

OEA/Ser.L/V/II.179
Doc.27
March 23, 2011
Original: Spanish

REPORT No. 24/21

CASE 13.047

MERITS

MIGUEL ÁNGEL AGUIRRE MAGAÑA
EL SALVADOR

Approved by the Commission in Session No. 2207 held on March 23, 2021
179 Period of Sessions

Cite as: IACHR. Report No. 24/21. Case 13.047. Merits. Miguel Ángel Aguirre Magaña. El Salvador. March 23, 2021.

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I. INTRODUCTION

1. On July 28, 2005, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR") received a petition from the Instituto de Derechos Humanos of the Universidad Centroamericana José Simeón Cañas (hereinafter "the petitioner"). The petition alleged that the Republic of El Salvador (hereinafter "the State of El Salvador," "the State," or "El Salvador") was internationally responsible to the detriment of Miguel Ángel Aguirre Magaña for the alleged lack of a diligent investigation and criminal prosecution of those responsible for an incident that took place in 1993 in which he suffered injuries, lost a leg, and lost hearing in his right ear.

2. The Commission approved admissibility report 63/16 of December 6, 2016.¹ On December 15, 2016, the IACHR notified the parties of the report and made itself available to help them reach a friendly settlement, but the conditions were not met for resolving the case using that process. The parties were given the time provided for in the Rules of Procedure to submit additional comments on the merits. All the information received was duly transferred to the parties.

II. POSITIONS OF THE PARTIES

A. Petitioner:

3. The Petitioner alleges El Salvador is internationally responsible to the detriment of Miguel Ángel Aguirre Magaña for the alleged lack of a diligent investigation and criminal prosecution of those responsible for an incident in which he suffered injuries, lost a leg, and lost his hearing in his right ear. It states that at the time of the facts, Mr. Aguirre was a court official. It indicates that on November 13, 1993, he was on his way to carry out a judicial procedure with another official and with the Justice of the Peace of Villa Apaneca, the owner of the vehicle in which they were traveling. It notes that during the trip, a grenade exploded without warning inside the vehicle. It states that because of the explosion, Mr. Aguirre had to have his right leg amputated above the knee, lost all of his hearing in his right ear, and suffered multiple injuries to other parts of his body.

4. The petitioner alleges that Mr. Aguirre filed a complaint with judicial authorities requesting the Justice of the Peace of Villa Apaneca—who had the grenade that exploded in his car—be investigated and punished. It states that the investigation into the facts of the case violated Mr. Aguirre's rights to fair trial and judicial protection in that: i) there were a number of irregularities during the criminal process; ii) the entire process suffered from unjustified delays; iii) the investigation was not conducted in observance of due diligence standards; and iv) a situation of impunity was the result of the lack of a diligent investigation.

5. Regarding the alleged irregularities during the criminal process, the petitioner indicates a false medical report was issued to benefit the defendant. The report indicated that he suffered multiple injuries in the explosion, when in reality he did not. The petitioner also indicates that the criminal court in charge of the investigation failed to comply with its obligation to conduct an inquiry into the defendant, who in fact did not participate in any investigative step. It also states that the aforementioned court denied his request for certification of the process, violating his right to petition.

6. Regarding the length of the process, the petitioner alleges it was unreasonable. It states that the case took almost 11 years and ended with the dismissal of the charges. It alleges that the judges in charge of the investigation change several times, in some cases recusing themselves without justification. It indicates that the investigative steps taken were not carried out quickly or effectively, failing to meet the deadlines established in the Criminal Procedural Code. It also underscores that despite presenting multiple requests to judicial authorities, they did not move the process along.

¹ IACHR. Admissibility report 63/16. Petition 860-05. Miguel Ángel Aguirre Magaña. El Salvador. December 6, 2016. The report declared the petition admissible with regard to articles 8 and 25 of the American Convention on Human Rights, in conjunction with the obligation established in Article 1(1) of the Convention.

7. Additionally, the petitioner indicates that the investigation was not conducted pursuant to due diligence standards. It alleges that the National Civil Police did not protect the crime scene and did not collect forensic evidence to determine if the explosion was the result of a device inside the vehicle or if the device had been thrown from outside. It indicates that the criminal investigation bodies did not follow the minimum methodologies for the investigation with regard to protecting, inspecting, and establishing the location of the facts, collecting evidence, and sending it to a laboratory.

