

Villaseñor Velarde et al. v. Guatemala

ABSTRACT¹

This case is about the judge who presided over the investigation into the murder of Myrna Mack Chang. The judge and her family had been threatened and harassed for over twenty years by unidentified men. The Court found Guatemala in violation 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 Court), and 25(1) (Right of Recourse Before a Competent Court), of the American Convention due to the State's failure to properly investigate the threats and acts of harassment.

I. FACTS

A. Chronology of Events

July 1991: Ms. María Eugenia Villaseñor Velarde, a judge, presides over the case involving the murder of Ms. Myrna Mack Chang, an anthropologist and human rights activist, in Guatemala City in 1990.² She orders the arrest of Mr. Noel de Jesús Betata Alvarez.³

April 1, 1992: Ms. Villaseñor Velarde is elected by Congress to serve as the Titular Magistrate for the Court of Appeals.⁴

1994: Ms. Villaseñor Velarde serves as a judge in the Third Court of Appeals.⁵ Ms. Villaseñor Velarde publishes a book, "Myrna Mack and

1. Joanna Krause, Author; Pamela Huynh, Editor; Elizabeth Russo, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, Report No. 46/16, Inter-Am. Comm'n H.R., Case No. 11.388, ¶¶ 49, 52 (Nov. 29, 2016). Myrna Mack Chang v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 101. ¶ 1 (Nov. 25, 2003).

3. *Id.* ¶ 52.

4. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 374, ¶ 34 (Feb. 5, 2019).

5. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 55.

Her Encounter with Justice,” which addresses the murder of Ms. Mack, the murders of Guatemalan judges, and the judicial response.⁶

Between February 1994 and July 21, 1994: Ms. Villaseñor Velarde is repeatedly threatened and harassed by unidentified men; they rob her, attempt to break into her home, vandalize her property and threaten to kill her on separate occasions.⁷

July 21, 1994: In response to the recurrent acts of harassment, which Ms. Villaseñor Velarde believes is a direct result of her position as a judge, and her publication of the book, she requests that the Inter-American Commission on Human Rights (“Commission”) grant precautionary measures for herself and two other Court of Appeals judges, Mr. Mario Salvador Jiménez and Mr. Héctor Orellana.⁸

July 25, 1994: In response to an unidentified driver attempting to force open the gate of the Mack Foundation with his car,⁹ an organization associated with Ms. Mack,¹⁰ Ms. Villaseñor Velarde requests that the Human Rights Prosecutor provide her with increased police protection for her safety.¹¹

The Commission requests that Guatemala adopt precautionary measures to protect the lives and personal integrities of Ms. Villaseñor Velarde, Mr. Salvador Jiménez, and Mr. Orellana due to the ongoing harassment that each of them have endured to date.¹²

July 28, 1994: The Department of Investigation and Prosecution of the Public Prosecutor’s Office declares that the files relating to the threats against Ms. Villaseñor Velarde have disappeared.¹³

August 1994: The State provides Ms. Villaseñor Velarde with four National Civilian Police officers as her security guards.¹⁴

6. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 56.

7. *Id.* ¶ 61, 62.

8. *Id.* ¶ 6.

9. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 49.

10. *Id.* ¶ 39.; *see also* FUNDACIÓN MYNA MACK, <https://www.myrnamack.org.gt> (last visited Feb. 16, 2020).

11. *Id.* ¶ 93.

12. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 7.

13. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 93.

14. *Id.* ¶ 70.

August 29, 1994: Three unknown men beat up Mr. Miguel Pacheco, a policeman guarding Ms. Villaseñor Velarde.¹⁵ The men question Mr. Pacheco about Ms. Villaseñor Velarde's activities, travel routes, and connection to Ms. Mack's sister.¹⁶ The men also ask Mr. Pacheco about Ms. Villaseñor Velarde's two year old daughter, Ms. Beatriz Eugenia Villaseñor Velarde.¹⁷ The men then threaten Mr. Pacheco, telling him to "get away from here because we, the people who live here, are going to kill her."¹⁸

The State files a denunciation of Mr. Pacheco's beating and specifies the Second Magistrate's Criminal Court's Office of the Prosecutor General of the Republic, Guatemala, to investigate the beating.¹⁹

August 31, 1994: Following her request for security from the Ministry of Defense, Ms. Villaseñor Velarde holds a press conference in which she declares that the State is responsible for any harm that may befall her.²⁰

