

PUBLIC

AI Index: AMR 51/090/2003

23 June 2003

Further Information on UA 167/02 (AMR 51/089/2002, 6 June 2002) - Death Penalty / Legal concern

USA (Texas)

Victor Hugo Saldaño (m), Argentine national, aged 30

On 12 June 2003, a federal district judge ruled that Texas death row inmate Victor Saldaño should receive a new sentencing hearing because of the introduction of racially discriminatory testimony at his 1996 trial. However, the District Attorney of the county where the trial was held is planning to appeal the ruling.

Victor Saldaño, an Argentine national, was convicted in 1996 in Collin County of the murder in November 1995 of a white man, Paul Ray King. A death sentence can only be passed in Texas if the jury unanimously agrees that "there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society" - so-called "future dangerousness". At Victor Saldaño's sentencing, the prosecution presented a psychologist as an expert witness who testified that "because [Saldaño] is Hispanic, this is a factor weighing in favour of future dangerousness". The psychologist said that he based his theory on the fact that "Hispanics are over-represented in prison compared with their percentage of the general population".

When this issue emerged during the appeals process, the Texas Attorney General -- representing the state in the federal court system -- "confessed error" in the US Supreme Court; that is, he admitted that the introduction of race as a factor for determining future dangerousness violated Victor Saldaño's right to equal treatment before the law. On 5 June 2000, the Supreme Court sent the case back to the Texas Court of Criminal Appeals (TCCA), which had upheld the death sentence in 1999, in order for it to give the case "further consideration in light of the confession of error".

On 13 March 2002, the TCCA again upheld the death sentence. Two of the judges dissented. One wrote: "Allowing the kind of testimony complained of here violates one of the most fundamental principles of our legal system: a citizen must be found guilty and given appropriate punishment because of what he did, not who he is." The other dissenter wrote: "I cannot condone a decision to impose the death penalty when I am uncertain whether racial prejudice was a component of that decision".

The case went to the federal courts. In May 2002, the Attorney General, despite the TCCA's March ruling upholding the death sentence, again confessed error. He asked the US District Court for the Eastern District of Texas either to require the trial court to impose a life sentence, or to conduct a new sentencing hearing. The Collin County District Attorney, whose office was responsible for the original prosecution of Victor Saldaño, also appealed, arguing that it was legitimate for him to intervene in the case at this stage because he had an interest in Saldaño's death sentence and in not having to conduct another sentencing. He also argued that the federal court could not for procedural reasons consider the merits of the race issue, but that even if it did, any constitutional error had been harmless to the outcome of the trial. On 12 June 2003, the federal district judge ruled in favour of Victor Saldaño and rejected the Collin County District Attorney's intervention.

Since this Urgent Action was issued, John Roach has replaced Tom O'Connell as the elected Collin County District Attorney. District Attorney Roach, who took office in January 2003, was the judge at Victor Saldaño's original 1996 trial. He has indicated that he will appeal the District Court's decision to the Fifth Circuit Court of Appeals. Victor Saldaño remains on death row.

In addition to the discrimination issue, the State of Texas violated international law by failing to inform Victor Saldaño promptly upon arrest of his right to contact his embassy for assistance, as required under Article 36 of the Vienna Convention on Consular Relations.

Since the USA resumed executions in 1977, 859 men and women have been put to death, 305 of them in Texas.

FURTHER RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language:

- expressing sympathy for the family and friends of Paul Ray King;
- expressing deep concern that racially discriminatory testimony was introduced at the 1996 trial of Victor Saldaño, and that this testimony amounted to a slur on the Hispanic community as a whole;
- welcoming the federal District Court's ruling overturning the death sentence;
- expressing regret that the District Attorney is planning to appeal the decision and to continue to seek to have the verdict from this tainted sentencing upheld;
- urging him to take a stand against racism by dropping his appeal against the federal court's decision, and urging him not to seek the death sentence in this case at any resentencing.

APPEALS TO:

John Roach, Collin County District Attorney
Collin County Government Center
Annex A and B, 210 S. McDonald St.
McKinney, TX 75069, USA

Telegram: Collin County District Attorney, McKinney, Texas, USA

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Salutation: Dear District Attorney

COPIES TO: Diplomatic representatives of USA accredited to your country.

PLEASE SEND APPEALS IMMEDIATELY. Check with the International Secretariat, or your section office, if sending appeals after 4 August 2003.