

# Deusto Journal of Human Rights

## Revista Deusto de Derechos Humanos

No. 15/2025

DOI: <https://doi.org/10.18543/djhr152025>

---

### ARTICLES / ARTÍCULOS

#### ***Velásquez Rodríguez v. Honduras: The role of victims' legal representatives in shaping the Inter-American Court's evidentiary regime***

*Velásquez Rodríguez vs. Honduras: El papel de la representación legal de las presuntas víctimas en la construcción del régimen probatorio de la Corte Interamericana*

Genaro Andrés Manrique Giacomán

<https://doi.org/10.18543/djhr.3016>

E-published: June 2025

### Copyright (©)

*Deusto Journal of Human Rights / Revista Deusto de Derechos Humanos* is an Open Access journal; which means that it is free for full and immediate access, reading, search, download, distribution, and reuse in any medium only for non-commercial purposes and in accordance with any applicable copyright legislation, without prior permission from the copyright holder (University of Deusto) or the author; provided the original work and publication source are properly cited (Issue number, year, pages and DOI if applicable) and any changes to the original are clearly indicated. Any other use of its content in any medium or format, now known or developed in the future, requires prior written permission of the copyright holder.

### Derechos de autoría (©)

*Deusto Journal of Human Rights / Revista Deusto de Derechos Humanos* es una revista de Acceso Abierto; lo que significa que es de libre acceso en su integridad inmediatamente después de la publicación de cada número. Se permite su lectura, la búsqueda, descarga, distribución y reutilización en cualquier tipo de soporte sólo para fines no comerciales y según lo previsto por la ley; sin la previa autorización de la Editorial (Universidad de Deusto) o la persona autora, siempre que la obra original sea debidamente citada (número, año, páginas y DOI si procede) y cualquier cambio en el original esté claramente indicado. Cualquier otro uso de su contenido en cualquier medio o formato, ahora conocido o desarrollado en el futuro, requiere el permiso previo por escrito de la persona titular de los derechos de autoría.

Deusto Journal of Human Rights

ISSN: 2530-4275 • ISSN-e: 2603-6002, No. 15/2025, Bilbao

© Universidad de Deusto • <http://djhr.revistas.deusto.es/>

# ***Velásquez Rodríguez v. Honduras: The role of victims' legal representatives in shaping the Inter-American Court's evidentiary regime***

*Velásquez Rodríguez vs. Honduras: El papel de la representación legal de las presuntas víctimas en la construcción del régimen probatorio de la Corte Interamericana*

Genaro Andrés Manrique Giacomán 

Ghent University, Belgium

genaro.manriquegiacomano@ugent.be

ORCID: <https://orcid.org/0000-0003-3158-4507>

<https://doi.org/10.18543/djhr.3016>

Submission date: 08.04.2024

Approval date: 15.01.2025

E-published: June 2025

---

**Citation / Cómo citar:** Manrique, Genaro A. 2025. «*Velásquez Rodríguez v. Honduras: The role of victims' legal representatives in shaping the Inter-American Court's evidentiary regime.*» *Deusto Journal of Human Rights*, n. 15: 229-255. <https://doi.org/10.18543/djhr.3016>

**Summary:** Introduction. 1. The Honduran context and the case of Ángel Manfredo Velásquez Rodríguez. 2. The role of the legal representatives of the alleged victims in the proceedings before the IA Court and their evidentiary strategies. 3. Proceedings before the IACHR Court. 4. Development of human rights standards and related evidentiary principles. 4.1. The concept of forced disappearances and its continuous nature. 4.2. Burden of proof. 4.3. Use of circumstantial and testimonial evidence. 5. The legal strategy of victims' representatives in the *Velásquez* case and its impact on the evidentiary regime and future IA Court caselaw. References.

**Abstract:** The landmark case of *Velásquez Rodríguez v. Honduras* (1988) not only initiated the jurisprudence of the Inter-American Court of Human Rights but also established foundational principles of its evidentiary regime. These standards, including the concept of forced disappearances, rules on burden of proof, and use of presumptions and testimonial evidence, continue to shape contemporary caselaw. This paper highlights the overlooked role of the legal representatives of the victims in proposing these evidentiary

principles. It comprehensively examines the case, delving into its facts, the Honduran context, the role of legal representatives of the victims, and the impact of *Velásquez Rodríguez* on the Court's evidentiary regime and future caselaw.

**Keywords:** Inter-American Court, Velásquez Rodríguez, forced disappearance, evidence regime, testimonies, legal representatives, burden of proof.

**Resumen:** El emblemático caso *Velásquez Rodríguez vs. Honduras* (1988) no sólo inició la jurisprudencia de la Corte Interamericana de Derechos Humanos, sino que también estableció principios básicos de su régimen probatorio. Estos estándares, incluyendo el concepto de desaparición forzada, las reglas sobre la carga de la prueba y el uso de presunciones y pruebas testimoniales, continúan dando forma a la jurisprudencia contemporánea. Este artículo destaca la importancia de la representación legal de las víctimas en el planteamiento de estos principios probatorios. Examina exhaustivamente el caso, profundizando en sus hechos, el contexto hondureño, el papel de sus representantes legales y el impacto de *Velásquez Rodríguez* en el régimen probatorio de la Corte y en su futura jurisprudencia.

**Palabras clave:** Corte Interamericana, Velásquez Rodríguez, desaparición forzada, régimen probatorio, testimonios, representantes legales, carga de la prueba.

---

## Introduction<sup>1</sup>

On July 29, 1988, the Inter-American Court of Human Rights (hereinafter IA Court or the Court) issued its first ever judgment, in which it declared that Honduras violated articles 7 (obligations to respect and to ensure the right to personal liberty), 5 (obligations to respect and to ensure the right to humane treatment) and 4 (obligation to ensure the right to life), all these articles read in conjunction with article 1.1 (obligation to respect rights and freedoms) of the American Convention on Human Rights (1969).

This case is not only important for being the one that started the jurisprudence of the IA Court, but also because the Court managed to lay down the paramount principles of its evidentiary regime that continue to be found in current caselaw, which is indicative of the great impact that *Velásquez Rodríguez* had on the future of the Inter-American system. This paper will also address an issue that has been overlooked by academia: that these evidentiary standards and principles were proposed to the IA Court as part of the legal strategy of the lawyers representing the alleged victims, who played a pivotal role in the proceedings.

In summary, the human rights standards and related evidentiary principles established in the judgment include: the concept of forced disappearances and its continuous nature; the rules on the burden of proof in human rights violations, and the use of presumptions and testimonial evidence to prove forced disappearances in the context of widespread human rights violations.

This paper takes a comprehensive approach to the well-known *Velásquez Rodríguez* case, firstly by discussing the facts of the case as well as the Honduran context; secondly, examining the role of the legal representatives of the alleged victims in the proceedings before the IA Court; thirdly, explaining each of the human rights standards and related evidentiary principles proposed by the legal representatives of Manfredo Velásquez, and finally, analyzing the impact of the case of *Velásquez Rodríguez* on the evidentiary regime and future caselaw of the IA Court.

---

<sup>1</sup> This article was written as part of the DISSECT Project, funded by the European Research Council (ERC-AdG-2018-834044), of which the author is a member.

