

Case of García and Family Members v. Guatemala

ABSTRACT¹

This case is about the arbitrary arrest and forced disappearance, in 1984, during Guatemala's dictatorship, of Mr. Edgar Fernando García, a teacher and syndicalist. In response, his wife and mother created the Grupo de Apoyo Mutuo ("GAM") one of the most prominent organizations active in Guatemala to seek justice for those who had been disappeared and their families. The States admitted responsibility for several violations and partial responsibility for others eventually, the Court found violation of several articles of the American Convention.

I. FACTS

A. Chronology of Events

1980: Mr. Edgar Fernando García,² an elementary school teacher and secretary of the labor union *Industria Centro Americana de Vidrio S.A.* ("CAVISA"), is married to Mrs. Nineth Varenca Montenegro Cottom, with whom he has a daughter, Alejandra García Montenegro.³ Acting on behalf of the University Students Association, Mr. García is granted permission to carry out a demonstration.⁴

February 18, 1984: Mr. García is walking down 3rd Avenue and 7th Street, in an area known as Zone 11, when uniformed police officers

1. Ava Rubin, Author; Theodore Nguyen, Editor; Kathryn Benson, Chief IACHR Editor; Cesare Romano, Faculty Advisor.

2. García and Family Members v. Guatemala, Merits, Reparations and Costs, Judgment, Inter-Am Ct. H.R. (ser. C) No. 258, ¶ 62 (Nov. 29, 2012). Mr. García also has connections to the Negotiating Committee on the Collective Working Conditions Agreement, the Patriotic Youth for Labor of the Guatemalan Labor Party, the *Universidad de San Carlos de Guatemala*, and the "Oliverio Castañeda de León" University Students Association. Mrs. Maria Emilia García is Mr. García's mother. *Id.* ¶¶ 62–63.

3. *Id.* ¶¶ 62–64.

4. *Id.* ¶ 64.

stop him.⁵ Mr. García attempts to run away, but the National Police injure and arrest him.⁶

February 19, 1984: In the early morning hours, Mrs. Montenegro Cottom hears a whistle similar to the one her husband used when he arrived home.⁷ She opens the door to heavily armed men, who subsequently search the house and take documents belonging to Mr. García.⁸

February 22, 1984: CAVISA files an application for habeas corpus on behalf of Mr. García.⁹ The Supreme Court of Justice requests information about Mr. García's detention from the heads of the National Police, the Internal Investigations Department, the Drugs and Narcotics Section, and the Specialized Technical Investigations Department.¹⁰

February 23, 1984: Mrs. Montenegro Cottom holds a press conference when the State does not respond to the Supreme Court's request.¹¹

March 2, 1984: Mrs. Montenegro Cottom files a complaint with the Vice Minister of Defense, who requests information about Mr. García from the Director General of the National Police.¹² The Director informs the Vice Minister that "no one of that name" was arrested on February 18, 1984.¹³

June 4, 1984: Mrs. Montenegro Cottom and Mrs. María Emilia García, Mr. García's mother,¹⁴ help found the *Grupo de Apoyo Mutuo* ("GAM").¹⁵ When Mr. García first disappears, family members of other missing persons approach Mrs. Montenegro Cottom for support.¹⁶ The group provides support to thousands of Guatemalans whose relatives and friends were forcibly disappeared.¹⁷ GAM is the first support organ-

5. *Id.* ¶ 65.

6. *Id.*

7. *Id.* ¶ 67.

8. *Id.*

9. *Id.* ¶ 69.

10. *Id.*

11. *Id.* ¶ 70.

12. *Id.*

13. *Id.*

14. *Id.* ¶ 63.

15. *Id.* ¶ 83.