8. The petitioner also alleges that the lack of a diligent investigation led to a situation of impunity in that it was not able to determine who was responsible for the facts leading to the alleged victims' permanent and irreversible injuries. The process thus concluded with an acquittal, confirmed by the highest court, which found that there was not sufficient evidence to find the defendant guilty.

B. State

9. The State holds that it is not internationally responsible in this case. It states that the investigation into the incidents that took place in November 1993 was carried out in adherence to the law and to the international standards of the inter-American system.

10. With regard to the law applicable to the facts of the case, it indicates that according to information from the Office of the Attorney General of the Republic, the criminal process was conducted pursuant to legislation that entered into force in 1973. It indicates that "at that time, criminal procedures law allowed for limited participation and rights of victims, and has now been replaced by the current criminal procedures law. It adds that under the applicable law, i) the Office of the Attorney General of the Republic did not conduct the investigation of the crime, but rather the court did, moving and directing the process officiously; and ii) Mr. Aguirre Magaña was not recognized as a witness.

11. El Salvador indicates that three inspections were carried out after the facts took place by i) police officers; ii) the justice of the peace of Ataco; and iii) the First Justice of the Peace of Ahuachapán. Regarding the participation of multiple judicial authorities in the process, the State said it was necessary to settle matters of jurisdiction "for a variety of recusals requested by the judges in the case, and it took time to issue the corresponding orders. It also argues that "during the course of the process, motions were filed by the parties, the majority by the defense, which also requested procedures to explore the hypothesis of other perpetrators and causes of the incident, to the point of causing procedural delays."

12. Regarding the investigative procedures, El Salvador indicates that the Office of the Public Prosecutor sent interview requests to the victim, witnesses, and inspectors. The State highlighted that the vehicle in which the facts took place caught fire as a result of the explosion inside it. It said this made it impossible to collect evidence that might help establish what happened, meaning that the expert reports that relied on photographs differed in their conclusions. This is why the expert reports had two hypotheses but neither could be confirmed: i) that the explosive device exploded inside the vehicle and was being transported by the Justice of the Peace of Villa Apaneca; and ii) that the explosive device was thrown from outside and exploded inside the vehicle.

13. It also indicates that the only direct witnesses of the fact were the people who were inside the vehicle. It notes that Mr. Francisco Reynaldo Castillo, the driver and owner of the vehicle, said it was an attempted assassination. It says this was confirmed by the passenger, José Antonio Ruiz Vásquez. The State also indicates that this was originally confirmed by Mr. Aguirre Magaña, who "one year later described a different version of the facts."

14. The State notes that because of what was initially stated, there was no way to determine with certainty the responsibility of Mr. Castillo, for which reason the case was provisionally dismissed. It indicates that this meant that the process was suspended for a time so as to add a new information and evidence to make it possible to file charges. It added that because Mr. Ruiz had passed away and could not serve as a witness and there was no new evidence, the dismissal to the benefit of Mr. Castillo was confirmed.

III. ESTABLISHED FACTS

A. Events of November 13, 1993.

15. The Commission takes note that the parties do not dispute the following facts, which were recognized by the judicial authorities in the criminal proceeding in this case:

- At the time of the facts, Miguel Ángel Aguirre Magaña was 53 years old and working as a judicial official in Villa de Apaneca.
- On November 13, 1993, Mr. Aguirre was traveling in a vehicle with Francisco Reynaldo Castillo Borja, the Justice of the Peace for Villa de Apaneca, and José Antonio Ruiz Vásquez, judicial secretary, to conduct a judicial procedure in Villa Concepción de Ataco. Mr. Castillo was the owner and driver of the vehicle.
- As they were on the way to do this procedure, traveling on the Villa de Apaneca highway toward the city of Ahuachapán, an explosive device exploded inside the vehicle in which the three individuals were traveling.²

16. According to Mr. Aguirre's testimony, following the explosion, Mr. Castillo got out of the vehicle with a shotgun and said "they were the victims of an assassination attempt." He said Mr. Ruiz went running to get the police. He said the car caught fire and that neither of the two people helped him. Mr. Aguirre said he was helped by an individual who was on the road, who took him to the Francisco Menéndez Hospital in Ahuachapán. He said he was later taken to the Social Security Hospital in Santa Ana.³ This information was not disputed by the State.