## 1. The Honduran context and the case of Ángel Manfredo Velásquez Rodríguez

In 1981, Roberto Suazo Córdova from the Liberal Party of Honduras (*Partido Liberal*) won the presidential elections. As part of the new government's security strategies, the newly elected president decided to form an alliance with the Honduran army, which had enjoyed institutional and constitutional autonomy since 1956 (Aguilar-Paz 1990, 23). Together with the head of the Honduran Armed Forces, General Gustavo Álvarez Martínez decided to implement a local version of the National Security Doctrine (*Doctrina de Seguridad Nacional*, DSN) to combat the perceived spread of leftist revolution in Central America (Amnesty International 1992, 3), marking the beginning of one of the darkest periods in the history of Honduras.

Between 1981 and 1984, between 100 and 150 people were forcibly disappeared, all following a very similar pattern<sup>2</sup>:

1. The disappearances were initiated by the violent kidnapping of the victims, often in broad daylight and in populated areas.
2. They were committed by armed men, dressed in civilian clothes and disguised, who acted with apparent impunity, in vehicles without official identification and with tinted windows, without license plates or with false plates.
3. The perpetrators were military agents, police officers or persons under their direction.
4. The authorities refused to acknowledge the deprivation of liberty and subsequently withheld information about their fate or whereabouts.

In this context, Ángel Manfredo Velásquez Rodríguez, a university student from the National Autonomous University of Honduras (*Universidad Nacional Autónoma de Honduras*, UNAH), was violently arrested without a warrant by members of the National Office of Investigations (*Dirección Nacional de Investigación*, DNI) and the Department of Military Intelligence of the Honduran Armed Forces (also known as G-2)<sup>3</sup>. The arrest had taken place in the city center of the capital Tegucigalpa on the afternoon of September 12, 1981. The alleged victims stated that "several eyewitnesses declared that he was taken along with other detainees to the cells of Public Security Force

---

<sup>2</sup> IA Court H.R. 1988. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29. Series C No. 4, para. 147.

<sup>3</sup> IACHR, Resolution 22/86 Case No. 7920 (Honduras) of April 18, 1986, para. 3.

Station No. 2 located in the El Manchén neighborhood of Tegucigalpa, where he was subjected to harsh interrogations under cruel torture"<sup>4</sup>, accused of alleged political crimes.

On September 17, 1981, he was transferred to the First Infantry Battalion where the interrogations continued and that, in spite of this, all the police and security forces denied his detention<sup>5</sup>. The search by the relatives was intense but did not yield any results other than false leads: in the days following the event, several *habeas corpus* petitions were filed before the Honduran Supreme Court of Justice, without any result, and likewise, repeated criminal complaints about Manfredo's kidnapping or illegal detention before the First Criminal Court of Honduras, without any response<sup>6</sup>. As a result of this impasse, the relatives decided to file a petition to the Inter-American Commission on Human Rights (IACHR).

On October 7, 1981, the petition No. 7920 was filed and submitted to the IACHR<sup>7</sup> on behalf of Manfredo Velásquez<sup>8</sup>. After transmitting the complaint to the Government, the Commission made several requests to the Government for the requested information on the alleged facts<sup>9</sup>, but the Government failed to provide any information or evidence. As Grossman (2007, 84) explains, "while the credibility of the Commission's findings increase[s] when all parties participate in the proceedings and the Commissioners decide the case on its merits, if the State refuses to participate in the proceedings, the Commission, in accordance with its regulations, can presume the validity of the facts as alleged by the petitioner". In the absence of a reply from Honduras, the Commission, by application of Article 38 (formerly Article 39) of its Rules of Procedure (1980), presumed as true "the facts denounced in the communication of October 7, 1981, concerning the detention and subsequent disappearance of Mr. Ángel Manfredo Velásquez Rodríguez in the Republic of Honduras" and informed the Government "that such facts constitute very serious violations of the right to life (Article 4) and the right to personal liberty (Article 7) of the American Convention"<sup>10</sup>.

<sup>4</sup> IACHR, Resolution 22/86 Case No. 7920, para. 3.

<sup>5</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, para. 3.

<sup>6</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, para. 74.

<sup>7</sup> The composition of the IACHR in 1981 was the following: Carlos A. Dunshee de Abranches (1964-1983), Andrés Aguilar (1972-1985), Tom J. Farer (1976-1983), Luis Demetrio Tinoco Castro (1980-1985), César Sepulveda (1980-1985), Francisco Bertrand Galindo (1980-1987), Marco Gerardo Monroy Cabra (1978-1987).

<sup>8</sup> IACHR, Resolution 22/86 Case No. 7920.

<sup>9</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, para. 4.

<sup>10</sup> IACHR, Resolution 30/83 Case No. 7920 (Honduras) of October 4, 1983.

On November 18, 1983, the Honduran State requested the reconsideration of Resolution No. 30/93 stating that domestic remedies had not been exhausted, and further claimed that the National Office of Investigations had no knowledge of the whereabouts of Mr. Velásquez Rodríguez, declaring that it was making a 'serious effort' to locate Mr. Velásquez Rodríguez<sup>11</sup>. Six months later, on May 30, 1984 the Commission informed the State that it had decided "in light of the information submitted by the Honorable Government, to reconsider Resolution 30/83 and to continue its study of the case"<sup>12</sup>. The Honduran State submitted the Report of the Investigatory Commission on October 17, 1985<sup>13</sup>.

Finally, on April 18, 1986, the IACHR adopted Resolution No. 22/86, where it stated that the new information presented by the Honduran State was insufficient to warrant reconsideration of Resolution No. 30/83<sup>14</sup>. The Commission found that all evidence showed that the State was responsible for the disappearance of Mr. Velásquez Rodríguez, who at the time of the decision was still missing<sup>15</sup>. Therefore, on April 24, 1986, the IACHR submitted the matter to the IA Court for it to decide whether the Honduran State had violated Articles 4 (right to life), 5 (right to humane treatment) and 7 (right to personal liberty) of the American Convention to the detriment of Mr. Ángel Manfredo Velásquez Rodríguez. The IACHR also requested that the consequences of the situation that constituted the violation of such rights be repaired, and that fair compensation be paid to the victims.

## 2. The role of the legal representatives of the alleged victims in the proceedings before the IA Court and their evidentiary strategies

Before delving into the procedural details of the *Velásquez* case before the IA Court, it is important to address the procedural obstacles that the victims faced in securing legal representation at the Court. It is also essential to examine the role played by the legal representatives of

<sup>11</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, para. 5.

<sup>12</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, para. 6.

<sup>13</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, para. 8.

<sup>14</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, para. 10.

<sup>15</sup> As of 2024, Manfredo Velásquez Rodríguez is still disappeared, as his body or remains have not been found.

the victims, as well as the legal strategies they used, in order to achieve an adequate representation of the interests of the victims, and to make their voices heard, but foremost to be able to bring the relevant factual information and legal arguments to the attention of the Court.

One of the first procedural obstacles faced by the legal representatives of the victims was their inability to participate directly in the proceedings before the IA Court. According to the American Convention on Human Rights, only States and the IACHR have *locus standi* to trigger the Court's jurisdiction (Article 33)<sup>16</sup>, and the IACHR is required to appear in all cases before the Court (Article 57). Notably, the American Convention does not assign any explicit role to the alleged victim in the individual proceeding before the Court (Medina 2011, 118). In this regard, according to the First Rules of Procedure of the IA Court from 1980, the alleged victims were not considered a party in the proceedings, thus the only recognized parties were the IACHR and the State (IA Court Rules of Procedure 1980). This would change several years later<sup>17</sup>.

