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) (Obligation of Non-

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93. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 110.

94. *Id.* ¶ 114.

95. *Id.*

96. *Id.* ¶ 115.

97. *Id.*

98. *Id.*

99. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 126.

100. *Id.*

101. *Id.* ¶¶ 125-26.

102. *Id.* ¶¶ 126, 145.

Discrimination) of the American Convention, to the detriment of Mr. Valenzuela Ávila,<sup>103</sup> because:

*The Court addressed the procedural aspects of the State investigation into Mr. Valenzuela Ávila's murder, noting that the right to judicial protection requires criminal proceedings to be conducted diligently, without undue delay.<sup>104</sup> Thus, the State is legally obligated to conduct effective and thorough criminal investigations.<sup>105</sup> At minimum, the Court stated that the State must attempt to: (1) identify the victim; (2) recover and preserve relevant evidence; (3) identify potential witnesses to obtain statements; (4) determine the cause, place, and time of death; and (5) conduct an autopsy to determine whether the death was a result of suicide, accidental circumstances, or foul play.<sup>106</sup>*

*The Court determined that the State failed to diligently investigate the circumstances of Mr. Valenzuela Ávila's death.<sup>107</sup> On the day of his death, the State acted negligently by failing to secure, preserve and photograph the crime scene.<sup>108</sup> Authorities mishandled the collection of evidence and failed to submit cartridges found at the scene of the crime for ballistic testing.<sup>109</sup> Additionally, the State did not attempt to follow-up on information provided by eyewitness statements.<sup>110</sup> Further, the Court noted that the State mishandled the processing of Mr. Valenzuela Ávila's body.<sup>111</sup> Though his identity was verified during an autopsy, the initial death certificate issued by the State referred to Mr. Valenzuela Ávila as an "unknown male."<sup>112</sup> Though the State has disputed allegations that his death was the result of an extrajudicial execution, they have failed to produce any evidence to dispel this supposition.<sup>113</sup>*

*Over two years after Mr. Valenzuela Ávila's death, authorities finally identified the owner of a motorcycle found at the scene of the crime.<sup>114</sup> However, the investigation has produced no other relevant evidence.<sup>115</sup>*

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103. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, "Declares," ¶ 2.

104. *Id.* ¶¶ 131, 134.

105. *Id.* ¶ 130.

106. *Id.* ¶ 133.

107. *Id.* ¶ 143.

108. *Id.* ¶ 139.

109. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶¶ 139, n.119.

110. *Id.* ¶ 137.

111. *Id.* ¶ 138.

112. *Id.*

113. *Id.* ¶ 140.

114. *Id.* ¶ 137.

115. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 137.

*The Office of the Public Prosecutor was not assigned the case until June 2009, and the investigation is reportedly ongoing.<sup>116</sup> Thus, the Court determined that the aforementioned failures prevented the State from conducting an effective investigation.<sup>117</sup>*

*Lastly, the Court moved to determine whether the delay in the proceedings constituted a breach of judicial protection, noting that the investigation into Mr. Valenzuela Ávila's death had been ongoing for nearly thirteen years.<sup>118</sup> Thus, the Court noted that an exhaustive analysis of this delay was unnecessary, considering the significant amount of time elapsed.<sup>119</sup> Based on the foregoing, the Court concluded that the State failed to properly investigate and prosecute the perpetrators of Mr. Valenzuela Ávila's murder within a reasonable length of time.<sup>120</sup>*

Articles 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, as well as in relation to Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture) and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Mr. Valenzuela Ávila,<sup>121</sup> because:

*The Court determined that it was unnecessary to discuss the State's failure to properly investigate Mr. Valenzuela Ávila's claims of torture, as the State previously issued a partial recognition of responsibility for failing to examine the allegations.<sup>122</sup> Therefore, the Court concluded that the State violated the judicial guarantees and protections guaranteed by Article 8(1) ((Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal) and 25(1) ((Right of Recourse Before a Competent Court) of the Convention, in relation to the Convention to Prevent and Punish Torture.<sup>123</sup>*

Articles 4(2) (Limitations on Death Penalty) and 9 (Freedom from *Ex Post Facto* Laws), in relation to Articles 1(1) (Obligation of Non-

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116. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 137.

117. *Id.* ¶ 141.

118. *Id.* ¶¶ 141-42.

119. *Id.* ¶ 142.

120. *Id.* ¶ 143.

121. *Id.* "Declares," ¶ 3.

122. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 144.

