

WorldCourts™

Institution: Inter-American Commission on Human Rights
File Number(s): Case No. 1697
Session: Twenty-Eighth Session (May 1 - 5, 1972)
Title/Style of Cause: Heleno Claudio Fragoso, August Sussekind de Moraes and George Tovares v. Brazil
Doc. Type: Decision
Decided by: President: Dr. Justino Jimenez de Aréchaga (Uruguay)
Vice-President: Dr. Durward V. Sandifer (United States)
Members: Atty. Angela Acuña de Chacón (Costa Rica); Dr. Manuel Bianchi (Chile); Dr. Gabino Fraga (Mexico); Dr. Mario Alzamora Valdez (Peru); Dr. Carlos A. Dunshee de Abranches (Brazil)
Dated: 14 March 1973
Citation: Fragoso v. Braz., Case 1697, Inter-Am. C.H.R., OEA/Ser.L/V/II/.29, doc. 41 rev. 2 (1972)
Terms of Use: Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

[1] Case No. 1697, of December 22, 1970 in which there was denunciation of the arbitrary arrest and mistreatment of Drs. Heleno Claudio Fragoso, August Sussekind de Moraes and George Tovares, Brazilian lawyers, which allegedly occurred in the city of Rio de Janeiro in November of that year.

[2] The Commission considered this case at its Twenty-Fifth Session (March 1971) and, in view of the recommendation of the rapporteur appointed at that session to study it, decided to request information from the Government of Brazil, and at the same time to transmit to the latter the pertinent parts of the denunciation, in conformity with Articles 42 and 44 of its Regulations. To this end, on May 10 it addressed a note to that government.

[3] In a note of August 27, 1971 (No. 7) the Government of Brazil stated that the request in question had been transmitted to the appropriate national authorities. In accordance with the terms of this reply, at its Twenty-Sixth Session (October-November 1971) the Commission decided to extend to December 28 of that year the period for supplying of the corresponding information.

[4] In a note dated November 10, 1971, the Government of Brazil transmitted the following summary information:

- a. That the acts reported had not been committed by governmental authorities;
- b. That the persons concerned had presented their case to the Ordem dos Advogados do Brasil (Bar Association of Brazil) and subsequently, to the Council for the Defense of Human Rights[FN1], under File No. 786 (Rapporteur: Professor Pedro Calmón).

[FN1] In accordance with Law No. 4.129 of March, 1964, the members of the Council for the Defense of Human Rights in Brazil are the Minister of Justice, a professor of international law, the President of the

Association of Publishers of Brazil, the President of the Education Association of Brazil, the minority and majority leaders of the Chamber of Deputies and the Senate, and the President of the Federal Council of Lawyers.

c. That the functions of the Council for the Defense of Human Rights in Brazil include the following, among others: "to receive communications that contain denunciations of violation of human rights, to consider their admissibility or justification, and to adopt measures designed to put an end to abuses committed by individuals or the authorities responsible for such acts" (Article 4, paragraph 13, of Law No. 4.139), which constitutes an internal legal procedure that excludes the concurrent activity of an international organization (paragraph d of Article 9 (bis) of the Statute of the Inter-American Commission on Human Rights), and

d. That, consequently, the Government of Brazil felt that the denunciation should be filed, as it did not satisfy the requirements for admissibility and, furthermore, because it did not pertain to a violation of human rights that could be imputed to the authorities of that country.

[5] Moreover, in a note dated November 24, 1971, the Government of Brazil enclosed a copy of a clipping from the newspaper "Estado de Sao Paulo," (of November 5, 1971) pertaining to the denunciation presented by Drs. Fragoso, Sussekind, and Tovares to the Bar Association and the Council for the Defense of Human Rights in Brazil.

[6] Subsequently, in response to a request of the Commission for all information necessary for consideration of the case (in a note dated December 7, 1971), the Government of Brazil enclosed various documents with a note of January 18, 1971, and stated that it rejected any responsibility whatsoever in the acts that constituted Case No. 1697, inasmuch as, in the report of the Director of the Federal Police to the Minister of Justice, it is stated that the individual who arrested Dr. Heleno Claudio Fragoso is not a police officer and that there is no police unit in the place where Dr. Tovares was allegedly detained. Furthermore, the note stated that no proceedings against the aforementioned lawyers existed, and that they enjoyed full freedom, which proved the complete noninvolvement of the authorities in the case. Finally, the note reiterated the position of the Brazilian Government to the effect that, as the case had been submitted to the Council for the Defense of Human Rights in Brazil, internal legal procedures and remedies had not been exhausted and therefore, in conformity with the provisions of paragraph d) of Article 9 (bis) of its Statute, the Inter-American Commission on Human Rights should abstain from considering the case.