In view of the above, Manfredo Velásquez's legal team, comprised of Juan Méndez (who at the time was Executive Director of Human Rights Watch Americas), Claudio Grossman (professor at American University), Jose Miguel Vivanco (fellow at Human Rights Watch Americas), and Hugo Muñoz Quesada (a former Minister of Justice in Costa Rica) began to discuss three possible legal strategies (Grossman 1992, 378–79): (1) to cooperate informally with the Inter-American Commission, (2) to request the modification of the Court's rules to allow direct representation, or (3) to request the IACHR to appoint the

---

<sup>16</sup> Article 33 of the American Convention states: "The following organs shall have competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to this Convention: a. the Inter-American Commission on Human Rights; and b. the Inter-American Court of Human Rights".

<sup>17</sup> The IA Court Rules of Procedure have undergone a series of reforms in this regard: In 1991 they were amended to specifically allow the inclusion of one or more of the alleged victims' representatives among the Commission's delegates, which allowed them to begin to participate in the proceedings before the Court, although always dependent on the Commission. In 1996, the Rules stated that victims' representatives had the right to present their own arguments and evidence autonomously at the reparations stage. In 2000, there was a huge development as the legal representatives of the victims were now considered 'true parties', i.e., they may present requests, arguments and evidence autonomously. Finally, in the most recent amendment from 2009, it is provided that they may present requests, arguments and evidence autonomously and "shall continue to do so throughout the proceedings", see Previous Rules of Procedure, available at: <https://www.corteidh.or.cr/reglamento.cfm?lang=en>.

lawyers as legal advisors in accordance with Article 21 of the Court's 1980 Rules of Procedure<sup>18</sup> and Article 64 of the Commission's 1980 Rules of Procedure<sup>19</sup>. They decided that considering the specific circumstances of the case and the limited time they had, the third was the best option (Juan Méndez 2023, personal interview<sup>20</sup>).

Once the Commission appointed them as legal advisors, they began to work starting to assist the IACHR staff in the preparation of the briefs, questionings, cross-examinations and closing arguments. They also were able to attend the hearings in San José, Costa Rica, in June and October 1987, January and July 1988, and January and July 1989, with the IACHR delegation.

The legal strategies were discussed by the victims' legal team together with the Executive Secretary of the IACHR, Edmundo Vargas Carreño, and once they were able to convince him of the best strategy to follow, they began to prepare and fine-tune the arguments to persuade the Court (Claudio Grossman 2023, personal interview<sup>21</sup>; Juan Méndez 2023, personal interview). As for the IA Court, it was open to this form of collaboration (Méndez and Vivanco 1990, 532–33) as the Rules of Procedure were inspired by the Rules of Procedure of the European Court<sup>22</sup>, and in the European Human Rights System it was common for the representatives of the alleged victims to be designated as legal advisor to the delegation of the now-abolished European Commission of Human Rights (Claudio Grossman 2023, personal interview; Juan Méndez 2023, personal interview)<sup>23</sup>.

<sup>18</sup> Article 21, IA Court's Rules of Procedure of 1980: "The Commission shall be represented by such delegates as it may designate for this purpose. These delegates may, if they wish, be assisted by any persons of their choice".

<sup>19</sup> Article 64, IACHR's Rules of Procedure of 1980: "The delegates (of the IACHR) may be assisted by any person designated by the Commission. In the performance of their duties, the advisors shall act in accordance with the instructions of the delegates".

<sup>20</sup> An in-person semi-structured interview was conducted with Juan Méndez on June 8, 2023, with a duration of 60 minutes. The interview was transcribed and subsequently analyzed thematically using qualitative analysis software.

<sup>21</sup> An in-person semi-structured interview was conducted with Claudio Grossman on June 9, 2023, with a duration of 50 minutes. The interview was transcribed and subsequently analyzed thematically using qualitative analysis software.

<sup>22</sup> Article 29(1) of the Rules of the European Court of Human Rights (1959) stated that: "The Commission shall delegate one or more of its members to take part in the consideration of a case before the Court. The delegates may, if they so desire, have the assistance of any person of their choice".

<sup>23</sup> See also, European Court of Human Rights, Cases De Wilde Ooms and Versyo (Vagrancy) v. Belgium. Merits. 1971, p. 6-8.

For the IA Court, the arrival of this team of lawyers was to some extent a relief. Juan Méndez (2023, personal interview) explains that:

When the Commission submitted the case to the Court, they [the Court] were [was] furious with the Commission, because they had literally received a six-page brief. After three years of proceedings, there was nothing but six pages. So, when we, the representatives of the victims, came and presented them with a brief developing the facts and offering evidence, the Court was quite relieved that it was not going to have to rule on those six pieces of paper.

The professionalism of the legal team allowed them to participate without any issues in the proceedings before the Court, either by questioning, cross-examining or presenting closing arguments (Claudio Grossman 2023, personal interview).

While doing this, the team had to be cautious in its approach, especially because they were highly concerned that Honduran military or government officials might attempt to withdraw Honduras from the American Convention or the Court's jurisdiction. Therefore, they decided to avoid focusing on politics and instead relied on technical legal arguments, playing on a formalistic legal tradition (Grossman 2007, 87; Juan Méndez 2023, personal interview).

Another strategy that set the course of the *Velásquez* case was the search for witnesses and the preparatory work for their testimonies. The lawyers were aware that those testimonies would be crucial, as the state's involvement in the disappearances leads it to make every effort to suppress all existing documentary and/or direct evidence, therefore testimonies would serve as indispensable sources of information, shedding light on the events leading up to, during, and following the disappearance, offering insights into the identities of perpetrators, the methods employed in effecting the disappearance, and the potential motives underlying such actions (Juan Méndez 2023, personal interview).

The lawyers got down to work: Méndez traveled to Toronto, Canada, to interview Florencio Caballero (a deserter of Honduran Battalion 316<sup>24</sup>) and to Mexico to meet with Inés Murillo (a student who was held in clandestine detention for approximately three months in 1983), both of whom agreed to testify before the Court (Juan Méndez 2023, personal interview).

---

<sup>24</sup> The Battalion 316, or Batallón 3-16, was a clandestine paramilitary body established by General Álvarez, which employed a *modus operandi* resembling the tactics of the death squads in Argentina, see Gill (2005: 120).

They, along with the IACHR, 'secured' the testimonies of several other key witnesses in order to prove that there was a systematic pattern of disappearances in Honduras. It concerned:

- Ramón Custodio López, President of the NGO Committee for the Defense of Human Rights in Honduras (*Comité para la Defensa de los Derechos Humanos en Honduras*, CODEH).
- Virgilio Carías, President of the Socialist Party of Honduras, victim of kidnapping under conditions similar to Manfredo Velásquez.
- Milton Jiménez Puerto and René Velásquez Díaz, both Honduran attorneys, who defended political prisoners, and were detained by the Honduran security forces without due process in 1982.
- José Gonzalo Flores Trejo, a student that was held in clandestine detention along with Inés Murillo.

The challenge was that their account was not directly related to the disappearance of Manfredo Velásquez, but only corroborated the context in which the disappearances took place during that period of time. Méndez (2023, personal interview) recounts that:

Now we had to convince the Executive Secretary [Edmundo Vargas Carreño] to let us bring a witness who knew nothing about Velásquez, but who knew something about forced disappearance, so how could we justify the pertinence of certain pieces of evidence that were not directly related to the particular event of Velásquez's disappearance?