17. Mr. Aguirre said he had i) serious injuries to his right leg, which was later amputated; and ii) multiple serious injuries to his left leg and right arm. He said that according to a medical evaluation, he lost hearing in his right ear and experienced injuries to his left ear. Mr. Aguirre said he was ordered to spend 20 days in recovery.⁴ The Commission observes that Mr. Aguirre was able to recover from his injuries in 60 days, although the amputation of his leg and his loss of hearing were permanent.⁵ This information was not disputed by the State.

18. Regarding what happened to the other two people who were in the vehicle, the Commission takes note that there is no documentation in this regard. The petitioner said Mr. Castillo was not even hospitalized for one day. However, it said a doctor issued a report indicating that Mr. Castillo suffered injuries and that he temporarily lost his hearing, for which he was told to spend "40 days healing." The petitioner indicates that the report was false and that the doctor was not a specialist at diagnosing hearing loss or disability.⁶ This information was not disputed by the State.

B. Regarding the criminal investigation and process

19. The Commission takes note that Mr. Aguirre filed a criminal complaint with judicial authorities stating that the November 13, 1993, explosion was the result of the explosion of a grenade that Apaneca Justice of the Peace Francisco Reinaldo Castillo Borja had in his possession. The IACHR does not have the full case file of the criminal process, and will therefore reference the information and documentation presented by the parties. Likewise, the Commission recalls that, according to the State, as of the time of the facts, the 1973 Criminal

² Communication from the petitioner of July 28, 2005. Resolution of the Chamber of the Third Western District, July 20, 2004. Annex 1 to the communication from the petitioner of July 28, 2005.

Communication from the State of January 10, 2019. Resolution 34/03 of the First Trial Court of Atiquizaya, May 19, 2004. Annex 3 to the communication from the State of January 10, 2019.

³ Communication from the petitioner of July 28, 2005. Communication from the petitioner of November 24, 2014.

⁴ Communication from the petitioner of July 28, 2005. Communication from the petitioner of November 24, 2014. Communication from the petitioner of November 13, 2015.

⁵ Resolution of the Chamber of the Third Western District, July 20, 2004. Annex 1 to the communication from the petitioner of July 28, 2005.

⁶ Communications from the petitioner of November 13, 2013, March 31, 2014, and November 13, 2015.

Procedural Code was in effect. El Salvador indicated that under that law, the Office of the Attorney General of the Republic was not in charge of the investigation. Rather, the judicial authority was the entity in charge of "*ex officio*" pursuit and management of the process.⁷

20. The petitioner reported that on November 14, 1993, the First Justice of the Peace of Ahuachapán was assigned to begin the investigation into the facts of the case, in the framework of three criminal offenses: i) very serious injuries to the detriment of Mr. Aguirre; ii) possessing, carrying, or using of weapons of war; and iii) procedural fraud. It stated that the judge found she did not have competence to take investigative actions because the facts took place in a different jurisdiction. It stated that the next day, the judge remitted the case to the First Criminal Judge (later called the Preliminary Investigation Court of Ahuachapán).⁸ This information was not disputed by the State.

21. The Commission observes that according to the documentation provided, between November 13 and 15, 1993, three inspections were carried out at the location of the facts. The IACHR notes that the inspection conducted on November 13 by the National Police found that the vehicle "was a four-door SUV, oriented north to south, completely destroyed by the fire." The report indicated that nearby, they found "red stains, apparently blood, and shrapnel, apparently from an explosive device and the vehicle." The IACHR takes note that the Technical Forensic Division of the National Civil Police determined that the explosive was a weapon of war (an "M-67" grenade), which exploded inside the vehicle.⁹

22. Likewise, in the inspections carried out on November 14 and 15, the judicial authority found the following:

(...) The total destruction of the vehicle (burned), with only its yellowish color remaining as evidence. The driver-side door is still dark green in color (...) it has no license plate number and neither make nor model are visible. On the pavement are pieces of windshield and other pieces of the SUV, such as the radiator, small pieces of metal, and there are no signs of blood because of the rain that fell on the day of the facts.

(...) No fragments of the explosive device that injured the person and destroyed the vehicle were found, due to how long had passed and the vehicle traffic on the highway (...). On inspection of the vehicle, it was observed to be on the side of the road, completely burned, without license plates, turned over, oriented north to south, with a hole on the passenger side floor, projection from inside out, about 45 x 60 cm in diameter and with multiple perforations caused by shrapnel.¹⁰

23. The IACHR notes that according to the petitioner, only the inspections were carried out, with no other investigative steps, such as expert reports or taking statements from the individuals involved and witnesses to establish the facts of the case. The Commission observes that according to the court documents provided, at least four people witnessed the facts and "did not give testimony."¹¹

24. The petitioner also indicated that between November 1994 and June 1995, the investigation was transferred to two other judges. It indicated that the Office of the Public Prosecutor requested the pretrial detention of Mr. Castillo. It noted that this request met with no response. It also reported that the judges failed to conduct any investigative procedures regarding the facts of the case. The Commission observes that the State did not provide documentation on investigative steps taken during that time.