16. *Id.*

17. *Id.*

ization of its kind in the State.¹⁸

July 1984: The State informs Mrs. Montenegro Cottom that Mr. García's disappearance is not a military matter and suggests she seek help from the appropriate civil authority.¹⁹

Mrs. Montenegro Cottom files another application for habeas corpus and continues to search prisons, cemeteries, and hospitals for her husband.²⁰

August 1984 and in 1985: The criminal court continues to request information regarding Mr. García's disappearance.²¹

1989 through 1993: GAM suffers numerous attacks, including the abduction, murder, and forced disappearances of activists.²² GAM's offices are also raided twice and bombed once.²³ Because of her association with GAM, Mrs. Montenegro receives death threats, and anonymous individuals open fire at her house.²⁴

1997: GAM files three applications for habeas corpus on behalf of Mr. García.²⁵

November 1997: GAM requests for a special investigation to be opened into Mr. García's detention.²⁶ In response, the Supreme Court of Justice orders the Public Prosecution Service to investigate the disappearance.²⁷

December 1997: The judge assigned to Mr. García's case visits the Men's Pre-Trial Detention Center and the Army headquarters in search of Mr. García.²⁸ The Ministry of Defense indicates that Mr. García was not arrested or captured on February 18, 1984, and that Mr. García has not been detained.²⁹

18. *Id.*

19. *Id.* ¶ 71.

20. *Id.* ¶¶ 71, 73.

21. *Id.* ¶ 72.

22. *Id.* ¶ 86.

23. *Id.*

24. *Id.* ¶ 87.

25. *Id.* ¶ 74.

26. *Id.* ¶ 75.

27. *Id.*

28. *Id.* ¶ 74.

29. *Id.*

April 8, 1999: A hearing is held on GAM’s request for a special investigation.³⁰

April 22, 1999: A second hearing is held on GAM’s request for a special investigation.³¹ During this hearing, the request is declared admissible and the Ombudsman’s Office takes over the investigation.³²

April 2000: The criminal court reports to the Supreme Court of Justice that it summoned as defendants certain heads of government from the time of the events, including the Head of State, Head of the Fifth Unit of the National Police, Head of the Technical Investigations Department (“DIT”), Head of the Special Operations Brigade of the National Police (“BROE”), Minister of the Interior, and Director of the G-2 Department of Military Intelligence (“National Defense General Staff”).³³

Approximately May 2001: The criminal court reports that it has not executed the summons because the Ombudsman’s Office has not yet provided some of the defendants’ addresses.³⁴

B. Other Relevant Facts

[None]

II. PROCEDURAL HISTORY

A. Before the Commission

August 22, 2000: GAM files a complaint with the Inter-American Commission on Human Rights.³⁵ The petitioners allege that the State is responsible for the forced disappearance of Mr. García, whose location is still unknown.³⁶

30. *Id.* ¶ 76.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *García and Family Members v. Guatemala*, Admissibility Report, Report No. 91/06, Inter-Am. Comm’n H.R. Case No. 12.343, ¶ 1 (Oct. 21, 2006).

36. *Id.*

October 21, 2006: The Commission approves Admissibility Report No. 91/06, alleging violations of Articles 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention.³⁷

October 22, 2006: The Commission issues Report on the Merits No. 117/70.³⁸ The Commission finds that the State violated Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial), 13(1) (Right to Seek, Receive, and Impart Information and Ideas), 13(2) (Prohibition of A Priori Censorship), 16 (Freedom of Association), 23 (Right to Participate in Government), and 25 (Right to Judicial Protection).³⁹ Additionally, the Commission finds that the State violated Article I of the Inter-American Convention on Forced Disappearance of Persons.⁴⁰ The Commission recommends that the State make certain reparations.⁴¹

B. Before the Court

February 9, 2011: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁴²

1. Violations Alleged by Commission⁴³

Article 3 (Right to Juridical Personality)

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 7 (Right to Personal Liberty)

Article 8 (Right to a Fair Trial)

Article 13 (Freedom of Thought and Expression)

Article 16 (Freedom of Association)

Article 23 (Right to Participate in Government)

Article 25 (Right to Judicial Protection)

all in relation to:

37. *Id.* “Decides” ¶ 1.