And there, the key is to prove that this was part of a pattern of conduct, to prove that the facts were part of the very phenomenon of forced disappearance, which at least from the point of view of intentionality, is the perfect crime, not only you kill a political rival, but also you destroy all the evidence of responsibility. Therefore, the logic was: try to demonstrate the pattern of conduct, to then demonstrate that the case was part of that pattern.

As will be explained in the following section, the testimonies given by the witnesses became key to prove that the context in which the disappearance of Manfredo Velásquez took place could be linked to the general context of disappearances in Honduras that was taking place at the time, thus demonstrating the responsibility of the Honduran State.

### 3. Proceedings before the IACHR Court

The hearing on the preliminary objections raised by the Government took place on June 15, 1987. Representatives of the Honduran State, the IA Commission and the representatives of the victims (as legal advisors of the Commission) participated in this hearing<sup>25</sup>.

Honduras brought forward several preliminary objections that were rejected by the Court for lack of sufficient grounds<sup>26</sup>, except for the one related to the non-exhaustion of domestic legal remedies. Regarding this last preliminary objection, the IACHR stated that the issue must be decided jointly with the merits of this case stating that "this matter is inseparably tied to the merits, since the lack of due process and of effective domestic remedies in the Honduran judiciary during the period when the events occurred is proof of a government practice supportive of the forced disappearance of persons, the case before the Court being but one concrete example of that practice"<sup>27</sup>.

The Court also stated that the Government of Honduras had the burden to prove that the petitioners had not exhausted domestic remedies, and that if a State failed to raise the objection early in the proceedings, either expressly or implicitly, it automatically waives its right to raise the objection later in the proceedings (Grossman 2007, 88). However, the Court declared that when certain exceptions to the rule of non-exhaustion of domestic remedies<sup>28</sup> are invoked, such as the ineffectiveness of such remedies or the lack of due process of law, "not only is it contended that the victim is under no obligation to pursue such remedies, but, indirectly, the State in question is also

---

<sup>25</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1., para. 14.

<sup>26</sup> The preliminary objections rejected by the Court were: 1) lack of a formal declaration of admissibility by the Commission; 2) failure to attempt to broker a friendly settlement; 3) failure to carry out an on-site investigation; 4) lack of a prior hearing; and 5) improper application of Articles 50 and 51 of the Convention, see IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Preliminary Objections, paras. 31-78

<sup>27</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Preliminary Objections, para. 83.

<sup>28</sup> Article 46(2) of the American Convention states that the provision regarding the exhaustion of domestic legal remedies shall not be applicable when: a) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; b) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

charged with a new violation of the obligations assumed under the American Convention”<sup>29</sup>. The aforementioned contravenes Article 25 which establishes the obligation to provide effective judicial remedies to victims of human rights violations and Article 8(1) which provides that all domestic remedies must be substantiated in accordance with the rules of due process of law. Thus, for the above reasons, the Court agreed with the Commission that the issue of domestic remedies is closely tied to the merits of the case.

On June 26, 1987, the Court issued its judgment on the preliminary objections, where it unanimously decided to: (1) Reject the preliminary objections raised by the Government of Honduras, except for the issues relating to the non-exhaustion of the domestic legal remedies, which were ordered joined to the merits of the case. (2) Continue hearing the case. (3) Postpone its decision on the reparations until such time as it renders judgment on the merits<sup>30</sup>.

From September 30 to October 7, 1987, the Court held hearings on the merits of the case and heard the conclusions of the parties. The Court later scheduled several private hearings on January 18 and 20, 1988, for several witnesses to present their testimony<sup>31</sup>. It is important to note that some of these witnesses received death threats or were murdered even before they could testify before the Court<sup>32</sup>.

Regarding the non-exhaustion of domestic remedies, the Court explained that although legal remedies technically existed in Honduras, it found that the *habeas corpus* petitions and criminal complaints were ineffective in cases of disappearances because the imprisonment occurred in secret, the formal procedural requirements precluded

---

<sup>29</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Preliminary Objections, para. 91.

<sup>30</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Preliminary Objections, para. 17.

<sup>31</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, para. 34.

<sup>32</sup> During the course of the trial, at the request of the Commission and in view of the threats against several witnesses (Milton Jiménez Puerto and Ramón Custodio López), the Court requested the Government of Honduras to adopt provisional measures provided for in Article 63(2) of the Convention, necessary to guarantee Mr. Jiménez and Mr. Custodio and the Committee for the Defense of Human Rights in Honduras CODEH, the safety of their lives and property. In its note of January 11, 1988, the Commission informed the Court of the death, on January 5, 1988 at 7:15 a.m., of Mr. José Isaiás Vilorio, member of Battalion 316 and one of the alleged perpetrators of the disappearance of Manfredo, whose appearance as a witness before the Court was scheduled for January 18, 1988. A few days later, on January 15, 1988, the Court learned of the murder in San Pedro Sula of Moisés Landaverde and Miguel Ángel Pavón Salazar, who testified before the Court during the hearing on September 30, 1987.

effective relief, and officials ignored the petitions. The IACHR proved the abovementioned through the testimonies of Inés Murillo and José Gonzalo Flores Trejo (both students, victims of clandestine detention), Milton Jimenez Puerto and Rene Velásquez Diaz (lawyers detained without due process), Virgilio Carías (politician, victim of kidnapping) and Miguel Ángel Pavón Salazar (Congressman, and vice-president of CODEH). All of them confirmed before the Court that “during the period in which the events took place, the legal remedies available in Honduras were ineffective to obtain the liberty of victims of forced or involuntary disappearances, which were ordered or tolerated by the public authorities”<sup>33</sup>. Also, according to dozens of press clippings presented by the IACHR, the Court was able to establish that between 1981 and 1984, more than one hundred people were illegally detained, many never reappeared and, in general, the legal remedies cited by the Government as available to the victims were ineffective<sup>34</sup>. In view of this evidence, the Court decided to reject the preliminary objection interposed by the Government of Honduras alleging the inadmissibility of the case for the failure to exhaust domestic legal remedies.

With respect to the merits of the case, the IACHR needed to prove: (1) that between 1981 and 1984 (the period in which Manfredo Velásquez disappeared) there were numerous cases in Honduras of people who were kidnapped and then disappeared; (2) that there was a pattern in those disappearances and that pattern could be linked to the Honduran Armed Forces or that at least there was acquiescence of the Honduran Government.

To prove these two hypotheses, the IACHR used the testimonies of Virgilio Carías (politician victim of kidnapping), Inés Consuelo Murillo and José Gonzalo Flores Trejo (both students, victims of clandestine detention), Milton Jiménez Puerto and René Velásquez Díaz (lawyers detained without due process) to prove that they all were detained or kidnapped by members of the Honduran Armed Forces in different events<sup>35</sup>.

Ramón Custodio López (president of CODEH), Miguel Ángel Pavón Salazar (Congressman, and vice-president of CODEH), Efraín Díaz Arrivillaga (congressman), and Florencio Caballero (a deserter from the Honduran Armed Forces, who was part of Battalion 316) testified that somewhere between 112 and 130 individuals were disappeared from

<sup>33</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, para. 76

<sup>34</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, para. 76.