123. *Id.*

Discrimination) of the Convention) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention, to the detriment of Mr. Valenzuela Ávila,<sup>124</sup> because:

*The Court stipulates that Article 4(2) (Limitations on Death Penalty) of the Convention declares that the death penalty may only be imposed for the most serious of crimes.<sup>125</sup> The Court has previously stated that the death penalty may only be considered in exceptional cases and subject to a set of strict limitations.<sup>126</sup>*

*The Court noted that Mr. Valenzuela Ávila was sentenced to death under Article 132 of the Guatemalan Penal Code.<sup>127</sup> Article 132 permits a judicial body to impose the death penalty for serious crimes if the defendant is determined to be a “danger” to society.<sup>128</sup> However, the Court previously held that Article 132 and its corresponding concept of “future danger,” is unlawful and contrary to the tenets of the American Convention.<sup>129</sup> Particularly, the determination of a criminal sentence based on an individual’s potential proclivity for violence is a direct violation of Article 9 (Freedom from Ex Post Facto Laws) of the Convention.<sup>130</sup> The subjective criteria utilized to issue the death penalty in this case is incompatible with the rights guaranteed by the Convention.<sup>131</sup>*

*Based on the foregoing, the Court concluded that the State violated Articles 4(2) (Limitations on Death Penalty) and Article 9 (Freedom from Ex Post Facto Laws) of the Convention.<sup>132</sup>*

Article 4(1) (Prohibition of Arbitrary Deprivation of Life) in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, to the detriment of Mr. Valenzuela Ávila,<sup>133</sup> because:

*The Court recognized that the allegations of Mr. Valenzuela Ávila’s extrajudicial killing remained unsubstantiated due to a lack of direct*

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124. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, “Declares,” ¶ 4.

125. *Id.* ¶ 151.

126. *Id.*

127. *Id.* ¶ 152.

128. *Id.*

129. *Id.* ¶ 154.

130. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 154.

131. *Id.* ¶¶ 155-56.

132. *Id.* ¶ 158.

133. *Id.* “Declares,” ¶ 5.



evidence.<sup>134</sup> However, the Court stressed that it would find the State guilty of violating Article 4(1) (Prohibition of Arbitrary Deprivation of Life), if the circumstantial evidence sufficiently indicates that the victim was extrajudicially executed.<sup>135</sup>

First, the Court points to the State's known involvement in the killing of fugitives between the years 2005-2006.<sup>136</sup> It is public knowledge that the State ordered the extra-judicial killings of escaped prisoners under the program known as "Operation Galiván."<sup>137</sup> The State-sanctioned program was created for the sole purpose of capturing the nineteen fugitives who escaped from "El Infiernito" in 2005.<sup>138</sup> State actors have since confirmed that the program required government agents to kill rather than recapture fugitives convicted of serious crimes as an act of social cleansing.<sup>139</sup> The State admits that it did not find it relevant to disclose that seven fugitives were killed during the execution of the program.<sup>140</sup>

In consideration of the aforementioned facts, the Court noted that both Mr. Valenzuela Ávila and his companion were escapees of "El Infiernito" and murdered by unknown assailants on December 8, 2006.<sup>141</sup> Additionally, the Court points to the negligent mishandling of Mr. Valenzuela Ávila's murder investigation as evidence of the State's culpability.<sup>142</sup>

In consideration of the foregoing, the Court determined that Mr. Valenzuela Ávila was extrajudicially executed by the State.<sup>143</sup> Thus, the Court concluded that the State arbitrarily deprived the victim of life, in violation of Article 4(1) of the American Convention.<sup>144</sup>

Articles 5(1) (Right to Physical, Mental, and Moral Integrity), 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), and 11(1) (Right to Honor and Dignity) in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, and in

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134. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶¶ 162-63.

135. *Id.* ¶ 163.

136. *Id.* ¶ 170.

137. *Id.* ¶ 167.

138. *Id.*

139. *Id.* ¶¶ 168, 170.

140. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs ¶ 165.

141. *Id.* ¶ 175.