38. *García and Family Members v. Guatemala, Merits, Reparations and Costs*, ¶ 1.

39. *Id.* ¶ 4.

40. *Id.*

41. *Id.*

42. *Id.* ¶ 1.

43. *Id.* ¶ 4.

Article 1(1) (Obligation of Non-Discrimination)
 Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the American Convention.

2. Violations Alleged by Representatives of the Victims⁴⁴

Same Violations Alleged by Commission, plus:

Article 2 (Failure to Give Domestic Effect to Rights)
 Article 17 (Rights of the Family)
 Article 19 (Rights of the Child) of the American Convention.

July 26, 2011: The representatives submit a request to the Court for provisional measures to protect Mr. Luis Roberto Romero Rivera, the director of the Special Investigations Unit of the Ombudsman’s Office, because he was the subject of numerous threats and harassment.⁴⁵

August 3, 2011: The State asks that the representatives’ request for provisional measures be declared inadmissible.⁴⁶ However, the State offers to provide Mr. Romero Rivera with “national protection.”⁴⁷ Mr. Romero Rivera accepts the offer.⁴⁸

September 12, 2011: The State files a brief containing a preliminary objection and partial acknowledgement of international responsibility.⁴⁹ The State objects on the grounds that the representatives failed to exhaust domestic remedies.⁵⁰

With regard to its acknowledgement of international responsibility, the State fully acknowledged its responsibility for the violations of Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 13 (Freedom of Thought and Expression), and 16 (Freedom of Association) in relation to Article 1(1) of the American Convention, to the detriment of Mr. García.⁵¹

44. *Id.* ¶ 5. GAM served as the representative of the victims.

45. *Id.* ¶ 6.

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.* ¶ 7.

50. *Id.* ¶ 28.

51. *Id.* ¶ 13(a).

The State partially acknowledged its responsibility for the violations of Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), in relation to Article 1(1) of the American Convention, to the detriment of Mr. García, his wife Mrs. Montenegro Cottom, his daughter Alejandra García Montenegro, and his mother María Emilia García.⁵² The State additionally partially acknowledged responsibility for the violations of Articles 13 (Freedom of Thought and Expression), 13(1) (Right to Seek, Receive, and Impart Information and Ideas), 13(2) (Prohibition of A Priori Censorship), 16 (Freedom of Association), and 23 (Right to Participate in Government) in relation to Article 1(1) of the American Convention, to the detriment of Mrs. Montenegro Cottom, Ms. García Montenegro, and Mrs. García.⁵³ The State did not acknowledge responsibility for these articles in relation to Article 2 of the Convention on the grounds that domestic laws provide for these rights.⁵⁴

April 26, 2012: The Court holds a public hearing and finds the State waived its preliminary objection.⁵⁵

III. MERITS

A. Composition of the Court

Diego García-Sayán, President
Manuel E. Ventura Robles, Vice President
Leonardo A. Franco, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge
Alberto Pérez Pérez, Judge
Eduardo Vio Grossi, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

52. *Id.* ¶ 13(b).

53. *Id.*

54. *Id.*

55. *Id.* ¶¶ 9, 11, 31.

B. Decision on the Merits

November 29, 2012: The Court issues its Judgment on Merits, Reparations and Costs.⁵⁶

The Court found unanimously that the State violated:

Articles 7 (Right to Personal Liberty), 5(1) (Right to Physical, Mental, and Moral Integrity), 5(2) (Prohibition of Torture and Cruel, Inhumane or Degrading Treatment), 4(1) (Prohibition of Arbitrary Deprivation of Life), and 3 (Right to Juridical Personality) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention and to Article 1(a) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Mr. García,⁵⁷ because:

The State admitted its international responsibility for the forced disappearance of Mr. García.⁵⁸ In light of this acknowledgement, the Court examined the deprivation of liberty in regards to a person who has been forcibly disappeared by the State.⁵⁹