<sup>35</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, paras. 83, 87.

1981 and 1984<sup>36</sup>, and that during the time of the disappearances the modus operandi of the kidnappers followed a pattern:

They used automobiles with tinted glass (which requires a special permit from the Traffic Division), without license plates or with false plates, and sometimes used special disguises, such as wigs, false mustaches, masks, etc. The kidnappings were selective. The victims were first placed under surveillance, then the kidnapping was planned. Microbuses or vans were used. Some victims were taken from their homes; others were picked up in public streets. On one occasion, when a patrol car intervened, the kidnappers identified themselves as members of a special group of the Armed Forces and were permitted to leave with the victim<sup>37</sup>.

Florencio Caballero also confirmed that according to a list in the files of Battalion 316, the number of disappeared persons might actually be 140 or 150<sup>38</sup>. He also confirmed that:

he had participated in some kidnappings, testified that the starting point was an order given by the chief of the unit to investigate an individual and place him under surveillance. According to this witness, if a decision was made to take further steps, the kidnapping was carried out by persons in civilian clothes using pseudonyms and disguises and carrying arms. The unit had four double-cabin Toyota pickup trucks without police markings for use in kidnappings. Two of the pick-ups had tinted glass<sup>39</sup>.

In view of the above, the IA Court was able to conclude that Angel Manfredo Velásquez Rodríguez's disappearance followed this same pattern and occurred in the same context, thus it could determine that Honduras violated Articles 7 (obligations to respect and to ensure the right to personal liberty), 5 (obligations to respect and to ensure the right to humane treatment) and 4 (obligation to ensure the right to life), all these articles read in conjunction with Article 1(1) (obligation to respect rights and freedoms) of the American Convention on Human Rights<sup>40</sup>.

On July 21, 1989, the Court issued a unanimous reparations judgement which contained a series of comprehensive measures to

<sup>36</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, para. 95.

<sup>37</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, para. 99.

<sup>38</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, para. 95.

<sup>39</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, para. 100.

<sup>40</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, para. 194.

repair damages, loss of earnings, and emotional harm suffered to be paid by the State of Honduras<sup>41</sup>: 75,000 lempiras to the family of Velásquez Rodríguez, 187,500 lempiras to the wife of Manfredo Velásquez Rodríguez and 562,500 lempiras to the children of Manfredo Velásquez Rodríguez<sup>42</sup>. The Court's decision on the reparations shows that (1) compensation must cover both material and moral damages and that (2) emotional harm cannot be subject to domestic law standards as it is the consequence of breaching an international legal rule (Pervou 2023, 172).

#### 4. Development of human rights standards and related evidentiary principles

##### 4.1. *The concept of forced disappearances and its continuous nature*

One of the most relevant aspects of the Velásquez Rodríguez judgment is the fact that it constitutes not only “the first explicit description of forced disappearances by an international tribunal” (Grossman 1992, 373), but also “the most extensive ruling on the states’ affirmative duties under international human rights law” (Pasqualucci 1994, 327). Before the case reached the Court, the General Assembly of the Organization of American States (OAS) had already expressed that forced disappearance represents a “cruel and inhuman [practice], mocks the rule of law, and undermines those norms which guarantee protection against arbitrary detention and the right to personal security and safety”<sup>43</sup>, thus “is an affront to the

---

<sup>41</sup> See IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Reparations and Costs. Judgment of July 21, 1989. Series C No. 7, para. 60.

<sup>42</sup> There was a disagreement between the Government of Honduras, on the one side, and the Commission and the Court, on the other, concerning the amounts of compensation. The contention stemmed from Honduras’ failure to remit payment within the Court’s stipulated timeframe and prior to a devaluation of the Honduran Lempira. Subsequently, the Government proposed settling the outstanding dues with the devalued currency, which had depreciated by nearly fifty percent against the US dollar. The IA Court dismissed this proposal, stating that had the government adhered to the payment deadline, the families would have received their reparation prior to the currency devaluation. This issue remained unresolved for several years with Honduras failing to pay the difference. Eventually, the Court employed a creative solution, asserting that given the devaluation of the lempira, reparations must be disbursed in a stable or ‘hard’ currency. This reasoning continues to be used to this day and reparations are issued in U.S. dollars. See Grossman (2007, 95).

<sup>43</sup> Organization of American States (1984), AG/RES. 742 (XIV-O/84).

conscience of the hemisphere and constitutes a crime against humanity”<sup>44</sup>.

Forced disappearance is not addressed as such by the American Convention, therefore the Court had to decide whether the disappearance is broken down into isolated violations of specific human rights enshrined in the Convention or whether the violations are unified in the phenomenon that should be treated as a single unit (Medina 2005, 123-24). The Court found that “the forced disappearance of human beings is a multiple and continuous violation<sup>45</sup> of many rights under the Convention that the States Parties are obligated to respect and guarantee”<sup>46</sup>. Firstly, the kidnapping of a person is an arbitrary deprivation of liberty, an infringement of a detainee’s right to be taken without delay before a judge and to invoke the appropriate procedures to review the legality of the arrest (violation of Article 7)<sup>47</sup>. Secondly, the prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being (violation of Article 5)<sup>48</sup>. Thirdly, the practice of disappearances often involves secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible (violation of Article 4 of the American Convention)<sup>49</sup>.

Therefore, forced disappearances represent a “radical breach of the treaty in that it shows a crass abandonment of the values which emanate from the concept of human dignity and of the most basic principles of the Inter-American system and the Convention”<sup>50</sup>.

<sup>44</sup> Organization of American States (1983), AG/RES. 666 (XIII-O/83).

<sup>45</sup> The continuous nature of forced disappearances was comprehensively addressed a few years later in the case of *Blake v. Guatemala* (1998). Since the facts related to the disappearance of Mr. Blake occurred in March 1985, i.e. after the acceptance of the contentious jurisdiction of the Court by the State of Guatemala (March 1987), the State filed the preliminary objection *ratione temporis*. In this regard, the Court recalled that forced disappearance constitutes a continuous crime, therefore, in the case of Mr. Blake’s disappearance, it should be considered that it began on March 28, 1985 (date on which he disappeared) and concluded on June 14, 1992 (date on which his mortal remains were found). See, IA Court H.R., Case of *Blake v. Guatemala*. Merits. Judgment of January 24, 1998. Series C No. 36, para. 7-11.

<sup>46</sup> IA Court H.R., Case of *Velásquez Rodríguez v. Honduras*. Merits, para. 155.

<sup>47</sup> IA Court H.R., Case of *Velásquez Rodríguez v. Honduras*. Merits, para. 155.

<sup>48</sup> IA Court H.R., Case of *Velásquez Rodríguez v. Honduras*. Merits, para. 156.

<sup>49</sup> IA Court H.R., Case of *Velásquez Rodríguez v. Honduras*. Merits, para. 157.

<sup>50</sup> IA Court H.R., Case of *Velásquez Rodríguez v. Honduras*. Merits, para. 158.