25. The IACHR takes note that the petitioner held that the process was kept open and without any procedural activity despite a series of requests, and it was simply transferred to a number of different judicial authorities: i) in April 1998, to the Preliminary Investigation Judge on Property of Ahuachapán; and ii) in

⁷ Communication from the State of January 10, 2019.

⁸ Communication from the petitioner of July 28, 2005. Communication from the petitioner of November 13, 2015.

⁹ Resolution of the Chamber of the Third Western District, July 20, 2004. Annex 1 to the communication from the petitioner of July 28, 2005.

¹⁰ Resolution of the Chamber of the Third Western District, July 20, 2004. Annex 1 to the communication from the petitioner of July 28, 2005.

¹¹ Resolution 34/03 of the First Trial Court of Atiquizaya, May 19, 2004. Annex 1 to the communication from the State of January 10, 2019.

April 2001, an interim judge.¹² The Commission observes that the State did not provide documentation on investigative steps taken during that time.

26. The petitioner reported that in June 2001, another Investigation Judge on Property of Ahuachapán took over the case. It indicated that an inspection was conducted of the location of the facts and Mr. Castillo was summonsed to appear before the court and provide his statement. The petitioner alleged that the President Magistrate at the time of the Third Western Section, one of Mr. Castillo's "godfathers and protectors," asked the judge to drop the investigation. It stated that because of this, the judge did not execute the summons for Mr. Castillo.¹³ This information was not disputed by the State.

27. The Commission notes that this judge requested to recuse himself from handling this process. This was because Mr. Aguirre was working in the same court that was hearing the matter. On May 28, 2002, the Chamber of the Third Western District ruled to grant the recusal.¹⁴

28. The IACHR observes that the petitioner reported that the process remained open and no court was designated until the middle of 2003. It indicated that the process was remitted to the First Trial Court Judge of Atiquizaya.¹⁵ The State indicated that on October 2 of that year, the judge asked to recuse himself from handling the process.¹⁶ The IACHR notes that the judge indicated that his recusal was based on the fact that he had "had a labor relationship" with Mr. Aguirre.¹⁷ On October 7, 2003, the Chamber of the Third Western District denied the request. The Chamber found that the grounds presented "were not sufficient to conclude that he could be suspected of partiality" and ordered the processing of the case to continue.¹⁸ The petitioner indicated that the judge did not take any investigative steps during that time.¹⁹ The State did not dispute this information.

29. On May 19, 2004, the First Trial Judge of Atiquizaya issued a ruling provisionally dismissing the three charges against Mr. Castillo. The ruling said his participation in the facts have not been proven, nor his relationship to the injuries caused to Mr. Aguirre. The judge said his decision was based on the fact that "as regards the *corpus delicti* and criminal participation in the offenses (...) no evidence was received, not even a formal criminal complaint, confiscation of a weapon, testimonial evidence, or direct implication of any liability in this regard, other than the word of the victim, Mr. Aguirre." He added that "the body of evidence contains no indication of witnesses or references corroborating in the least what Mr. Aguirre has said."²⁰

30. On May 28, 2004, the Public Prosecutor appealed the ruling to dismiss. It noted that the forensic analysis conducted by the National Civil Police determined that the explosive device was a grenade and that "it exploded from inside to outside the vehicle." It argued that this, plus the fact that Castillo had a shotgun and shotgun shells in his vehicle, strengthened the hypothesis that this was not an assassination attempt and that no one had thrown a grenade at the vehicle. On the contrary, it argued that the grenade was inside the vehicle and that it belonged to Mr. Castillo.²¹

31. On July 20, 2004, the Chamber of the Third Western District denied the appeal and upheld the dismissal of the case. The Chamber confirmed that during the process, two hypotheses were established about what

¹² Communication from the petitioner of November 13, 2015.

¹³ Communication of the petitioner, July 28, 2005. Communication from the petitioner of November 13, 2015.

¹⁴ Resolution of the Chamber of the Third Western District, Recusal APN 32/02, May 28, 2002. Annex 3 to the communication from the State of January 10, 2019.