The violation of the rights expressed in Articles 7 (Right to Personal Liberty), 5(1) (Right to Physical, Mental, and Moral Integrity), 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), 4(1) (Prohibition of Arbitrary Deprivation of Life) and 3 (Right to Juridical Personality) leaves the victim completely defenseless.⁶⁰ Indeed, when the State actions are part of a “systematic practice of forced disappearance[s],” the violations constitute an international crime.⁶¹

The Court found the State violated Article 7 (Right to Personal Liberty) by the very act of initiating a forced disappearance.⁶² While there are different variations of the circumstances surrounding Mr. García’s disappearance, the undisputed facts remain that Mr. García was arrested on February 18, 1984, taken to a Unit of the National Police, and was

56. Case of García and Family Members v. Guatemala, Merits, Reparations, and Costs.

57. *Id.* “Declares” ¶ 1.

58. *Id.* ¶ 93.

59. *Id.* ¶¶ 95–96.

60. *Id.* ¶ 96.

61. *Id.*

62. *Id.* ¶ 101.

not heard from again.⁶³ As the State has the special obligation to guarantee the rights of all detained persons, the State's deprivation of that right is a *per se* violation of Article 7 (Right to Personal Liberty).⁶⁴ This principle is reiterated in the Inter-American Convention on the Forced Disappearance of Persons.⁶⁵ Thus, the Court found that Mr. García's detention and forced disappearance infringed upon his liberty required by Article 7 (Right to Personal Liberty).⁶⁶

In relation to Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), the Court has repeatedly found that forced disappearances violate the right to personal freedom.⁶⁷ Both prolonged isolation and solitary confinement violate a prisoner's right to personal integrity and are indicative of cruel and inhumane treatment and amount to article violations when the State knowingly submits detainees to law enforcement officials who perpetrate such treatment.⁶⁸ However, even without substantiated claims of violence, these circumstances automatically amount to a 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 American Convention.⁶⁹ Thus, because Mr. García was subjected to, at the very least, prolonged detention, the State violated his rights under Articles 5(1) (Right to Physical, Mental and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane, or Degrading Treatment).⁷⁰

Article 4(1) (Prohibition of Arbitrary Deprivation of Life) protects the right to life proffered throughout the American Convention.⁷¹ The Court has established that forcibly disappeared victims are at an increased risk of execution, followed by concealment of the body.⁷² By committing and covering up the crime, the perpetrators violate the right to life.⁷³ Because the Court verified that most of the victims of the State's forced

63. *Id.*

64. *Id.* ¶ 102.

65. *Id.*

66. *Id.* ¶¶ 102, 114.

67. *Id.* ¶ 105.

68. *Id.* ¶¶ 105–106.

69. *Id.*

70. *Id.* ¶¶ 106, 114.

71. *Id.* ¶ 107.

72. *Id.*

73. *Id.*

disappearances were executed, the same can be assumed to have occurred to Mr. García, even without any physical evidence of his remains.⁷⁴ Therefore, the State violated Article 4(1) (Prohibition of Arbitrary Deprivation of Life).⁷⁵

Lastly, the Court found that in cases of forced disappearance, the State also generally violates the right to juridical personality of the victim.⁷⁶ By perpetrating forced disappearances, the Court found that the State was an actor in removing the “protection of the law” from Mr. García and violated his right to personal and legal security.⁷⁷ The right to juridical personality confers upon Mr. García the right to enjoy and exercise his civil rights.⁷⁸ One such civil right is the right to be buried according to one’s religion or custom.⁷⁹ Because Mr. García’s whereabouts or remains are unknown, the State violated Mr. García’s rights under Article 3 (Right to Juridical Personality).⁸⁰

Article 16(1) (Freedom of Association for Any Purpose) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mr. García,⁸¹ because:

The State recognized and accepted responsibility for the violation of Mr. García’s rights to association and expression.⁸² The Court found that the State’s purpose in detaining Mr. García was to stifle his speech and to prohibit him from associating with leaders and members of organizations opposing the State.⁸³ Mr. García was a leader of the labor union CAVISA, which was considered an enemy of the State.⁸⁴ The Court noted that not only did the State violate Mr. García’s right to freedom of association protected by Article 16(1) (Freedom of Association for Any Purpose), but the State also instilled fear in other members of the social organizations associated with Mr. García.⁸⁵ Because the

74. *See id.* ¶¶ 107–108.