It is worth mentioning that the *Velásquez* judgment also “cemented a sound foundation and structure for a further interpretation of the general duties to ‘respect’ and to ‘ensure’” (Vermeulen 2012, 109–11), contained in Article 1(1) of the American Convention, even though the IACHR did not specifically alleged the violation of said provision, as the Court explained that the fact that it was not brought forward by the IACHR does not preclude it from analyzing it<sup>51</sup>. Here is where the Court developed the ‘procedural’ aspect of the crime (Burgogue-Larsen and Úbeda de Torres 2011, 300), becoming the first Court to conclude that a violation of the rights recognized in Articles 3 to 25 of the American Convention automatically constitutes a violation of Article 1(1) relative to the obligation to respect rights. As Burgogue-Larsen (2005, 351–52) explains, this theory of positive procedural obligations took shape on the American continent before becoming a classic in European litigation.

#### 4.2. *Burden of proof*

Although the basic rule upheld by the Court is the legal maxim *actori incumbit probatio* (Paúl 2015b, 37), which means that the plaintiff to a legal action must prove his or her claims, in cases of forced disappearance the Court has taken a different approach. In the *Velásquez* case, the Court explained that<sup>52</sup>:

Because the Commission is accusing the Government of the disappearance of Manfredo Velásquez, it, in principle, should bear the burden of proving the facts underlying its petition.

The Commission’s argument relies upon the proposition that the policy of disappearances, supported or tolerated by the Government, is designed to conceal and destroy evidence of disappearances. When the existence of such a policy or practice has been shown, the disappearance of a particular individual may be proved through circumstantial or indirect evidence or by logical inference. Otherwise, it would be impossible to prove that an individual has been disappeared.

---

<sup>51</sup> The Court used the *iura novit curiae* principle stating that “a Court has the power and the duty to apply the juridical provisions relevant to a proceeding, even when the parties do not expressly invoke them”, see IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, para. 163.

<sup>52</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, paras. 123-126.

The Government did not object to the Commission's approach. Nevertheless, it argued that neither the existence of a practice of disappearances in Honduras nor the participation of Honduran officials in the alleged disappearance of Manfredo Velásquez had been proven.

The Court finds no reason to consider the Commission's argument inadmissible. If it can be shown that there was an official practice of disappearances in Honduras, carried out by the Government or at least tolerated by it, and if the disappearance of Manfredo Velásquez can be linked to that practice, the Commission's allegations will have been proven to the Court's satisfaction, so long as the evidence presented on both points meets the standard of proof required in cases such as this.

According to the Court's interpretation, the burden of proof corresponds to the Commission in principle, but in human rights violations, the State's defense cannot rely on the impossibility of the plaintiff to present evidence in the proceedings since. In such cases, it is the State the one that controls the means to clarify the facts that have occurred in its jurisdiction and, therefore, it is necessary to rely on the cooperation of the State itself in order to obtain the required evidence.

The Court also stated that massive or systematic violations, there is a minimum threshold to be met as the Court cannot ignore the special seriousness of finding that a State Party to the American Convention has carried out or has tolerated a practice of disappearances in its territory<sup>53</sup>. This requires the Court to apply "a standard of proof which considers the seriousness of the charge and which, notwithstanding what has already been said, is capable of establishing the truth of the allegations in a convincing manner"<sup>54</sup>. This standard of proof "cannot be simply satisfied with reasonable inferences or hearsay, and in such cases, when the plaintiff establishes the pattern of disappearances and then link the individual case to the pattern through circumstantial evidence, the petitioners have satisfied their burden of proof"(Grossman 2007, 89).

For some authors, the above reasoning is what is known as the reversal of the burden of proof. For example, Caro Coria (2012, 366) explains that the IA Court establishes a reversal of the burden of proof in cases of forced disappearance since Velásquez Rodríguez, due to the fact that the nature characteristic of such violation is the concurrence of acts aimed at suppressing evidence after the fact. Roberts agrees

<sup>53</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, para. 129.

<sup>54</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, para. 129.

with this notion, stating that “a reversal of the burden is justified where the challenges in accessing the relevant information have been actively produced, as is the case for instance in the context of ‘secret’ violations of one form or another, including incommunicado detention and forced disappearance” (Roberts 2021, 1692).

My contention is that what the Court established in Velásquez cannot be considered a reversal of the burden of proof, as the IACHR (and legal representatives of the victims) first needed to prove that 1) that there was a generalized practice of disappearances at the time of his disappearance and 2) that Manfredo disappeared in similar circumstances. It is not until these two previous points are proved that the burden of proof is on the State to disprove it. Paúl (2015a, 311) concurs with the above, explaining that once the existence of a generalized massive violation of human rights is proven, and also it is possible to link said generalized practice to the particular case of an alleged victim, it is now the State who has the *onus probandi*, and must prove that there is no such violation.

Both Juan Méndez and Claudio Grossman, lawyers of Ángel Manfredo Velásquez align themselves with this perspective. Méndez (2023, personal interview) stated that:

I do not consider that it is possible to call it a reversal of the burden of proof, because the Court says that the plaintiff, in this particular case the IA Commission, must prove that Manfredo Velásquez existed and that he disappeared, and that he allegedly disappeared by the action of State agents. Here the burden remains on the Commission. Then, once it is established that there is, in principle, responsibility of State agents, the burden is transferred, rather than inverted, to the State to prove that the facts are not true, or that if the person disappeared it was not due to the actions of a State actor, or that the State did everything in its power to prevent, impede and eventually investigate, prosecute and punish the crime, the violation of its international obligations.

I would not call this a reversal of the burden, because reversal suggests that the first step has to be taken by the other party, and here it is rather a transfer of the burden of proof: First the alleged victims have to do their part and then it is up to the State to destroy a presumption that has been created with the evidence that you have provided.

According to Grossman (2023, personal interview):

There is no reversal of the burden of proof, what we see is a determination of the level of proof required when there are massive and systematic violations of human rights. The burden of proof is not on the State to prove that the disappearance did not occur, it is only after the Commission manages to (1) establish the framework of massive and systematic violations of human rights, which include forced disappearances and (2) link the individual case of Ángel Manfredo Velásquez to that generalized practice, that the burden of proof rests on the Honduran State.

Drucker (1988, 313) and Taqi (2000, 961–62) agree with Méndez and Grossman, stating that *Velásquez* presents a two-step process for adjudicating disappearance cases, were first, the petitioner must demonstrate that the State has engaged in a systemic practice of disappearances. Second, the petitioner must establish a link between that practice and the individual case. Once the petitioner has satisfied both requirements, the burden of proof is on the State to disprove the allegations. If the government fails to refute the allegations, the Inter-American Court could presume the State's responsibility for the disappearance.

And indeed, the IACHR and the victims' representatives were able to successfully prove with the testimonies presented that there was a pattern of disappearances in Honduras, and then frame Manfredo's disappearance in that pattern. Once this was done, the State had the opportunity to disprove this pattern, which it failed to do and therefore the Court ruled on its international responsibility. That said, within the argument asserting the absence of reversal, it is conceivable to comprehend why the Court has refrained from employing the phrase 'reversal of the burden of proof'. This illustrates the Court's understanding that, contingent upon the nature of the violation, the alleged victims (or the Commission in the previous Rules of Procedure, or the representatives of the alleged victims in the current Rules from 2009) are invariably required to establish their claim initially.

#### 4.3. *Use of circumstantial and testimonial evidence*

The IACHR and representatives of the victims explained before the Court that the lack of forensic and physical evidence makes it very difficult to prove a forced disappearance, especially because this type

of violation is characterized by an attempt to suppress all information about the kidnapping or the whereabouts and fate of the victim<sup>55</sup>:

the policy of disappearances, supported or tolerated by the Government, is designed to conceal and destroy evidence of disappearances. When the existence of such a policy or practice has been shown, the disappearance of a particular individual may be proved through circumstantial or indirect evidence or by logical inference. Otherwise, it would be impossible to prove that an individual has been disappeared.