¹⁵ Communication from the petitioner of November 13, 2015.

¹⁶ Communication from the State of January 10, 2019.

¹⁷ Resolution of the Chamber of the Third Western District, Recusal APN 36/03, October 7, 2003. Annex 3 to the communication from the State of January 10, 2019.

¹⁸ Resolution of the Chamber of the Third Western District, Recusal APN 36/03, October 7, 2003. Annex 3 to the communication from the State of January 10, 2019.

¹⁹ Communication from the petitioner of November 13, 2015.

²⁰ Resolution 34/03 of the First Trial Court of Atiquizaya, May 19, 2004. Annex 1 to the communication from the State of January 10, 2019.

²¹ Resolution of the Chamber of the Third Western District, July 20, 2004. Annex 1 to the communication from the petitioner of July 28, 2005.

had happened: i) that it was an assassination attempt against the persons who were in the vehicle and the explosive device was thrown from outside; and ii) that the explosive device was inside the vehicle owned by Mr. Castillo.

32. Regarding the police inspection on November 13, 1993, the Chamber held that "it was not conducted by experts specializing in these types of incidents" who would use a proper forensic investigation methodology. It added that the November 15 inspection that same year did include the participation of ballistics experts, forensic photographers, and other specialists, and it was concluded that "no fragments of the explosive device that injured the person and destroyed the vehicle were found, due to how long had passed and the vehicle traffic on the highway." The Chamber therefore underscored this demonstrated "the importance of conducting the inspection with all the right experts and evidence analysts for the most effective investigation." The Chamber concluded as follows:

The inspection and expert witness exhibits have shown that the [general forensic investigative] methodology [at the scene of the facts—protecting, observing, and establishing the scene of the facts, as well as collecting and turning over evidence to a laboratory] was not even minimally followed, and in addition, the expert reports are not conclusive in their findings, leaving a significant margin for doubt. They are therefore not decisive and do not help resolve the conflicting versions of the facts. (...)

Based on the reasoned justifications set forth, doubt persists in all the alleged crimes, as it has not been decisively established whether the grenade or grenades were thrown from outside the vehicle or if they were being transported inside it, and it therefore cannot be concluded with certainty that the crimes were committed (...).

Because of the amount of time that has passed and the disappearance of the vehicle, it is difficult and perhaps impossible to conduct other expert examinations to resolve the doubt that persists, doubts that were also raised by the experts upon recognition that other investigations were needed. Because of this inadequate investigation, neither the *corpus delicti* nor the participation of the defendant in it could be sufficiently established in this preliminary investigation. The provisional dismissal ordered by the judge subject of this appeal is therefore appropriate.²²

33. The Commission does not have up-to-date information on the health of Mr. Aguirre.

IV. CONSIDERATIONS OF LAW

A. Rights to a fair trial) and judicial protection (articles 8(1)²³ and 25(1)²⁴ of the American Convention, in conjunction with Article 1(1)²⁵ of the Convention

1. General considerations

34. Pursuant to articles 8 and 25 of the American Convention, States have an obligation to make effective judicial remedies available to the victims of human rights violations, and they must meet the requirements of the rules of legal due process.²⁶ This obligation, which is one of means and not ends, must be assumed by the State as its own juridical duty and not a simple formality condemned from the start to failure.²⁷ Likewise, the IACHR has held as follows:

²² Resolution of the Chamber of the Third Western District, July 20, 2004. Annex 1 to the communication from the petitioner of July 28, 2005.

²³ Article 8(1). Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

²⁴ Article 25(1) Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

²⁵ Article 1(1) The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

²⁶ Inter-American Court. *Case of Rodríguez Vera et al. (the Disappeared from the Palace of Justice) v. Colombia*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 14, 2014. Series C No. 287, para. 435

²⁷ Inter-American Court. *Case of García Lucero et al. v. Chile*. Preliminary Objection, Merits, and Reparations. Judgment of August 28, 2013. Series C No. 267, para. 161.