75. *Id.* ¶¶ 107, 114.

76. *Id.* ¶ 108.

77. *Id.* ¶¶ 108–10.

78. *Id.* ¶ 109.

79. *Id.* ¶ 110.

80. *Id.* ¶¶ 110, 114.

81. *Id.* “Declares” ¶ 2.

82. *Id.* ¶ 115.

83. *Id.*

84. *Id.* ¶ 118.

85. *Id.* ¶ 121.

*State's purpose in detaining Mr. García was to stifle his speech, the Court concluded that the State violated Article 16(1) (Freedom of Association for Any Purpose).*⁸⁶

Articles 7 (Right to Personal Liberty), 5(1) (Right to Physical, Mental, and Moral Integrity), 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), 4(1) (Prohibition of Arbitrary Deprivation of Life) and 3 (Right to Juridical Personality) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention and to Article 1(a) of the Inter-American Convention on Forced Disappearance of Persons to the detriment of Mr. García,⁸⁷ because:

*In addition to the above analysis of Articles 7 (Right to Personal Liberty), 5 (Right to Humane Treatment), 4 (Right to Life), and 3 (Right to Juridical Personality), the Court found that the State violated these articles by failing to comply with the obligation to initiate a comprehensive investigation into Mr. García's disappearance.*⁸⁸ *The State made no efforts to begin an investigation, in contravention of the guarantee to investigate within a reasonable period of time.*⁸⁹ *In addition, the Court determined that the domestic habeas corpus process had no bearing on or success in locating Mr. García.*⁹⁰ *The Court concluded that by failing to conduct an effective investigation, the State violated the rights recognized in Articles 7 (Right to Personal Liberty), 5(1) (Right to Physical, Mental, and Moral Integrity), 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), 4(1) (Prohibition of Arbitrary Deprivation of Life) and 3 (Right to Juridical Personality) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, and in relation to Article 1(a) of the Inter-American Convention on Forced Disappearance of Persons.*⁹¹

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 Convention and to Article 1(a) of the Inter-

86. *Id.* ¶ 118.

87. *Id.* "Declares" ¶ 3.

88. *Id.* ¶ 155.

89. *Id.*

90. *Id.*

91. *Id.*

American Convention on Forced Disappearance of Persons, to the detriment of Mrs. Montenegro Cottom, Ms. García Montenegro, and Mrs. García,⁹² because:

The Court explained that, due to the failure to initiate an effective investigation and the breakdown of justice by not prosecuting the responsible State officials, the State violated the victims' rights to judicial protection.⁹³ Therefore, the State violated 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 Convention, and in relation to Article 1(a) of the Inter-American Convention on Forced Disappearance of Persons to the detriment of Mrs. Cottom, Ms. García Montenegro and Mrs. García.⁹⁴

Articles 5(1) (Right to Physical, Mental and Moral Integrity), and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mrs. Montenegro Cottom, Ms. García Montenegro and Mrs. García,⁹⁵ because:

The Court reasoned that forced disappearance cases create violations of the rights to mental and moral integrity of the disappeared victim's family members.⁹⁶ This occurs as a direct result of the forced disappearance and the inability to discover information as to the whereabouts of that family member.⁹⁷ The Court concluded that the absence of information about Mr. García, as well as the State's refusal to launch an investigation, amounts to cruel and inhuman treatment of Mr García's family.⁹⁸

The State partially acknowledged responsibility for these violations.⁹⁹ The Court noted that, since Mr. García's disappearance, the family members have been involved in multiple organizations in an effort to

92. *Id.* "Declares" ¶ 4.

93. *Id.* ¶ 155.

94. *Id.*

95. *Id.* "Declares" ¶ 5.