And it is for this very reason that the use of certain circumstantial evidence such as testimonies and documentary evidence not directly related to the disappearance of Manfredo Velásquez but connected to the general pattern of disappearances in Honduras, was critical.

The IA Court sided with the IACHR, stating that indeed, direct evidence, is not the only type of evidence that may be legitimately considered in reaching a decision, and that it is legitimate to use circumstantial evidence, indicia and presumptions to support a judgment, as long as consistent conclusions about the facts can be inferred from them<sup>56</sup>. Circumstantial or presumptive evidence is especially important in forced disappearances because, in this type of violation, the State holds the necessary means to fully prove the violation and there are efforts to suppress/erase all information and available evidence concerning the disappearance or the whereabouts and fate of the victim<sup>57</sup>.

It is important to remark that this approach was adopted by the Court because there is a clear distinction between criminal law and international human right law (Bovino 2005, 58), as the effective goal of the latter is to establish the international responsibility of the State rather than individual responsibility, as is the case with domestic criminal law. The IA Court explained this very clearly in the judgment<sup>58</sup>:

Since the Court is an international tribunal, it has its own specialized procedures. All the elements of domestic legal procedures are therefore not automatically applicable. The above principle is generally valid in international proceedings but is particularly

<sup>55</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, para. 124.

<sup>56</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, para. 130

<sup>57</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, paras. 130-131, 136 and 157

<sup>58</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, paras. 132-134.

applicable in human rights cases. The international protection of human rights should not be confused with criminal justice. States do not appear before the Court as defendants in a criminal action. The objective of international human rights law is not to punish those individuals who are guilty of violations, but rather to protect the victims and to provide for the reparation of damages resulting from the acts of the States responsible.

Undoubtedly, the most important pieces of evidence in the Manfredo Velásquez case were the testimonies of Florencio Caballero (deserter) and Inés Murillo (student). Both intervenors in the case and experts on the Inter-American System agree that both testimonies were impressive and left everyone inside (and outside) the courtroom in awe. Méndez (2023, personal interview) recalls:

I remember that when Florencio Caballero finished testifying, Vargas Carreño, who was the head of the delegation, stood up and said to me, “with this testimony we won”. And we all felt that way, because he was very categorical, very clear, a very good witness overall.

The State objected to the Commission’s use of certain witnesses<sup>59</sup>, claiming that they were not impartial since in cross-examination they had stated that they were opponents of General Álvarez. The Court, however, considered that a witness could not be excluded from testifying solely because of their political opinion towards a particular government<sup>60</sup>.

Regarding the circumstantial documentary evidence presented by the IACHR and the legal representatives of the victims, specifically the press clippings, the Court noted that many of the paper clippings contain public and well-known facts which, as such, do not require to be proof; others are of evidentiary value, as has been recognized in international jurisprudence, as they textually reproduce public statements from Government officials such as high-ranking members of the Armed Forces or the President of the Supreme Court of Honduras<sup>61</sup>. There were other paper clippings in the file that were also

---

<sup>59</sup> The State objected to the testimonies of Inés Consuelo Murillo, José Gonzalo Flores Trejo, Virgilio Carias, Milton Jiménez Puerto, Florencio Caballero, Zenaida Velásquez Rodríguez and Leopoldo Aguilar Villalobos, see IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, paras. 86, 88, 90, 92, 101, 110 and 116.

<sup>60</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, paras. 142-143.

<sup>61</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, para. 146.

considered as circumstantial, but they helped to corroborate the testimonies regarding the responsibility of the Honduran military and police for disappearances, therefore the Court ruled them admissible<sup>62</sup>.

As Cavallaro and Brewer noted, the witnesses offered by the IACHR and the legal representatives of the victims, played a significant role in the judgment, as their accounts are used more than 120 times throughout the whole document (Cavallaro and Brewer 2008, 797), and the Court explicitly stated that the testimonies were instrumental in demonstrating the pattern of disappearances in Honduras at the relevant time<sup>63</sup>.

## 5. The legal strategy of victims' representatives in the *Velásquez* case and its impact on the evidentiary regime and future IA Court caselaw

The case of *Velásquez Rodríguez* marks the beginning of the groundbreaking jurisprudence of the Inter-American Court. As explained in this paper, this case is not only important for being the first, but also for laying the foundation of the evidentiary regime of the Inter-American Court by addressing a horrific crime that has hurt almost the whole continent (Molina 2007, 66). The IA Court was very careful to draft a judgment that was legally sound, but also pedagogical and educational, in which it could establish the basis of analysis of a situation that had not been addressed by any other international tribunal, thus it was cautious as to "what", "how" and "why" (Viviana Krsticevic 2023, personal interview<sup>64</sup>).

Thanks to the efforts made by the legal representatives of Manfredo Velásquez Rodríguez, his case also started the conversation on the relevance of allowing the direct representation of the victims (Méndez and Vivanco 1990), which ultimately led to several changes in the Rules of Procedure of the Commission and the Court to further strengthen the position of the victims within the system.

The lawyers also played a pivotal role in helping the Court develop three human rights standards and related evidentiary principles in particular. First, the IA Court was the pioneer in defining forced

<sup>62</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, para. 146.

<sup>63</sup> IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits, para. 99.

<sup>64</sup> An in-person semi-structured interview was conducted with Viviana Krsticevic on June 6, 2023, with a duration of 50 minutes. The interview was transcribed and subsequently analyzed thematically using qualitative analysis software.

disappearances on a clear and precise matter, also considering its continuous character. This created 'momentum' for the drafting of the Inter-American Convention on Forced Disappearance (1994), the International Convention on Enforced Disappearances (2006), and later the inclusion of enforced disappearance as an international crime under the Rome Statute (1998) (Grossman 2009, 54).

Second, the Court managed to codify its rules regarding the burden of proof, specifically in cases of widespread and systematic violations, establishing that once the victims prove the pattern and link the particular violation to it, the state must disprove the fact so as to not incur international responsibility.

Finally, the IA Court sets out one of its most emblematic features: the relevance of its oral hearings and testimonies. The Court ruled that in the case of forced disappearances, considering the characteristics of the crime in which there is little direct evidence available, the testimonies have a special value, since it is through them that it is possible to identify particular situations of the disappearance, such as the context of the disappearance, establish circumstances of time and place, as well as the alleged perpetrators<sup>65</sup>. This has even been applied

---

<sup>65</sup> The Court has made such an assessment of the testimonial evidence in the following cases (listed in chronological order from most recent to oldest): IA Court H.R., Case of Members and Militants of the Patriotic Union v. Colombia. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of July 27, 2022. Series C No. 455, para. 366; IA Court H.R., Case of Alvarado Espinoza et al. v. México. Merits, Reparations and Costs. Judgment of November 28, 2018. Series C No. 370, para. 169; IA Court H.R., Case of Vásquez Durand et al. v. Ecuador. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 15, 2017. Series C No. 332, para. 110; IA Court H.R., 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. 230; IA Court H.R., Case of Osorio Rivera and family members v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 26, 2013. Series C No. 274, para. 150; IA Court H.R., Case of Gonzalez Medina and family v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs. Judgment of February 27, 2012. Series C No. 240, para. 134; IA Court H.R., Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparation and Costs. Judgment of September 1, 2010. Series C No. 217, para. 168; IA Court H.R., Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, para. 222; IA Court H.R., Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and costs. Judgment of September 22, 2009. Series C No. 202, para. 38; IA Court H.R., Case of Bámaca Velásquez v. Guatemala. Merits. Judgment of November 25, 2000. Series C No. 70, para. 131; IA Court H.R., Case of Blake v. Guatemala. Merits. Judgment of January 24, 1998. Series C No. 36, para. 51; IA Court H.R., Case of Godínez Cruz v. Honduras. Merits. Judgment of January 20, 1989. Series C No. 5., para. 137; IA Court H.R., Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4, para. 131.

in cases related to other types of human rights violations such as those related to sexual violence (Lopes Cerqueira 2018, 162–65)<sup>66</sup>.