The judicial investigation must be undertaken in good faith, diligently, exhaustively, and impartially, and must be aimed at exploring all possible lines of investigation to enable the identification of the perpetrators of the crime so they can be tried and punished.²⁸

35. As regards States' obligation to act with due diligence, this means facilitating access to suitable and effective judicial remedies to human rights violations. Likewise, for the purposes of guaranteeing the right to access to justice, States have "an obligation to ensure the right of the victims or their families to participate in all phases of the respective proceedings, so that they can make suggestions, receive information, provide evidence, make arguments and, in brief, assert their interests and rights."²⁹ The Court has held as follows:

[T]he investigation must be aimed at pursuing, arresting, prosecuting, and punishing both the perpetrators and the masterminds of the facts. Impunity must be eradicated by establishing both general State responsibilities and the individual responsibilities (criminal and other) of its agents or of private parties, such that to comply with this obligation, the State must remove all *de facto* and *de jure* obstacles that maintain impunity.³⁰

36. Additionally, States have an obligation to ensure investigations are conducted exhaustively and diligently. This means conducting all the inquiries necessary to ensure the victims can learn the truth of all the facts that took place and to ensure those involved in the crimes are punished.³¹ The State must demonstrate that it has conducted an immediate, exhaustive, serious, and impartial investigation³² aimed at exploring all potential lines of investigation to enable the identification of the perpetrators of the crime so they can be tried and punished.³³ Both the IACHR and the Courts have held that States can be held responsible for failure to "order, practice, or evaluate" evidence that could be fundamental for solving the facts.³⁴

37. With regard to the principle of independence and impartiality, States must guarantee that the bodies charged with taking part in the judicial process—whether during the preliminary investigation or in the trial itself—approach the matter with as much objectivity as possible. This essentially means that the intervening judicial authorities must have no personal prejudice and provide sufficient guarantees such that the parties of the process have no justified doubt as to its impartiality.³⁵

38. Regarding the reasonable period of time for the process, it must be assessed based on the total length of the proceeding from the first procedural act until issuance of the final judgment, including any appeals that may be filed.³⁶ The right to access to information means that the solution to the matter must be produced within a reasonable period of time, as a prolonged delay can, in certain cases, constitute in itself a violation of the right to a fair trial.³⁷ Both the IACHR and the Court have underscored that in order to determine the reasonability of the length of a process, the following elements must be taken into account: i) the complexity of the matter; ii) the procedural activity of the interested party; iii) the conduct of judicial authorities; and iv) the effect the legal situation has had on the person involved in the process.³⁸

²⁸ IACHR. Report 37/00. Case 11,481. Monseñor Oscar Arnulfo Romero and Galdámez, para. El Salvador. April 13, 2000, para. 80.

²⁹ IACHR. Thematic report The Right to Truth in the Americas. August 13, 2014, para. 80. Inter-American Court. *Case of González Medina and relatives v. Dominican Republic*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of February 27, 2012. Series C No. 240, para. 251.

³⁰ Inter-American Court. *Case of the Employees of the Fireworks Factory of Santo Antonio de Jesus v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 15, 2020. Series C No. 407, para. 220.

³¹ Inter-American Court. *Case of Coc Max et al. (Xamán Massacre) v. Guatemala*. Merits, Reparations, and Costs. Judgment of August 22, 2018. Series C No. 356, para. 81.

³² IACHR. Report 55/97. Merits. Juan Carlos Abella et al. Argentina. November 18, 1997, para. 412.

³³ IACHR. Report 25/09. Merits. Sebastião Camargo Filho. Brazil. March 19, 2009, para. 109.

³⁴ Inter-American Court, *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala*. Judgment of November 19, 1999. Series C No. 63, para. 230. Also see: IACHR. *Access to Justice for women who are Victims of Violence in the Americas*. January 20, 2007, para. 41.

³⁵ Inter-American Court. *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 2, 2004. Series C No. 107. Paras. 169 to 171.

³⁶ Inter-American Court. *Case of Andrade Salmón v. Bolivia*. Merits, Reparations, and Costs. Judgment of December 1, 2016. Series C No. 330. Para. 200.

³⁷ Inter-American Court. *Case of the Employees of the Fireworks Factory of Santo Antonio de Jesus v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 15, 2020. Series C No. 407, para. 222.

³⁸ IACHR. Report 110/10. Case 12,539. Merits, Sebastián Furlan and relatives v. Argentina. October 21, 2010, para. 100.