96. *Id.* ¶ 161.

97. *Id.*

98. *Id.*

99. *Id.*

*seek justice for Mr. García and to hear any news of his whereabouts.*¹⁰⁰ *Since the State has not released information as to Mr. García's location, the family has been unable to properly bury him in line with their beliefs.*¹⁰¹

*Additionally, the Court determined that the family has experienced undue stigmatization and isolation as a result of having a disappeared family member.*¹⁰² *Mrs. Montenegro Cottom described a "systematic campaign" to "discredit and denigrate" her family.*¹⁰³ *Mrs. Montenegro Cottom indicated that her quest to find Mr. Garcia turned her family into subversives, liars, and mad people in the eyes of society, which marginalized and isolated them.*¹⁰⁴ *As a result of the sadness, frustration, and anxiety Mr. García's family experienced, the Court determined that the State violated their rights to personal integrity guaranteed in Articles 5(1) (Right to Physical, Mental and Moral Integrity), and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention.*¹⁰⁵

Article 16(1) (Freedom of Association for Any Purpose) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention, to the detriment of Mrs. Montenegro Cottom and Mrs. García,¹⁰⁶ because:

*Article 16(1) (Freedom of Association for Any Purpose) requires that the State provide the necessary means for human rights activists to conduct their activities freely.*¹⁰⁷ *Thus, the State must refrain from imposing obstacles that hinder their work and must protect the activists when threatened.*¹⁰⁸ *Following Mr. García's disappearance, the Court found that the right of Mr. García's family to denounce the incident was severely restricted because of the persistent threats and harassment they*

100. *Id.* ¶ 163.

101. *Id.*

102. *Id.* ¶ 165.

103. *Id.*

104. *Id.*

105. *Id.* ¶¶ 165, 167.

106. *Id.* "Declares" ¶ 6.

107. *Id.* ¶ 179, n.168.

108. *Id.* ¶ 179.

suffered.¹⁰⁹ In fact, some members of GAM were killed during their efforts to investigate Mr. García's disappearance.¹¹⁰ Even though there was no concrete evidence that the State formally implemented those threats, the State adopted partial acknowledgment of the violations of Article 16(1) (Freedom of Association for Any Purpose).¹¹¹

Because of Mr. García's disappearance, Mrs. Montenegro Cottom and Mrs. García founded GAM with the goal of obtaining justice for the families of disappeared persons.¹¹² The Court found this as evidence that the State considered GAM to be enemies of the State and that the State targeted and repressed GAM activists.¹¹³ Thus, the Court concluded that the State violated Article 16(1) (Freedom of Association for Any Purpose) in relation to Article 1(1) (Obligation of Non-Discrimination) of the Convention.¹¹⁴

The Court did not rule on:

Articles 13 (Freedom of Thought and Expression) and 23 (Right to Participate in Government) of the American Convention, because:

Even though the State acknowledged responsibility for violating Articles 13 (Freedom of Thought and Expression) and 23 (Right to Participate in Government), the Court found that the representatives failed to prove that the right to freedom of thought and expression was sufficiently impaired.¹¹⁵ Additionally, the Court found that the failure of State bodies to collaborate on an investigation does not automatically entail a violation of the right of access to information contained in Articles 13 and 23.¹¹⁶

Articles 17 (Rights of the Family) and 19 (Rights of the Child) of the American Convention, because:

The Court previously examined the harms related to Articles 17 (Rights

109. *Id.* ¶ 178.

110. *Id.*

111. *Id.*

112. *Id.* ¶ 179.

113. *Id.* ¶¶ 180–81.

114. *Id.* ¶¶ 178, 186.

115. *Id.* ¶ 122.