The *Velásquez Rodríguez* case stands as a pivotal milestone in the evolution of international human rights law, as it profoundly shaped legal standards and principles governing state responsibility in cases of forced disappearances. While it holds historical significance as the first contentious case decided by the Court, its relevance stems not merely from this fact, but from its substantial impact on human rights jurisprudence. The legal strategy and evidentiary framework established in *Velásquez Rodríguez* have become a model for legal representatives in subsequent cases, both within the Inter-American system and across other international human right bodies and courts, cementing its status as a foundational precedent.

## References

- Aguilar-Paz, Ernesto. 1990. «Honduras: ¿se iniciará el cambio?» *Nueva Sociedad* 106: 22–27.
- Amnesty International. 1992. *'Disappearances' in Honduras: A wall of silence and indifference*. Accessed February 10, 2024: <https://www.amnesty.org/fr/wp-content/uploads/2021/06/amr370021992en.pdf>
- Bovino, Alberto. 2005. «La actividad probatoria ante la Corte Interamericana de Derechos Humanos.» *SUR- Revista Internacional de Derechos Humanos* 3: 61–83. Accessed February 15, 2024: <https://sur.conectas.org/es/la-actividad-probatoria-ante-la-corte-interamericana-de-derechos-humanos/>.
- Burgorgue-Larsen, Laurence. 2005. «La Corte Europea de Derechos Humanos y el derecho penal.» *Anuario de Derecho Internacional*, 317–78.
- Burgorgue-Larsen, Laurence, and Amaya Úbeda de Torres. 2011. *The Inter-American Court of Human Rights: Case-Law and Commentary*. Oxford: Oxford University Press.
- Caro, Dino C. 2012. «La prueba en el crimen de desaparición forzada de personas conforme a la jurisprudencia de la Corte Interamericana de Derechos Humanos.» *Ius et Veritas* 22 (44): 358–85.

---

<sup>66</sup> See also, IA Court H.R., Case of the Miguel Castro Castro Prison v. Peru. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160; IA Court H.R., Case of Fernández Ortega et al. v. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 30, 2010. Series C No. 215; IA Court H.R., Case of Rosendo Cantú et al. v. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216; IA Court H.R., Case of Bedoya Lima et al. v. Colombia. Merits, Reparations and Costs. Judgment of August 26, 2021. Series C No. 431.

- Cavallaro, James, and Stephanie E. Brewer. 2008. «Reevaluating regional human rights litigation in the twenty-first century: The case of the Inter-American Court.» *The American Journal of International Law* 102 (4): 768–827.
- Drucker, Linda. 1988. «Governmental liability for disappearances: A landmark ruling by the Inter-American Court of Human Rights.» *Stanford Journal of International Law* 25 (1): 289–322.
- Gill, Lesley. 2005. *Escuela de Las Américas. Entrenamiento militar, violencia política e impunidad en las Américas*. Santiago: LOM.
- Grossman, Claudio. 1992. «Disappearances in Honduras: The need for direct victim representation in human rights litigation.» *Hastings International and Comparative Law Review* 15 (3). Accessed March 1, 2024: [https://repository.uchastings.edu/hastings\\_international\\_comparative\\_law\\_review/vol15/iss3/1](https://repository.uchastings.edu/hastings_international_comparative_law_review/vol15/iss3/1).
- Grossman, Claudio. 2007. «The Velasquez Rodriguez case: The development of the Inter-American Human Rights system.» In *International Law Stories*, edited by John E. Noyes, Laura A. Dickinson, and Mark W. Janis, 77–113. New York: Foundation Press.
- Grossman, Claudio. 2009. «The Inter-American system and its evolution.» *Inter-American and European Human Rights Journal* 2 (1–2): 49–65.
- Lopes Cerqueira, Daniel. 2018. «Valoración y estándar de prueba en la jurisprudencia de la Corte Interamericana de Derechos Humanos en casos de violencia de género.» *Actualidad Jurídica* 296: 152–70.
- Medina, Cecilia. 2005. *La Convención Americana: Teoría y jurisprudencia. Vida, integridad personal, libertad personal, debido proceso y recurso judicial*. Santiago: Universidad de Chile.
- Medina, Cecilia. 2011. «Modificación de los reglamentos de la Corte Interamericana de Derechos Humanos y de La Comisión Interamericana de Derechos Humanos al procedimiento de peticiones individuales ante la Corte.» *Anuario de Derechos Humanos* 0 (7): 117–26. DOI: 10.5354/0718-2279.2011.17001.
- Méndez, Juan E., and José M. Vivanco. 1990. «Disappearances and the Inter-American Court: Reflections on a litigation experience.» *Hamline Law Review* 13: 507–77.
- Molina, Ana L. 2007. «La desaparición forzada de personas en América Latina.» *Estudios Básicos de Derechos Humanos* 4: 65–129.
- Pasqualucci, Jo M. 1994. «The Inter-American Human Rights System: Establishing precedents and procedure in Human Rights Law.» *Inter-American Law Review* 26 (2): 297–361.
- Paúl, Álvaro. 2015a. «Análisis sistemático de la evaluación de la prueba que efectúa la Corte Interamericana de Derechos Humanos.» *Revista Chilena de Derecho* 42 (1): 297–327.
- Paúl, Álvaro. 2015b. «An overview of the Inter-American Court's evaluation of evidence.» In *The Inter-American Court of Human Rights: Theory and practice, present and future*, edited by Yves Haeck, Oswaldo Ruiz-

- Chiriboga, and Clara Burbano-Herrera, 25–50. Accessed March 20, 2024: <https://papers.ssrn.com/abstract=2822375>.
- Pervou, Ioanna. 2023. *The right not to be subjected to enforced disappearance. The right not to be subjected to enforced disappearance*. Switzerland: Springer. DOI: 10.1007/978-3-031-36731-1.
- Roberts, Christopher. 2021. «Reversing the burden of proof before human rights bodies.» *International Journal of Human Rights* 25 (10): 1682–1703. DOI: 10.1080/13642987.2020.1859486.
- Taqi, Irum. 2000. «Adjudicating disappearance cases in Turkey: An argument for adopting the Inter-American Court of Human Rights' approach.» *Fordham International Law Journal* 24 (3): 940–87.
- Vermeulen, Marthe L. 2012. *Enforced disappearance: Determining state responsibility under the International Convention for the protection of all persons from enforced disappearance*. Cambridge: Intersentia.