39. Lastly, both the IACHR and the Court have indicated that in cases where a person with disabilities has been affected, judicial authorities should act with greater diligence. The Court has held that "it is crucial that the authorities in charge prioritize attending to and resolving the procedure to avoid delays in the proceedings, thus guaranteeing the swift resolution or execution of them."³⁹ Likewise, the State obligations with regard to the duties of due diligence and swiftness described in the previous section are enhanced in cases of persons with disability. Judicial authorities in charge of processes involving persons with disabilities who do not taking all actions within their power are violating the right to a fair trial.⁴⁰

40. For its part, United Nations Committee on the Rights of Persons with Disabilities has said States have an obligation to ensure effective access to justice for persons with disabilities on an equal basis with others. It has indicated that the necessary adjustments must be made to facilitate their participation as victims.⁴¹ This includes testifying as witnesses in all judicial procedures, including during the investigation and other preliminary stages.⁴²

2. Analysis of the case

41. First of all, the Commission underscores that it is not within its authority to make determinations as to the criminal responsibility of individual persons who may be involved of the facts of this case. The analysis performed hereinafter will focus on determining whether the investigation and criminal process in this case were conducted in adherence to corresponding Inter-American standards on the rights to fair trial and judicial protection, described above.

42. In this case, the Commission observes that Mr. Aguirre, an individual with a physical disability, filed a criminal complaint with judicial authorities over the incidents that took place on November 13, 1993. Mr. Aguirre alleged that the serious injuries he suffered were the results of the explosion of a grenade that the owner and driver of the vehicle, Francisco Reynaldo Castillo Borja, Justice of the Peace of Villa de Apaneca, had in his possession. As the State itself has noted, the law in force at the time establish that it was the judicial authority, not the Office of the Public Prosecutor, that was in charge of "moving" and "directing the process."

43. In this regard, the IACHR takes note of a series of elements indicating omissions and irregularities in the investigation, establishing the facts, and moving the criminal process forward. First, the Commission underscores that according to the documentation submitted, the judicial authority initially in charge of the process limited itself to conducting visual inspections concluding that the explosion of the vehicle was the result of an M-67 grenade and that "it exploded from inside to outside the vehicle." It also indicated that the vehicle was almost entirely destroyed; however, it noted that the owner of the vehicle had a shotgun and shotgun shells in his vehicle. This authority did not request any additional investigative step or ask for testimony from the three individuals who were in the vehicle when the facts took place. The State recognized that, under the law in force at the time, Mr. Aguirre was not recognized as a witness.

44. Second, the IACHR highlights that according to the procedural documents submitted, there were at least four witnesses to the facts. However, none of these individuals were called to testify.

45. Third, the IACHR notes that between 1993 and 2001, the process was transferred to at least five different judicial authorities as a result of multiple requests for recusal. These requests were because of a supposed connection between the judicial authorities and the defendant, who was a Justice of the Peace for Villa de Apaneca. The Commission observes that according to the documentation presented, there was no procedural

³⁹ Inter-American Court. *Case of Spoltore v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment June 9, 2020. Series C No. 404, para. 45.

⁴⁰ Inter-American Court. *Case of Furlán and Relatives v. Argentina*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2012. Series C No. 246, para. 204.

⁴¹ UN. Committee on the Rights of Persons with Disabilities. Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 38/2016, September 20, 2018, para. 11.4.

⁴² UN. Committee on the Rights of Persons with Disabilities. Views adopted by the Committee under article 2 of the Optional Protocol, concerning communication No. 30/2015, August 18, 2017, para. 7.6.

activity during this period of time. On the contrary, none of the authorities requested the performance of any investigative steps or the collection of testimony from the persons involved or from the witnesses.

46. Fourth, the IACHR takes note of the information provided by the petitioner and not challenged by the State on the filing of briefs with judicial authorities to accelerate the process and challenge omissions in the investigation. Those briefs, also submitted by Mr. Maguiña, a person with physical disabilities, met with no response. The IACHR also notes that there was a request from the Office of the Public Prosecutor to place the accused in pretrial detention, but it also met with no response.

47. Fifth, it was only in 2001, eight years after the facts took place, that the judge in charge of the process conducted a new inspection of the scene of the facts, without requesting any additional investigative steps. The judge also asked for the first time for the accused individual to give a statement, but this procedure was never executed. According to the petitioner, the failure to exercise this request for a statement was the result of outside pressure from the President Magistrate at the time of the Chamber of the Third Western District, an individual who was close to the accused. The IACHR does not have enough information to confirm the petitioner's claim. Nevertheless, the Commission notes that the judge in charge of the process sought to recuse himself from it, a recusal that was granted by the Chamber of the Third Western District.

48. Sixth, the Commission observes that between 2001 and 2003, the case was not assigned to any judicial authority, and was therefore stalled. Likewise, the new judge that was assigned to the case also requested to recuse himself—a request that was not granted—and took no steps to move the case forward.