142. *Id.*

143. *Id.*

144. *Id.*

relation to Articles 1 (Obligation to Prevent and Punish Torture), 6 (Obligation to Take Effective Measures and Punish Torture) and 8 (Obligation to Investigate and Prosecute) of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Mr. Valenzuela Ávila,<sup>145</sup> because:

*The Court stressed that the prohibition against the use of torture, cruel, or inhumane treatment is not only a violation of the Convention, but a violation of customary international law.<sup>146</sup> The Court also recognized that acts intended to suppress an individual's physical will in order to elicit confessional statements are acts of torture.<sup>147</sup>*

*First, the Court moved to examine the allegations of torture reportedly suffered by Valenzuela Ávila prior to his arrival at the Men's Preventative Detention Center in Quetzaltenango in May 1998.<sup>148</sup> The Court considered both the victim's own allegations as well as the statements provided by eyewitnesses.<sup>149</sup> Witness testimony indicated that in May 1998, the victim arrived at the Men's Preventative Detention Center in a battered condition, unable to sit down, and "defecating blood."<sup>150</sup> The Court noted that the medical testimonies of Dr. Edna Karina Vaquerano Martinez and Mr. Cristóbal Aldana Alfaro corroborate the victim's own personal account of this abuse.<sup>151</sup> Although a conflicting report was produced by Dr. Carlos Guillermo Quijada Sandoval, the Court reiterated that the absence of physical evidence does not indicate that physical abuse has not taken place, and that the corroborating testimony of two medical experts is sufficient to conclude that the victim was abused.<sup>152</sup> Thus, the Court concluded that the victim experienced acts of violence perpetrated by State authorities in May 1998.<sup>153</sup>*

*Additionally, the Court determined that the violent acts perpetrated by the State in May 1998 qualified as torture under the Convention to Prevent and Punish Torture.<sup>154</sup> To make this determination, the Court considered whether the acts were intentionally committed in furtherance of*

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145. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, "Declares," ¶ 6.

146. *Id.* ¶ 180.

147. *Id.* ¶ 181.

148. *Id.* ¶ 188.

149. *Id.* ¶¶ 188-89.

150. *Id.* ¶ 189.

151. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs ¶ 192.

152. *Id.* ¶¶ 191-93.

153. *Id.* ¶ 194.

154. *Id.* ¶ 195.

a specific purpose and whether they caused the victim severe physical or psychological harm.<sup>155</sup> In May 1998, State authorities deliberately beat, suffocated, and raped Mr. Valenzuela Ávila until he produced confessional statements about his involvement in the murder of Ms. Silvia Jerez Romero de Herrera.<sup>156</sup> The Court determined that the beatings were performed for the purpose of obtaining a confession and that the sexual abuse experienced by the victim undoubtedly resulted in severe physical and mental suffering.<sup>157</sup>

Further, the Court held that the sexual violence experienced by the victim significantly affected Mr. Valenzuela Ávila's private life and violated his right to honor and dignity guaranteed by Article 11(1) (Right to Honor and Dignity) of the Convention.<sup>158</sup>

Secondly, The Court determined that Valenzuela Ávila was subjected to physical torture and violence following his escape attempt in June 2001.<sup>159</sup> Eyewitness testimony indicated that the victim was seized from his cell and later returned in a battered condition with cigarette burns covering his neck and genitals.<sup>160</sup> The details of this abuse were further substantiated by a July 2001 petition to the Third Chamber of Appeals, in which Mr. Valenzuela Ávila disclosed that he was being tortured by police officers seeking information about Ms. Romero de Herrera's death.<sup>161</sup> Additionally, the aforementioned medical examinations further corroborate the allegations of abuse suffered by the victim during this time period.<sup>162</sup> Therefore, the Court determined that the victim was subjected to acts of physical torture at the hands of the State in June 2001.<sup>163</sup>

Lastly, the Court concluded that the six years Mr. Mr. Valenzuela Ávila spent on death row resulted in serious psychological trauma, in violation of Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) of the Convention.<sup>164</sup>

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155. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 195.

156. *Id.* ¶ 194.

157. *Id.* ¶¶ 194-95.

158. *Id.* ¶ 196.

159. *Id.* ¶¶ 198, 201.

160. *Id.* ¶ 199.

161. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 198.

162. *Id.* ¶ 200.

163. *Id.* ¶ 202.

164. *Id.* ¶¶ 206-07.