Early September 1994: Unknown men attempt to kidnap Ms. Villaseñor Velarde's daughter.²¹

Ms. Villaseñor Velarde receives multiple anonymous phone calls threatening her life because she published a book about Ms. Mack.²²

September 1994: The Directorate General of the National Police appoint personnel to protect Ms. Villaseñor Velarde and her family.²³

September 1, 1994: Because of the ongoing harassment and threats, Ms. Villaseñor Velarde leaves Guatemala for Costa Rica, after the Supreme Court granted her request for a thirty-day leave.²⁴

The Presidential Commission of the Executive's Policy on Human Rights (Presidente de la Comisión Presidencial Coordinadora de la Política del Ejecutivo en Materia de Derechos Humanos;

15. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 50. ; Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 63.

16. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 63.

17. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 50. ; Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶¶ 50, 64.

18. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 63.

19. *Id.* ¶ 88.

20. *Id.* ¶ 96.

21. *Id.* ¶ 64.

22. *Id.* ¶ 64.

23. *Id.* ¶ 97.

24. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 65.

“COPREDEH”), argues that Ms. Villaseñor Velarde leaves Guatemala not to ensure her safety, but to attend a conference.²⁵

The State provides security to Ms. Villaseñor Velarde during this time.²⁶

September 5, 1994: The Human Rights Ombudsman (Procurador de los Derechos Humanos) issues a resolution concluding that Ms. Villaseñor Velarde’s rights to integrity and safety have been violated because of the ongoing threats and intimidation.²⁷ The resolution further states that Guatemala failed its duty to protect Ms. Villaseñor Velarde’s right to safety in neglecting to arrange security measures for her.²⁸ Finally, the Ombudsman requests that the Ministry of the Interior conduct a thorough investigation.²⁹

September 22, 1994: The Human Rights Office of the Archdiocese of Guatemala present a petition on behalf of Ms. Villaseñor Velarde to the Commission, which claims that the State is responsible for the threatening and intimidating acts against Ms. Villaseñor Velarde due to her status as a judge, and for failure to investigate such acts, failure to identify those responsible for perpetuating such acts and failure to punish those responsible.³⁰

September 26, 1994: COPREDEH drafts a report declaring that Ms. Villaseñor Velarde does not allege that the State is responsible for the threats made against her.³¹

October 1994: Upon Ms. Villaseñor Velarde’s return to Guatemala from Costa Rica,³² Congress appoints her to the Ninth Division of the Appeals Court in Antigua.³³

October 16, 1994: Ms. Villaseñor Velarde files an amparo action with the Supreme Court, seeking protective services guaranteed by her constitutional right to life, safety, and means of ensuring judicial

25. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 52.

26. *Id.* ¶ 70.

27. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 66.

28. *Id.* ¶ 66.

29. *Id.* ¶ 66.

30. *Id.* ¶ 1.

31. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 100 n.167.

32. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 65.

33. *Id.* ¶ 67.

201x]

Desktop Publishing Example

105

independence.³⁴ She further requests her reinstatement as a judge in the Court of Appeals for criminal matters.³⁵ This petition is denied.³⁶

December 1995: In response to complaints filed with the Human Rights Ombudsman and the Police, the police blame Ms. Villaseñor for getting them into trouble.³⁷

The President of the Judiciary assigns two security guards, and replacements, to ensure Ms. Villaseñor Velarde's safety.³⁸

Between December 1995 and May 1997: Ms. Villaseñor Velarde endures more harassment from unidentified men, including her home's telephone line being cut and persistent threats.³⁹

Ms. María Villaseñor Velarde has four security guards for her family's protection who rotate every eight days.⁴⁰ During each shift, one guard protects Ms. María Villaseñor Velarde while another guard protects her mother and daughters.⁴¹ Ms. María Villaseñor Velarde pays for the guards' meals and COPREDEH promises to speak to the Director General of the Civilian National Police to address this issue.⁴²

January 1997: Ms. María Villaseñor Velarde presides on an appellate panel that overturns a death penalty in a highly publicized kidnapping case.⁴³ Public figures, such as the Attorney General, denounce this decision.⁴⁴

The four guards from the Civilian National Police that were assigned to protect Ms. María Villaseñor Velarde and her family are withdrawn.⁴⁵

February 1998: Although the Ninth Chamber of the Court of Appeals receives a case about the murder of an escort of the Guatemalan president,

34. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 67.