[7] In accordance with established practice, the Commission transmitted the pertinent parts of the reply of the Government of Brazil to the petitioner, with a note dated November 29, 1971.

[8] In a communication dated December 13, 1971, the petitioner supplied additional information on the case and, particularly, regarding the information provided by the Government of Brazil, which may be summarized as follows: a) the contention of that government to the effect that the case could not be admitted by the Inter-American Commission on Human Rights as internal legal procedures and remedies of that state had not been exhausted was unacceptable inasmuch as the requirement established in paragraph d) of Article 9 (bis) of the Statute could not be invoked when such legal measures and remedies do not exist. No such measures or remedies are available to persons arbitrarily arrested--as in the case of Dr. Pragoso-- for putting an end to the violation of which they are victims, or for eventually obtaining redress; b) the Council for the Defense of Human Rights in Brazil cannot be considered an instance for exhausting internal legal procedures and remedies for various reasons) including, among others, the fact that it is not a Judicial organ but a governmental one with advisory authority as) at most, its competence is limited to formulating suggestions and recommendations, and it is not authorized to order cessation of the alleged violation, or to provide redress for the act denounced; and c) because the aforesaid Council

does not act on a permanent basis, as indicated by the fact that, since its creation, it has met only twice. In conclusion: the only recourse available to the parties concerned was the Inter-American Commission on Human Rights, the competent international organ.

[9] Dr. Durward V. Sandifer, the rapporteur of the case, prepared a "Second Report on Case No. 1697" and, on the basis of his recommendations, at its Twenty-Seventh Session (Viña del Mar, February 28 - March 8, 1972) the Commission decided to postpone consideration and final decision on the case until its session in Washington, D.C., scheduled to be held May 1 - 5, 1972.

[10] At its Twenty-Eighth Session (May 1 - 5, 1972) the Commission considered a third report prepared by the rapporteur (Doc. 7-28), and a draft resolution.

The Commission first considered point 2 of the draft resolution presented by the rapporteur, relative to the question of competence for consideration of the case.

Dr. Carlos A. Dunshee de Abranches expressed disagreement with the rapporteur regarding the aforesaid point 2 of the draft resolution) stating that, in view of the provisions of paragraph d) of Article 9 (bis) of the Statute and Article 54 of the Regulations of the Commission, the terms "internal legal procedures and remedies" covers not only recourse to judicial organs but all remedies within the jurisdiction of the state; that in conformity with this premise, the proceedings before the Council for the Defense of Human Rights in Brazil on the facts of Case No. 1697 implied the existence of internal remedies that had not been exhausted; and, consequently, the Commission should refrain from considering this case, in the light of the aforementioned provisions.

This interpretation led to a discussion in which those favoring the recommendations of the rapporteur prevailed. However, amendments to the draft resolution were proposed. Finally, the majority--with an opposing vote cast by Dr. Carlos A. Dunshee de Abranches--approved the following resolution (OAS/Ser.L/V/II.28, Doc. 11):

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

HAVING SEEN the report and recommendations of the rapporteur appointed to examine the violations of human rights in the case of the alleged arbitrary detention of Professor Heleno Claudio Fragoso, Dr. Augusto Sussekind de Moraes Rego and Dr. George Tovares (case 1697),

RESOLVES:

To approve the "Third Report on case 1697 (Brazil)" prepared by the rapporteur; and

DECIDES:

1. That the Government of Brazil be informed that the fact that this case has been submitted to the consideration of the Council for the Defense of Human Rights of Brazil does not bar its examination on the part of the Commission, in light of the provisions of its Statute.
2. That the case be filed without prejudice on its merits.
3. That this decision be transmitted to the Government of Brazil and the claimants.

Dr. Carlos A. Dunshee de Abranches presented an explanation of his vote.

[11] In conformity with this resolution, the Commission addressed the Government of Brazil in a note dated May 5, 1972, and the petitioner in a communication dated May 11, 1972.