Articles 7(1) (Right to Personal Liberty and Security), 7(2) (Prohibition of Deprivation of Liberty Unless for Reasons and Conditions Previously Established by Law), 7(5) (Right to Be Promptly Brought Before a Judge and Right to a Trial Within Reasonable Time), all in relation to Article 1(1) (Obligation of Non-Discrimination) of the American Convention, to the detriment of Mr. Valenzuela Ávila,<sup>165</sup> because:

*In general, Article 7 of the Convention protects an individual from arbitrary state interference, whether by deprivation of freedom or timely access to a competent judicial authority.<sup>166</sup> The Court determined that the State's failure to provide the victim with access to judicial authorities within six hours of his May 1998 arrest constituted a deprivation of personal liberty in violation of the Convention.<sup>167</sup> The Court noted that the victim arrived at the Men's Preventative Detention Center in Quetzaltenango facility in the early hours of May 28, 1998 and did not receive the opportunity to appear before a judge until May 29, 1998.<sup>168</sup> Further, the Court notes that Article 6 of the Political Constitution of Guatemala indicates that detainees must have the opportunity to appear before a competent, judicial authority within six hours of arrest.<sup>169</sup> Thus, the State's failure to provide the victim with timely access to a competent judicial authority violated the rights guaranteed by Article 7(1), 7(2), and 7(5) of the Convention.<sup>170</sup>*

The Court found unanimously that Guatemala had not violated:

Articles 4(1) (Prohibition of Arbitrary Deprivation of Life) and 4(6) (Right to Seek Amnesty, Pardon, or Commutation of Sentence) of the American Convention,<sup>171</sup> because:

*The Court determined that the State was not responsible for arbitrarily depriving Mr. Valenzuela Ávila of life by sentencing him to death, as his death was the result of an extrajudicial killing.<sup>172</sup>*

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165. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, "Declares," ¶ 7.

166. *Id.* ¶¶ 211-12.

167. *Id.* ¶ 220.

168. *Id.* ¶ 219.

169. *Id.* ¶ 220.

170. *Id.*

171. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, "Declares," ¶ 8.

172. *Id.* ¶ 156.

Articles 7(6) (Right to Have Recourse Before a Competent Court) and 25(1) (Right of Recourse Before a Competent Court) of the American Convention,<sup>173</sup> because:

*The Court decided not to discuss Articles 7(6) and 25(1) because the allegations were previously resolved in the Court's discussion of Articles 5(1) and 5(2) of the American Convention.*<sup>174</sup>

#### IV. REPARATIONS

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

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

###### 1. Judgment as a Form of Reparation

The Court indicated that the Judgment itself is a form of reparation.<sup>175</sup>

###### 2. Investigate, Identify, Prosecute, and Punish Those Responsible for the Death of the Victim

The State must continue to investigate the death of the victim with reasonable haste and due diligence.<sup>176</sup> To this end, the State must: (1) ensure that the appropriate judicial bodies have access to adequate resources; (2) confirm that the relevant victims, witnesses, and judicial authorities are provided adequate guarantees of safety; and (3) ensure that the victim's relatives are afforded the opportunity to participate during all stages of the investigation, in accordance with domestic law and the Convention.<sup>177</sup>

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173. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, "Declares," ¶ 9.

174. *Id.* ¶ 222.

175. *Id.* "Provides" ¶ 10.

176. *Id.* ¶ 233.

177. *Id.*

### 3. Investigate Acts of Torture and Identify, Prosecute, and Punish Those Responsible

Within six months, the State must initiate an investigation to properly determine the circumstances surrounding the victim's torture.<sup>178</sup> The State must allow the victim's relatives to participate in the investigative proceedings.<sup>179</sup>

### 4. Publish the Judgment

Within six months of the issuance of the Judgment, the State must publish a copy of the Judgment online, within an official gazette and a widely circulated national newspaper.<sup>180</sup> The Judgment must remain available on the State's official website for a period of one year.<sup>181</sup> The State must immediately notify the Court once each publication is made available, regardless of any time period stipulations.<sup>182</sup>

### 5. Transfer the Victim's Remains to a Cemetery in Retalhuleu

The State must transfer the remains of the victim from the burial site in La Gomera, Escuintla, to the village of Caballo Blanco in Retalhuleu.<sup>183</sup> The transfer must take place within a period of six months and in coordination with the victim's relatives.<sup>184</sup> The State is ordered to cover the costs of exhumation, transfer, and funeral rites.<sup>185</sup>

### 6. Legislative Reform

The State must adopt the appropriate legislative measures to revise the domestic penal code in order to ensure that the criminalization of torture is modified to reflect international human rights standards.<sup>186</sup> The State must work towards complete abolition of the death penalty and prohibit the legislative expansion of the penalty in accordance with the mandates of the Convention.<sup>187</sup>

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178. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 236.

179. *Id.*

180. *Id.* ¶ 238.