116. *Id.* ¶ 157.

of the Family) and 19 (Rights of the Child) when it analyzed Article 5(1) (Right to Physical, Mental, and Moral Integrity) and did not find it necessary to address those harms again.¹¹⁷

C. Dissenting and Concurring Opinions

1. Separate of Judge Eduardo Vio Grossi

In a separate opinion, Judge Vio Grossi expressed that, although he voted in favor of the Judgment, he did not agree with the Court's decision to keep the agreed-upon reparations confidential.¹¹⁸ In support of his position, Judge Vio Grossi pointed out that the reparations agreement did not request to be confidential.¹¹⁹

Judge Vio Grossi found that there were no provisions or obligations, either by the Convention or by statute, for the Court to keep the reparations or compensation to the victims confidential.¹²⁰ Judge Vio Grossi emphasized that the Court's ruling on the reparations agreement failed to promote transparency.¹²¹

IV. REPARATIONS¹²²

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

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

1. Investigate, Prosecute, and Punish Those Responsible

The State must continue to investigate the disappearance of Mr. García in order to identify and punish those responsible.¹²³ Additionally, the State must grant Mr. García's family access to all stages of the in-

117. *Id.* ¶ 170.

118. *García and Family Members v. Guatemala, Merits, Reparations, and Costs*, Separate Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. (ser. C) No. 258, at 1 (Nov. 29, 2012).

119. *Id.*

120. *Id.* ¶ III.

121. *Id.* ¶ IV.

122. The Court decided to keep the Reparations Agreement between the parties confidential. *García and Family Members v. Guatemala, Merits, Reparations and Costs*, ¶ 225.

123. *Id.* "And Establishes" ¶ 2.

vestigation.¹²⁴

2. Investigate Mr. García's Whereabouts

The State must conduct a search into the whereabouts of Mr. García.¹²⁵ If the victim is found deceased, his remains must be returned to his family.¹²⁶ His family and next of kin must be adequately informed throughout the investigation.¹²⁷

3. Publish the Judgment

The State must publish the operative paragraphs of the Judgment in the Official Gazette and in another national newspaper.¹²⁸ The State must also indicate in those newspapers that the complete Judgment will be available on the Court's website.¹²⁹

4. Issue a Public Apology

The State must issue a public apology and acknowledge international responsibility in a ceremony conducted in a manner agreed upon by the victims.¹³⁰ The State must make reference to the human rights violations declared in the Judgment.¹³¹ Additionally, the State must ensure that Mr. García's next of kin are present for the ceremony.¹³²

5. Commemorate the Victims

The State must construct a cultural space to honor the memory of Mr. García and other victims of human rights violations in an initiative known as "Concord Memorial."¹³³ Additionally, the State must create a plaque bearing Mr. García's name to be placed in the park or plaza that the Court ordered the State to construct as part of reparations in *Gudiel*

124. *Id.* ¶ 197.

125. *Id.* ¶ 200, "And Establishes" ¶ 3.

126. *Id.* ¶ 200.

127. *Id.*

128. *Id.* ¶¶ 201, 203, "And Establishes" ¶ 4.

129. *Id.* ¶ 203.

130. *Id.* ¶ 206, "And Establishes" ¶ 5.

131. *Id.*

132. *Id.*

133. *Id.* ¶¶ 208–209.

*Álvarez et al. (“Diario Militar”) v. Guatemala.*¹³⁴ Additionally, the State must rename Ninth Street in Guatemala City¹³⁵ and the public school “Julia Ydigoras Fuentes” in Mr. García’s honor.¹³⁶

6. Provide Study Grants

The State must provide ten study grants of \$3,200.82¹³⁷ each to children or grandchildren of persons who have been forcibly disappeared, at the discretion of Mr. García’s family.¹³⁸ These study grants must be delivered to the students no later than the beginning of the 2013 school year.¹³⁹

7. Guarantee Non-Repetition

The State must adopt all necessary legislation to ensure the creation of a National Commission for the Search for Victims of Forced Disappearance.¹⁴⁰ This Commission will help with the search for and identification of Mr. García and other victims of forced disappearances.¹⁴¹

8. Issue a Compliance Report

Within six months of notification of the Judgment, the State must issue a report regarding the measures taken to comply with the reparations.¹⁴²

B. Compensation

[Undisclosed]¹⁴³

134. *Id.* ¶ 210; *see* Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 253, “And Decides” ¶ 7 (Nov. 20, 2012).