35. *Id.*

36. *Id.*

37. *Id.* ¶ 89.

38. *Id.* ¶ 98.

39. *Id.* ¶¶ 54, 57, 68, 69, 93.

40. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 99.

41. *Id.*

42. *Id.* ¶ 100.

43. *Id.* ¶ 57.

44. *Id.* ¶ 70.

45. *Id.* ¶ 99.

Ms. Villaseñor Velarde and the President of the Ninth Chamber are transferred out of the case after receiving death threats.⁴⁶

March 16, 1998: Ms. Villaseñor Velarde receives an order to relocate to the Tenth Division of the Court of Appeals, which is located in Guatemala City.⁴⁷

May 24, 1999: The Special Cases Attorney of the Public Prosecutor's Office alleges that Ms. Villaseñor Velarde received payment in exchange for her order to release former Guatemalan President Efraín Ríos Montt.⁴⁸ In response to such an allegation of corruption, Ms. Villaseñor Velarde claims that she filed a complaint with the Human Rights Ombudsman.⁴⁹

July 16, 1999: A newspaper publishes an article alleging that a former Attorney General and the General Presidential Staff was responsible for making recent slanderous claims against Ms. Villaseñor Velarde as part of a campaign to discredit her for her involvement in the Myrna Mack trial.⁵⁰

July 23, 1999: The Human Rights Ombudsman issues a resolution criticizing the Special Cases Attorney's allegations against Ms. Villaseñor Velarde as meritless, reprimanding the Attorney "for making accusations of corruption against (Ms. María Villaseñor Velarde) that were detrimental to her honor."⁵¹

August 1999: The Supreme Court finds that Ms. Villaseñor Velarde did not interfere with the judicial process regarding Mr. Ríos Montt.⁵²

December 1999: Ms. Villaseñor Velarde presides as a judge for the Third Division of the Court of Appeals.⁵³

June 20, 2000: Ms. Villaseñor Velarde's brother-in-law observes a man, believed to be a former security guard, watching Ms. Villaseñor

46. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 57.

47. *Id.* ¶ 71.

48. *Id.* ¶ 58.

49. *Id.* ¶ 72.

50. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 58.

51. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 72.

52. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 135.

53. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 73.

201x]

Desktop Publishing Example

107

Velarde's home.⁵⁴ After confronting the man, he tells her brother-in-law that three men were planning to murder her sister, Ms. Rose Villaseñor Velarde.⁵⁵ Ms. Villaseñor Velarde's brother-in-law immediately alerts her of the man's presence,⁵⁶ she calls the police and the man is arrested.⁵⁷

Ms. Villaseñor Velarde asks the Public Prosecutors' Office to carry out an investigation into such ongoing threats.⁵⁸

October 2001: One of Ms. Villaseñor Velarde's security guards goes on vacation, but no replacement is provided for her protection.⁵⁹ Ms. Villaseñor Velarde complains to the Civil National Police Department for Protection and Security Services (Comisaría de Servicio de Protección y Seguridad de la Policía Nacional Civil; "SERPROSE") personnel chief.⁶⁰

October 3, 2001: General Edgar Godoy and Colonels Juan Valencia and Juan Oliva make statements criticizing Ms. Villaseñor Velarde's book on Ms. Mack.⁶¹ These statements coincide with the start of the trial against those alleged as responsible Ms. Mack's murder.⁶²

October 9, 2001: The Civil National Police Department for Protection and Security Services send a replacement security guard for Ms. Villaseñor Velarde's protection.⁶³

November 14, 2001: The Director General of the National Civil Police orders the Criminal Investigation Service to investigate threats made against Ms. Villaseñor Velarde.⁶⁴

March 7, 2002: In response to her complaints regarding the reduction in her security detail, the Human Rights Ombudsman issues a resolution⁶⁵ declaring that the SERPROSE personnel chief is responsible for the

54. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 74.

55. *Id.*

56. *Id.*

57. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 59.

58. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 74.

59. *Id.* ¶ 101.

60. *Id.* ¶ 101.

61. *Id.* ¶ 75.

62. *Id.* ¶ 75.

63. *Id.* ¶ 101.

64. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 93.

65. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 102.

failure to provide a timely replacement for Ms. Villaseñor Velarde's protection.⁶⁶

Between January 1, 2003 and September 18, 2003: Threats and acts of harassment against Ms. Villaseñor Velarde continue; her niece, Ms. Julia María Balconi Villaseñor, is struck and killed by a car,⁶⁷ her sister observes an unknown man trying to force entry into their home⁶⁸ and Ms. Villaseñor Velarde's vehicle is vandalized again.⁶⁹

A police officer signs a report detailing different events that happened to Ms. Villaseñor Velarde between May and September.⁷⁰

February 28, 2004: Ms. Villaseñor Velarde tells COPREDEH that the precautionary measures have been effective and that her security detail has been providing adequate protection for her.⁷¹

February 2005: Ms. Villaseñor Velarde serves as a judge for the Fifth Division of the Court of Appeals, located in Quetzaltenango, and oversees criminal, drug trafficking and environmental criminal cases.⁷²

July 5, 2005: The Public Ministry receives an official letter from the Supreme Court containing Ms. Villaseñor Velarde complaints of three separate threats made against her.⁷³

August 22, 2005: A group of unidentified individuals enter Ms. Villaseñor Velarde's home, beat up her sister, Ms. Rosa Antonieta Villaseñor Velarde, steal Ms. Villaseñor Velarde's family members' passports and draw a swastika on their door.⁷⁴

November 4, 2005: The State requests that the Telecommunications of Guatemala provide specific details regarding incoming phone calls on Ms. Villaseñor Velarde's phone line.⁷⁵

66. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 102.

67. *Id.* ¶ 76.

68. *Id.*; Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 62.

69. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 76.

70. *Id.* ¶ 93.

71. *Id.* ¶ 103.

72. *Id.* ¶ 78.

73. *Id.* ¶ 92.

74. *Id.* ¶ 79.

75. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 121.

201x]

Desktop Publishing Example

109

July 19, 2007: An assistant prosecutor visits Ms. Villaseñor Velarde regarding her complaints about events that took place in July 2005.⁷⁶ The State takes no further action in investigating the events.⁷⁷

November 21, 2007: An individual identifying themselves as Ms. Karina Montes (“KM”), writes to the President of the Guatemalan Supreme Court, alleging Ms. Villaseñor Velarde is “capable” of murder to maintain her authority, has threatened and “removed” individuals who hinder her, and has done so through her sponsorship by organized criminal enterprises.⁷⁸ The identity of Ms. Karina Montes is unknown to Ms. Villaseñor Velarde.⁷⁹

December 10, 2007: Ms. Villaseñor Velarde files a complaint regarding the KM email and recent threats that she received with the Public Prosecutor’s Office.⁸⁰

January 2008: Ms. Villaseñor Velarde requests a status update from the Judiciary regarding investigations into her recently filed complaints about events that took place in November 2007 because to date, she has not received a response from any judicial authority.⁸¹

January 2, 2008: Ms. Villaseñor Velarde’s December 10 complaints are forwarded to the Human Rights Prosecutor of the Unit of Crimes Committed Against Operators of Justice (Unidad de Delitos Cometidos contra Operadores de Justicia de la Fiscalía de Derechos Humanos).⁸² Following an investigation, the Public Ministry ends continued inquiries due to the lack of evidence.⁸³

February 12, 2008: Ms. Villaseñor Velarde provides a testimonial to the State detailing threats made against her.⁸⁴

76. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 91.

77. *Id.* ¶ 91.

78. *Id.* ¶ 80; Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 64.

79. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 81.

80. *Id.* ¶ 92. ; Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 123.

81. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 92.

82. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 123.

83. *Id.* ¶ 123.

84. *Id.* ¶ 124.

February 13, 2008: Files containing personal information are stolen from Ms. Villaseñor Velarde's office in the Fifth Division of the Court of Appeals.⁸⁵

March 5, 2008: The State reports that threatening phone calls that Ms. Villaseñor Velarde received cannot be traced due to technical limitations.⁸⁶

March 12, 2009: The Human Rights Ombudsman issues a resolution regarding Ms. Villaseñor Velarde's allegations of ongoing harassment and threats to her safety.⁸⁷ The Ombudsman concludes Ms. Villaseñor Velarde's right to security and judicial independence has been violated.⁸⁸ Furthermore, the resolution declares sufficient circumstantial evidence exists to hold Guatemala responsible for the violations because of its failure to guarantee Ms. Villaseñor Velarde's safety.⁸⁹

October 19, 2012: COPREDEH requests that the Deputy Director General of SERPROSE assess Ms. Villaseñor Velarde's current risks.⁹⁰ As part of this assessment, Ms. Villaseñor Velarde states that she currently has two police officers assigned to her for protection and requests that the Civilian National Police continue to provide her with security detail.⁹¹

October 30, 2012: State police personnel conduct a risk analysis for Ms. Villaseñor Velarde and the Director General of SERPROSE concludes that there is a "medium risk" because no recent attacks have been made against her.⁹² This Order recommends the termination of Ms. Villaseñor Velarde's security detail.⁹³

September 11, 2013: The Civilian National Police Inspector, at the direction of COPREDEH, records the decision to terminate Ms.

85. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 82; Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 65.

86. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 124.

87. *Id.* ¶ 83.

88. *Id.* ¶ 84.

89. *Id.* ¶ 84.

90. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 105.

91. *Id.* ¶¶ 105–06.

92. *Id.* ¶ 72.

93. *Id.* ¶ 107.

201x]

Desktop Publishing Example

111

Villaseñor Velarde's security detail.⁹⁴ Following this decision, Ms. Villaseñor Velarde's security detail is removed.⁹⁵

2014: Ms. Villaseñor Velarde retires, ending her judicial career.⁹⁶

November 10, 2015: The President of the Judiciary refuses to issue an order finding that Ms. Villaseñor Velarde did not intervene in the case of Mr. Ríos Montt because she had the constitutional right to reply.⁹⁷

B. *Other Relevant Facts*

In the Commission's 1993 report on human rights issues in Guatemala, the Commission notes that judges often lack security, and thus, face risk to both life and career because of the cases they adjudicate.⁹⁸ In 2001, the Commission notes that threats to Guatemalan judges is widespread and often stems from efforts to influence judicial rulings.⁹⁹ Additionally, the Commission notes that this problem is exacerbated by Guatemala's failure to respond accordingly.¹⁰⁰ The Commission demands that Guatemala adopt all necessary measures to ensure the safety and independence of the judiciary.¹⁰¹

In a January 2000 report, the United Nations' Special Rapporteur notes that Guatemalan judges "have been the victims of threat[s], act[s] of intimidation, and harassment."¹⁰² Even where security forces are assigned, the Rapporteur notes that often the personnel assigned is "not ideal and some even have criminal records."¹⁰³ The Special Rapporteur, again, reiterates the importance of protecting the judiciary in an October 2009 Report.¹⁰⁴

In a 2013 report, the Commission notes that between 2009 and 2011, three Guatemalan judges—and at least seven justice operators—were killed.¹⁰⁵ Further, between 2002 and 2012, 640 judges and

94. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 108.

95. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 71.

96. *Id.* ¶ 34.

97. *Id.* ¶ 135.

98. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 41.

99. *Id.* ¶ 42.

100. *Id.* ¶ 43.

101. *Id.* ¶ 45.

102. *Id.* ¶ 46.

103. *Id.* ¶ 46.

104. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 47.

105. *Id.* ¶ 48.

magistrates report that they had been subjected to threats and intimidation, twenty-four were assaulted, and five were kidnapped.¹⁰⁶

II. PROCEDURAL HISTORY

A. *Before the Commission*

November 29, 2016: The Commission adopts Admissibility and Merits Report No. 46/16.¹⁰⁷ The Commission holds that Guatemala violated 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 Court), Article 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Ms. María Villaseñor Velarde.¹⁰⁸ Additionally, the Commission holds that Guatemala violated Article 5(1) (Right to Physical, Mental, and Moral Integrity), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Ms. Beatriz Villaseñor Velarde, Mr. Francis Villaseñor, and Ms. Rosa Villaseñor Velarde.¹⁰⁹

With regards to admissibility, the State argues that since investigations into threats made against Ms. Villaseñor Velarde are ongoing, the petitioners have not exhausted domestic remedies.¹¹⁰

Nevertheless, the Commission invokes the exception to the exhaustion of domestic remedies and states that twenty-one years have elapsed since Guatemala began investigating the threats made against Ms. Villaseñor Velarde.¹¹¹ Thus, the Commission finds that exhaustion of domestic remedies is inapplicable due to the unwarranted delay.¹¹² With respect to any argument that the petition was time-barred, the Commission holds that the six-month rule does not apply in cases where a state fails to exhaust domestic remedies due to unwarranted delays.¹¹³

With regards to the merits, while the State acknowledges Ms. Villaseñor Velarde's role as a public servant, the State argues it cannot be held responsible for the threats made against Ms. Villaseñor Velarde

106. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 48.

107. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 2.

108. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 137.

109. *Id.* ¶ 137.

110. *Id.* ¶ 21.

111. *Id.* ¶ 32.

112. *Id.* ¶¶ 32–33.

113. *Id.* ¶ 34.

201x]

Desktop Publishing Example

113

as they were carried out by non-State actors.¹¹⁴ Additionally, Guatemala notes that it provided Ms. Villaseñor Velarde with security guards for over nineteen years, only withdrawing the protection after Ms. Villaseñor Velarde's professional role had significantly shifted and the State's risk assessment showed Ms. Villaseñor Velarde had not been subjected to renewed threats.¹¹⁵ Finally, Guatemala argues that Ms. Villaseñor Velarde's family members do not have a cognizable claim, as they fail to show direct or indirect harm.¹¹⁶

Despite Guatemala's arguments on the merits, the Commission holds that since Ms. Villaseñor Velarde is a judge, the State bears an obligation to ensure Ms. Villaseñor Velarde's personal integrity.¹¹⁷ The Commission notes that Ms. Villaseñor Velarde filed multiple formal complaints alleging threats made against her.¹¹⁸ While the Commission notes the State has taken some steps to ensure Ms. Villaseñor Velarde's safety,¹¹⁹ the Commission ultimately finds these protective measures insufficient.¹²⁰

In light of the foregoing violations, the Commission recommends the State: (1) provide full reparations for any human rights violations ultimately found, (2) carry out an independent investigation into complaints filed by Ms. Villaseñor Velarde, (3) impose appropriate disciplinary penalties for any steps that led to the violations found, and (4) implement steps to ensure thorough investigations into any future complaints of threats made against judges.¹²¹

B. *Before the Court*

March 15, 2017: The Commission submits the case to the Court after the State failed to adopt its recommendations.¹²²

1. Violations Alleged by Commission¹²³

To the detriment of Ms. Villaseñor Velarde:

114. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶ 22.

115. *Id.* ¶¶ 24–25.

116. *Id.* ¶ 20.

117. *Id.* ¶ 114.

118. *Id.* ¶ 124.

119. *Id.* ¶ 132.

120. Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, ¶¶ 134–135.

121. *Id.* ¶ 139.

122. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 1.

123. *Id.* ¶ 175.

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 Court)

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

all in relation to:

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

To the detriment of Ms. Beatriz Villaseñor Velarde, Mr. Francis Villaseñor, and Ms. Rosa Villaseñor Velarde:

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

in relation to:

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

2. Violations Alleged by Representatives of the Victims¹²⁴

Same Violations Alleged by Commission, plus:

Article 11 (Right to Privacy) of the American Convention.

June 8, 2018: The Court receives an amicus curiae brief from the International Law Studies Group of Human Rights (GEDI-DH) of the Federal University of Minas Gerais, Brazil.¹²⁵ The brief discusses the need for an independent judiciary, and the State's obligation which arises from that need. Furthermore, the brief addresses the heightened need to ensure the judicial safety in light of a judge's gender and involvement in human rights cases.¹²⁶

III. MERITS

A. *Composition of the Court*¹²⁷

Eduardo Ferrer Mac-Gregor Poisot, President

Eduardo Vio Grossi, Judge

Humberto A. Sierra Porto, Judge

124. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 6.

125. *Id.* ¶ 9.

126. *Id.* ¶ 9 n.8.

127. Judge Ricardo Pérez Manrique did not deliberate nor participate in this case because he joined the Court while the present case was being decided. *See Id. n.**

201x]

Desktop Publishing Example

115

Elizabeth Odio Benito, Judge
Eugenio Raúl Zaffaroni, Judge
L. Patricio Pazmiño Freire, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on the Merits*

February 5, 2019: The Court issues its Judgment on Merits, Reparations, and Costs.¹²⁸

The Court found unanimously that Guatemala had violated:

Articles 5(1) (Right to Physical, Mental, and Moral Integrity), 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Court), and 25(1) (Right of Recourse Before a Competent Court), in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Ms. María Villaseñor Velarde, because:

The Court noted that states have an obligation to ensure the free exercise of the judicial process.¹²⁹ This obligation includes guaranteeing the judiciary remains free from external interference.¹³⁰ While the state must protect the judiciary, the Court noted that unfavorable press, investigations into possible illegal acts performed by the judiciary, and court filings challenging rulings, do not inherently constitute threats or intimidation, as all are normal functions of—or checks on—the judicial process and do not constitute threats or intimidation.¹³¹ Thus, Guatemala does not bear the burden of protecting judges from such acts where they do not constitute intimidation or undue pressure on the judiciary.¹³²

That being said, the Court concluded that—in light of the frequency and ongoing threats made against Ms. Villaseñor Velarde—the State failed to ensure Ms. Villaseñor Velarde’s safety and judicial independence.¹³³

128. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 175.