181. *Id.*

182. *Id.* ¶ 239.

183. *Id.* ¶ 242.

184. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 242.

185. *Id.*

186. *Id.* ¶ 243.

187. *Id.* ¶ 244.

## 7. Provide Training Sessions on the Absolute Prohibition of Torture

The State is required to provide police officers and criminal justice officials with training sessions on the impermissible use of torture.<sup>188</sup>

### *B. Compensation*

The Court awarded the following amounts:

#### 1. Pecuniary Damages

[None]

#### 2. Non-Pecuniary Damages

The Court awarded \$60,000 to Mr. Valenzuela Ávila, and directed fifty percent of the award to be distributed equally among the victim's five children.<sup>189</sup> The remaining fifty percent is to be split equally between Ludim Azucena Ruiz López, the victim's spouse and mother of three of his children, and Rosa Maria Mendoza López, mother of two of the victim's children.<sup>190</sup>

#### 3. Costs and Expenses

The Court awarded \$10,000 to Institute of Comparative Studies in Criminal Sciences of Guatemala and \$10,000 to the Institute of Criminal Public Defense as reparations for costs incurred during the domestic and international litigation of the case.<sup>191</sup> Additionally, the Court ordered the State to compensate the Legal Victims Assistance Fund in the amount of \$1,620.53 to cover the expenses incurred during the international litigation of the case.<sup>192</sup>

#### 4. Total Compensation (including Costs and Expenses ordered):

\$81,620.53

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188. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 246.

189. *Id.* ¶ 254. Note: Mr. Valenzuela Ávila's five children include: Luis Fernando Valenzuela Ruiz, Jorge Luis Valenzuela Ruiz, and Tirso Román Valenzuela Ruiz; the remaining children's names have been omitted from the Judgment due to safety concerns. *See id.* ¶ 49.

190. *Id.* ¶ 254.

191. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 258.

192. *Id.* ¶ 261.

*C. Deadlines*

The State must initiate an investigation to properly determine the circumstances surrounding the victim's torture, within six months from the date of the Judgment.<sup>193</sup>

Within six months of the issuance of the Judgment, the State must publish a copy of the Judgment online, within an official gazette and a widely circulated national newspaper.<sup>194</sup>

The Judgment must remain available on the State's official website for a period of one year.<sup>195</sup>

The State must transfer the remains of the victim to a burial site in Retalhuleu within six months of the judgment.<sup>196</sup>

The State must pay compensation for non-pecuniary damages and costs and expenses within one year of the Judgment.<sup>197</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

## VI. COMPLIANCE AND FOLLOW-UP

[None]

## VII. LIST OF DOCUMENTS

*A. Inter-American Court*

## 1. Preliminary Objections

[None]

## 2. Decisions on Merits, Reparations and Costs

Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 386, (Oct. 11, 2019).

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193. Valenzuela Ávila v. Guatemala, Merits, Reparations, and Costs, ¶ 236.

194. *Id.* ¶ 238.

195. *Id.*

196. *Id.* ¶ 242.

197. *Id.* ¶ 262.



### 3. Provisional Measures

*Valenzuela Ávila v. Guatemala*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 386, (Oct. 11, 2019).

*Valenzuela Ávila v. Guatemala*, Resolution of the President, Inter-Am Ct. H.R. (ser. C) No. 386, (Mar. 4, 2019).

*Valenzuela Ávila v. Guatemala*, Resolution of the President, Call for Hearing, Inter-Am. Ct. H.R. (ser. C) No. 386, (Feb. 15, 2019).

### 4. Compliance Monitoring

[None]

### 5. Review and Interpretation of Judgment

[None]

#### *A. Inter-American Commission*

##### 1. Petition to the Commission

[None]

##### 2. Report on Admissibility

*Valenzuela Ávila v. Guatemala*, Admissibility Report, Report No. 24/04, Inter-Am. Comm'n H.R., Case No. 12.452, (Feb. 26, 2004).

##### 3. Provisional Measures

[None]

##### 4. Report on Merits

*Valenzuela Ávila v. Guatemala*, Report on Admissibility and the Merits, Report No. 132/17, Inter-Am. Comm'n H.R., Case No. 12.452, (Oct. 25, 2017).

## 5. Application to the Court

Valenzuela Ávila v. Guatemala, Letter of Submission, Inter-Am. Comm'n H.R., Case No. 12.452, (Apr. 19, 2018).

## VIII. BIBLIOGRAPHY

[None]