49. Seventh, in May 2004, the First Trial Judge of Atiquizaya provisionally dismissed the charges. The judge found that during the process, no evidence was collected and no testimony was given. The resolution was upheld by the Chamber of the Third Western District in July 2004.

50. The Commission finds that from the start of the investigation, there was at least one police report indicating that the grenade exploded from inside the vehicle, and that the owner of the vehicle had weapons in the back. Despite this, no investigative steps were taken during the process to explore this line of investigation. The IACHR notes that during the 11 years the process lasted, four inspections of the scene of the facts were carried out, with no additional investigative steps taken. Additionally, statements were never taken from the accuser, who was a person with physical disabilities, the defendant, the other person traveling in the vehicle, or any of the four witnesses to the facts. Additionally, the IACHR notes the long periods of procedural inactivity, multiple transfers of the investigation to different judicial authorities, and requests from judges to recuse themselves from handling the process.

51. The IACHR concludes that these elements reflect a lack of due diligence in investigating, resolving the facts, and punishing the individuals responsible for the facts that took place in 1993 to the detriment of Miguel Ángel Aguirre Magaña. The IACHR underscores that it is precisely this lack of due diligence that led to the dismissal of the charges against the accused and, consequently, a situation of impunity. Despite multiple briefs submitted to raise questions about these omissions, irregularities, and shortcomings in the investigation, the State did not provide adequate and effective remedies to address these violations.

52. Regarding the length of the criminal process, the IACHR observes that it lasted 11 years, from the submission of the criminal complaint in 1993 to the upholding of the dismissal in 2004. Recalling the elements for determining the reasonability of the time period of the process described in the previous section, the Commission highlights that there is no complexity where a possible perpetrator has been identified, there were witnesses, and there was information. In any case, for a complexity argument to be admissible, it is not sufficient for States to simply invoke it. They must provide specific information in each case that connects its complexity to the delay.⁴³ In this case, that did not happen.

⁴³ IACHR. Report 34/14. Case 12,492. Merits. Carlos Escaleras Mejía and relatives, para. 172.

53. The Commission also does not find enough evidence to allow for the conclusion that there was some type of activity or behavior on the part of the alleged victim that could have slowed the investigation. The IACHR notes that the submission of the remedies available under domestic law by the individual involved in the process is not a justification for delaying its processing. With regard to the actions of judicial authorities, the IACHR underscores the various transfers of the case, as well as the long periods of procedural inactivity.

54. Regarding the impact of the juridical situation on the person involved in the process, the IACHR recalls the contents of the previous section regarding the enhanced duty to accelerate the investigation in the case of persons with disabilities. In this regard, the Commission underscores that Mr. Aguirre's disability made it necessary for the investigations and criminal process to be carried out with greater diligence in order to be resolved quickly. In view of the criteria analyzed, the Commission concludes that the time period of 11 years during which the criminal process lasted was unreasonable.

55. Therefore, the Commission finds that the State failed to comply with its duty to investigate the facts with due diligence and within a reasonable period of time, as well as its duty to provide adequate and effective resources to remedy the situation. Therefore, the Commission concludes that the State of El Salvador violated the rights to fair trial and judicial protection enshrined in articles 8(1) and 25(1) of the American Convention in conjunction with the obligations established in Article 1(1) of the convention, to the detriment of Miguel Ángel Aguirre Magaña.

V. CONCLUSIONS AND RECOMMENDATIONS

56. Based on the considerations of fact and law set forth throughout this report, the Inter-American Commission concludes that the State of El Salvador is responsible for the violation of the rights to fair trial and judicial protection enshrined in articles 8(1) and 25(1) of the American Convention in conjunction with the obligations established in Article 1(1) of the convention, to the detriment of Miguel Ángel Aguirre Magaña.

57. By virtue of these conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF EL SALVADOR:

1. Provide full pecuniary and nonpecuniary reparations to Miguel Ángel Aguirre Magaña for the human rights violations declared in this report. The State must adopt measures to provide financial compensation and satisfaction for the non-pecuniary damages.
2. Order measures to provide the necessary physical and mental health care needed to Miguel Ángel Aguirre Magaña. These measures must be implemented in accordance with the victim's wishes and in coordination with the victim and his representatives.
3. Provide permanent training programs for judicial authorities on due diligence and access to justice for persons with disabilities, in accordance with the standards established in this report.