129. *Id.* ¶ 83.

130. *Id.* ¶ 84.

131. *Id.* ¶¶ 85–86.

132. *Id.* ¶ 86.

133. *Id.* ¶ 90.

*The State argued it had been notified only twice of threats made against Ms. Villaseñor Velarde.*¹³⁴ *The Court, however, noted several additional incidents alerting the State to the ongoing threats.*¹³⁵ *The Court concluded, given the extent of these events, that the State had sufficient knowledge of the ongoing threats to Ms. Villaseñor Velarde.*¹³⁶

*Additionally, the Court noted that these incidents were not isolated, but were part of a larger pattern of intimidation against Ms. Villaseñor Velarde.*¹³⁷ *In reaching this conclusion, the Court noted that Ms. Villaseñor Velarde had given the State sufficient notice of the threats made against her, including her complaint filed prior to July 28, 1994, and two subsequent complaints filed on February 10, 1997.*¹³⁸ *The Court acknowledged that the State provided information of efforts taken to investigate Ms. Villaseñor Velarde's claims to intimidation.*¹³⁹ *However, the Court found that the State's investigations were extremely limited and spread over a twelve-year period,*¹⁴⁰ *ultimately concluding that the State's failure to investigate both the threats alluded to by the "Honduran man" on January 17, 1996, and the denunciation by "KM" on November 21, 2007, represented a failure of the State's duty to timely investigate.*¹⁴¹

*Finally, the Court noted that ensuring that judges can conduct their role free from threat and intimidation is not a judicial privilege, but rather, the State's obligation to ensure a free and independent judiciary.*¹⁴² *As such, the Court found that the State's failure to timely investigate placed Ms. Villaseñor Velarde at undue risk and threat, violating her right to personal integrity.*¹⁴³

*Given the above, the Court found Guatemala had failed to ensure the personal and judicial integrity of Ms. Villaseñor Velarde.*¹⁴⁴

The Court found unanimously that Guatemala had not violated:

134. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶¶ 91–92.

135. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 93.

136. *Id.* ¶ 95.

137. *Id.* ¶ 116.

138. *Id.* ¶ 113.

139. *Id.* ¶ 119.

140. *Id.* ¶¶ 121–22.

141. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 126.

142. *Id.* ¶ 130.

143. *Id.* ¶¶ 131–32.

144. *Id.* ¶ 132.

201x]

Desktop Publishing Example

117

Article 11 (Right to Privacy) of the Convention, to the detriment of Ms. María Villaseñor Velarde,¹⁴⁵ because:

Since the parties did not provide specific arguments about the specific threats rising to the level of human rights violations, the Court could not conclude whether the acts constituted undue acts of intimidation or pressure that affected Ms. Villaseñor Velarde's honor or dignity.¹⁴⁶ Furthermore, the Court held that the State had sufficiently investigated threats made against Ms. Villaseñor Velarde's professional reputation, including investigating the KM letter and allegations of corruption made against Ms. Villaseñor Velarde.¹⁴⁷

Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 11 (Right to Privacy) of the Convention, to the detriment of Ms. Beatriz Villaseñor Velarde, Mr. Francis Villaseñor, and Ms. Rosa Villaseñor Velarde,¹⁴⁸ because:

The Court held that as Ms. Villaseñor Velarde's individual personal safety was not threatened, her immediate family members did not have a cognizable claim of violation of personal integrity or privacy.¹⁴⁹ The Court found that, while the State owed a duty to investigate threats made against Ms. Villaseñor Velarde given her role in the judiciary, the State did not owe this same duty to Ms. Villaseñor Velarde's family members.¹⁵⁰ Furthermore, though Ms. Villaseñor Velarde's family members may have experienced fear due to their proximity to Ms. Villaseñor Velarde,¹⁵¹ the relatives' claims were based on threats and acts not directly attributable to the State.¹⁵²

C. Dissenting and Concurring Opinions

1. Concurring Opinion of Judge Humberto Antonio Sierra Porto

In a separate opinion, Judge Humberto Antonio Sierra Porto (“Judge Sierra Porto”) concurred with the Court’s conclusion, but stated that the

145. *Id.* ¶ 175.

146. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 87.

147. *Id.* ¶¶ 135, 139.

148. *Id.* ¶ 175.

149. *Id.* ¶¶ 144–45.

150. *Id.* ¶ 144.

151. *Id.* ¶ 145.

152. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 145.

Court should have noted more instances where the State owed a duty to investigate.¹⁵³ Judge Sierra Porto questioned whether sufficient evidence existed to establish the State had been informed of multiple threats against Ms. Villaseñor Velarde.¹⁵⁴ However, Judge Sierra Porto held State's failure to respond to the August 19, 1994 threat was sufficient to establish a breach of the duty to investigate threats made against the judiciary.¹⁵⁵

IV. REPARATIONS

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

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

1. Publish the Judgment

The Court determined that the Judgment is a *per se* form of reparation.¹⁵⁶ It ordered the State make the following publications within six months from the issuance of the Judgment: 1) a summary of the Judgment in an official, widely-circulated newspaper, the Official Gazette of the State, and the Judicial Weekly of the State, and 2) the Judgment in its entirety on the Ministry of Foreign Affairs website accessible by the public, for at least one year.¹⁵⁷

2. Issue Compliance Report

The Court ordered the State issue a compliance report within one year of the Judgment.¹⁵⁸

A. *Compensation*

The Court awarded the following amounts:

153. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, Separate Opinion of Judge Humberto Antonio Sierra Porto, Inter-Am. Ct. H.R. (ser. C) No. 374, ¶ 2 (Feb. 5, 2019).

154. *Id.* ¶ 41.

155. *Id.* ¶ 41.

156. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 175.

157. *Id.* ¶ 157.

158. *Id.* ¶ 175.

201x]

Desktop Publishing Example

119

1. Pecuniary Damages

The Court awarded \$30,000 to Ms. Villaseñor Velarde as compensation for immaterial damage.¹⁵⁹

2. Non-Pecuniary Damages

[None]

3. Costs and Expenses

The Court ordered Guatemala pay \$4,688.10 to the Legal Assistance Fund to reimburse expenses incurred during the litigation process within six months of the Judgment.¹⁶⁰

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

\$34,688.10

B. *Deadlines*

The State must pay damages to Ms. Villaseñor Velarde within one year.¹⁶¹ Additionally, the State must publicize the Judgment within six months.¹⁶² The State must reimburse fees to the Legal Assistance Fund within six months.¹⁶³ Finally, the State must issue a compliance report within one year of the Judgment.¹⁶⁴

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

159. Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, ¶ 165.

160. *Id.* ¶ 168.

161. *Id.* ¶ 169.

162. *Id.* ¶ 157.

163. *Id.* ¶ 168.

164. *Id.* ¶ 175.

120

Loy. L.A. Int'l & Comp. L. Rev.

[Vol. XX:nnn]

[None]

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 374, \(Feb. 5, 2019\).](#)

[Villaseñor Velarde et al. v. Guatemala, Merits, Reparations, and Costs, Separate Opinion of Judge Humberto Antonio Sierra Porto, Inter-Am. Ct. H.R. \(ser. C\) No. 374, \(Feb. 5, 2019\).](#)

3. Provisional Measures

[Villaseñor Velarde et al. v. Guatemala, Provisional Matters, Order of the President, Inter-Am. Ct. H.R. \(ser. E\) \(April 24, 2018\).](#)

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[None]

A. *Inter-American Commission*

1. Petition to the Commission

[Not Available]

2. Report on Merits & Admissibility

201x] *Desktop Publishing Example* 121

[Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, Report No. 46/16, Inter-Am. Comm'n H.R., Case No. 11.388, \(Nov. 29, 2016\).](#)

3. Provisional Measures

[None]

4. Report on Merits & Admissibility

[Villaseñor Velarde et al. v. Guatemala, Report on Admissibility and Merits, Report No. 46/16, Inter-Am. Comm'n H.R., Case No. 11.388, \(Nov. 29, 2016\).](#)

5. Application to the Court

[Not Available]

VIII. BIBLIOGRAPHY

Fundación Myna Mack, <https://www.myynamack.org.gt> (last visited Feb. 16, 2020).