

## PART 5

### SOVIET SHOW-TRIALS IN THE AMERICAS: THE CASE OF THE CICIG VERSUS MOISÉS GALINDO

*Guatemala, Summer & Fall 2017*

#### **The CICIG Sets Up a Defense Attorney**

Moisés Galindo is a criminal defense attorney who, in high-profile matters, has defended clients against prosecution by the International Commission Against Impunity in Guatemala (CICIG). Galindo has also represented persons making charges against the CICIG.

On October 4, 2017 the justice ministry's "special division against impunity," attached to the CICIG, brought to court one of Galindo's clients, Alexandra Reyes, for the purpose of gathering a sworn statement. The session was to take place before the same judge who was presiding over a case in which the witness, Reyes, was being defended by Galindo.

The basis of the October hearing was a July 11, 2017 meeting between Reyes and Galindo, which Reyes had initiated at the CICIG's behest. Galindo took the meeting without knowing that the CICIG was behind it.

Likewise, Galindo was kept in the dark about Reyes's later testimony before the trial judge.

The judge, Erica Aifan, obviously knew that Reyes was testifying about matters that were subject to lawyer-client confidentiality. Not only did Judge Aifan let the testimony proceed; she granted an arrest warrant against Galindo as soon as Reyes had concluded her testimony. These facts made Judge Aifan complicit in the irregular procedure.

#### **Reyes's Testimony & Galindo's Arrest**

In her statement, according to prosecution filings, Reyes testified that Galindo had received a vehicle from her co-defendant as payment for legal fees. Reyes claimed Galindo had told her that the vehicle given in payment was part of an illicit transaction.

Reyes also testified she had recorded the talk at the CICIG's request, with a bracelet recorder the CICIG had supplied to her. Reyes also testified that she had already acted as an agent for the CICIG in this way – meeting another person and bringing a recorder to the meeting.

At the end of Reyes's statement, prosecutor Juan Sandoval – accused by Galindo in another criminal process – asked the judge to order Galindo's arrest. The judge complied.

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Galindo was arrested the following day and charged with money-laundering for having received the vehicle. On his way into court, Galindo was forced to pass through a gauntlet of reporters – an act expressly prohibited by Article 13 of the Constitution.

Justice Minister Thelma Aldana and CICIG Commissioner Iván Velásquez also met with the press at that time, and spoke about the charges against Galindo as if they were proven facts.

Immediately upon the judge's detention order, the justice ministry and the CICIG began the seizure of all Galindo's material assets.

Alleging illegalities against him, Galindo twice filed habeas corpus motions; both were immediately denied.

As of this writing, Judge Aifan has not yet complied with her legal obligation to deliver to the defense a usable copy of the recording that Reyes says she made of her meeting with Galindo. A sound-file of some kind was given to the defense, but it was so garbled that it had no meaning whatever. The prosecution's failure to produce a true sound-record of the meeting leaves doubt as to whether such a thing actually exists.

### Irregularities in the Case

Hardly anything about this case, except perhaps the courtroom furnishing, has been in conformity with applicable law.

- No judge had authorized any recording that Reyes and the CICIG might have produced.
- During the first four weeks after Galindo's arrest, supposedly incriminating information on his case was distributed to news media without Galindo having been allowed – as the law requires – to examine it.
- In efforts to justify the many delays over Galindo's arraignment, Judge Aifan made various excuses to the effect that her schedule was overcrowded, or that no courtroom was available to hold the hearing.
- While Judge Aifan permitted the press, illegally, to accost Galindo for one hour, she expelled Karen Ness, a US-Guatemalan citizen, from the courtroom area as she recorded the press committing the illegal action.
- On November 6, Judge Aifan received the prosecution – justice ministry and CICIG representatives – for about 45 minutes in her chambers without the presence of the defense. This occurred before the continuation of Galindo's arraignment.

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### Points of Legal Analysis

Galindo's imprisonment is illegal because the court, the justice ministry and the CICIG have grossly violated his rights to due process.

The arrest warrant against Galindo was granted immediately after the state's witness had testified, and despite the absence of any proof that a crime had been committed.

Galindo was held for fifty-seven days under what the justice ministry called "provisional confinement." This concept does not exist in Guatemala's juridical order.

The violation of the attorney-client privilege, and the lack of a court order for recording the July 11 meeting, make any record about the meeting – be it a recording or witness testimony – inadmissible as evidence. Even so, Judge Aifan cited the supposed recording as grounds for all her rulings in the case, which include the arrest warrant and Galindo's continued detention.

The courts did not treat Galindo's request for relief or his habeas corpus motions in a lawful manner. The judge delayed the former for a month; and as for the latter, a higher court ignored the obvious violations of due process by the lower court.

Despite the Constitution's numerous guarantees of private property and due process, the CICIG and the justice ministry began the process of confiscating all Galindo's assets. They and the court have also violated Galindo's lawful rights, as enumerated in many articles of the Constitution.

### Further Conclusions

Through their public statements as well as leaks to the media, the CICIG and ministry of justice, in advance of any bona fide legal process, have already made out Galindo to be guilty as charged.

The 2016 report of the UN's human rights commissioner in Guatemala complained about abuses of preventive detention as a political weapon against citizens. The UN's own CICIG, as well as the justice ministry, have been the protagonists in many such cases. Moisés Galindo's is one of those.

It is hard to avoid the conclusion that Guatemala's justice ministry, with the CICIG as chief

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instigator, deprived Moisés Galindo of his freedom and his constitutional rights as retribution for his earlier work in opposing their own legal and ethical violations and as an attempt to intimidate their opposition, including defense lawyers.