135. García and Family Members v. Guatemala, Merits, Reparations and Costs, ¶¶ 211, 213.

136. *Id.* ¶¶ 214–15.

137. <http://www.xe.com/currencytables/?from=GTQ&date=2012-1-01> (to convert 25,000 Guatemalan Quetzals to US Dollars in the year 2012).

138. García and Family Members v. Guatemala, Merits, Reparations and Costs, ¶ 216, “And Establishes” ¶ 9.

139. *Id.* ¶ 218.

140. *Id.* ¶¶ 219, 221, “And Establishes” ¶ 10.

141. *Id.* ¶ 221.

142. *Id.* “Operative Paragraphs” ¶ 13.

143. *Id.* ¶ 225.

Prior to the public hearing of this case, the State presented an “agreement on measures of reparation for the pecuniary and non-pecuniary damage caused and the costs incurred” (“Reparations Agreement”).¹⁴⁴ According to the Reparations Agreement, the parties held meetings to reach an amicable agreement regarding pecuniary and non-pecuniary damages.¹⁴⁵ The State additionally agreed to adopt specific measures of reparation.¹⁴⁶ Because the representatives requested that the Reparations Agreement not be disclosed, the Court declared the Reparations Agreement confidential and did not include the enclosed information in the Judgment.¹⁴⁷

1. Pecuniary Damages

[Undisclosed]

2. Non-Pecuniary Damages

[Undisclosed]

3. Cost and Expenses

[Undisclosed]

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

[Undisclosed]

C. Deadlines

The State must deliver the ten study grants to the selected children by the 2013 school year.¹⁴⁸ As referenced in the Reparations Agreement, the State agreed to pay the undisclosed compensation amounts during 2012.¹⁴⁹

144. *Id.* ¶ 13(e).

145. *Id.*

146. *Id.*

147. *Id.* ¶ 225.

148. *Id.* ¶ 218.

149. *Id.* ¶ 227.

Additionally, the State must provide the Court with an update on its compliance with all reparations within six months of notification of the Judgment.¹⁵⁰

The State must publish the Judgment in the Official Gazette and in another national newspaper within two months of notification of this decision.¹⁵¹

Lastly, the State must make every effort to locate Mr. García within a reasonable time.¹⁵²

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

2016: As of 2016, the Court has not yet monitored the State's compliance.

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[García and Family Members v. Guatemala, Merits, Reparations and Costs, Judgment, Inter-Am Ct. H.R. \(ser. C\) No. 258 \(Nov. 29, 2012\).](#)

[García and Family Members v. Guatemala, Merits, Reparations, and Costs, Separate Opinion of Judge Eduardo Vio Grossi, Inter-Am. Ct. H.R. \(ser. C\) No. 258 \(Nov. 29, 2012\).](#)

150. *Id.* ¶ 239.

151. *Id.* ¶ 202.

152. *Id.* ¶ 198.

3. Provisional Measures

[None]

4. Compliance Monitoring

[None]

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

[Not Available]

2. Report on Admissibility

[García and Family Members v. Guatemala, Admissibility Report, Report No. 91/06, Inter-Am. Comm'n H.R., Case No. 12.343 \(Oct. 21, 2006\).](#)

3. Provisional Measures

[None]

4. Report on Merits

García and Family Members v. Guatemala, Report on Merits, Report No. 117/70, Inter-Am. Comm'n H.R., Case No. 12.343 (Oct. 22, 2010).

5. Application to the Court

[Not Available]

VIII. BIBLIOGRAPHY

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Elisabeth Malkin, *Trial on Guatemalan Civil War Leaves Out U.S. Role*, N.Y. TIMES (May 16, 2013), http://www.nytimes.com/2013/05/17/world/americas/trial-on-guatemalan-civil-war-carnage-leaves-out-us-role.html?_r=0

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