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Institution:	Inter-American Commission on Human Rights
File Number(s):	Case No. 1701
Session:	Twenty-Eighth Extraordinary Session (1 - 5 May 1972)
Title/Style of Cause:	Nestor Martins and Nildo Centeno v. Argentine Republic
Doc. Type:	Resolution
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:	Martins v. Arg., Case 1701, Inter-Am. C.H.R., OEA/Ser.L/V/II/.29, doc. 41 rev. 2 (1972)
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[1] Case No. 1701, of January 6, 1971, in which denunciation is made of the kidnapping of Dr. Nestor Martins, an Argentine attorney and legal adviser to the Confederación de Trabajadores de la República Argentina, and of Mr. Nildo Centeno, which occurred in Buenos Aires on December 16, 1970.

[2] In a note dated January 25, 1971, the Commission requested the corresponding information from the Argentine Government, at the same time transmitting to the latter the pertinent parts of the complaint, in conformity with Articles 42 and 44 of its Regulations. This request was reiterated on May 10, 1971.

[3] In a note dated July 31, 1971 (No. DOI-2523), the Argentine Government answered the request for information, providing data on work carried out by police and judicial authorities in order to determine the whereabouts and condition of the presumably kidnapped persons "carrying out many interrogations and investigations in the city of Buenos Aires, as well as neighboring areas, to a distance of two kilometers, and including inspection of ships in a broad area of the delta of the River Plate, seeking to determine the hypothetical existence of the corpses of the missing persons. However, no developed information was developed regarding the whereabouts and condition of Dr. Martins and Mr. Centeno Delgadillo."

[4] In accordance with its Regulations, in a communication dated September 3, 1971, the Commission transmitted to the petitioners copies of the pertinent parts of the reply of the Argentine Government.

[5] In a memorandum dated October 13, 1971, the petitioners provided additional information on the case and, particularly, in connection with the data transmitted by the government concerned.

[6] At its Twenty-Sixth Session (October-November 1971) the Commission designated Dr. Gabino Fraga as rapporteur. Dr. Fraga presented a report (Doc. 33-26) on the basis of the recommendations of which the following decisions were adopted:

- a) to transmit to the Argentine Government the pertinent parts of the additional information supplied by the petitioners, requesting that it present the observations that it deemed appropriate; and
- b) to request that the petitioners inform the Commission regarding progress in the corresponding judicial proceedings and, in particular, exhaustion of internal legal procedures and remedies with the competent authorities of the Argentine Republic, and whether there had been unjustified delay in the administration of justice.

[7] In accordance with these decisions, the Commission addressed the Argentine Government in a note dated November 17, 1971, and the petitioners on December 1 of that year.

[8] In a memorandum of February 8, 1972, the petitioners supplied new data on the status of the judicial proceedings, which may be summarized as follows:

- a) the proceedings were progressing only in volume, inasmuch as the measures ordered and carried out were totally ineffective while, on the other hand, others that could have shed light on the affair had been omitted, although they had been requested even by the Public Prosecutor;
- b) in conformity with procedural standards in effect in the Federal Capital Buenos Aires), it had not been possible to appeal to the judicial authorities, inasmuch as the investigative stage of the case had been entrusted exclusively to the court that was acting on it; and
- c) during the first 47 days of the summary proceedings (critically important days for the investigation) clear and unjustifiable delays had occurred in the administration of justice, which, so far, had ensured failure of the investigation."

[9] At the Twenty-Seventh Session (February 28 - March 8, 1973), as Dr. Gabino Fraga was absent, the Commission designated Dr. Carlos A. Dunshee de Abranches to study the status of the case and to make appropriate recommendations. Dr. Dunshee de Abranches submitted a report (Doc. 38-27) in which he stated that without evidence of the direct or indirect participation of representatives of the Argentine Government, and of their inaction in curbing the criminal act, it was not possible to invoke international protection. He recommended that the case be filed, without prejudice to reopening it if the Commission saw fit.

This recommendation was the object of observations as it was believed that, given the status of the processing, it would not be appropriate to file the case, especially if information to be provided by the government concerned was pending. Consequently, the Commission agreed to postpone its decision on Case No. 1701 until its Special Session.

[10] In a note dated March 7, 1972 (DOI-DOEA No. 794) transmitted on March 9, 1972 to the Commission by its Ambassador, Permanent Representative to the Organization, the Argentine Government answered the request for information of November 17, 1971, providing new data on the investigation pursued by the competent agencies. The note contains the following statements:

"According to information transmitted by the Ministry of the Interior and competent agencies, maximum efforts continue to be made to locate new witnesses or clues that may permit successful completion of the investigation. The Latin American police organizations that were alerted in due course have not responded satisfactorily; it has been reiterated through Interpol that 'the search for the men named MARTINS and CENTENO in the international sphere is still important.' Furthermore, and as a supplement to the measures adopted, appeals have been addressed to the country's citizens through the press, radio, and television, seeking their collaboration in supplying information that may shed light on the case.

"It should be mentioned that personnel of the Homicide Division of the Federal Police had various

interviews with relatives and friends of the missing persons. They have not only failed to contribute information that could have channeled the investigation toward positive results but have shown marked ill will and lack of cooperation toward police personnel.

"Likewise, intensive and continuous investigations are being pursued; even the most insignificant clues have not been discarded, and the helpful anonymous communications that have been sent to the aforementioned Division have been investigated.

"As the Chairman is aware, the facts that have given rise to the present activities are under the jurisdiction of Dr. Víctor J. Irurzún, National Judge of First Instance, Criminal Investigation, Secretariat No. 152, in the case pertaining to 'investigation of violations of Art. 141 and 149 bis of the Criminal Code' who is responsible for all measures designed to throw light on the aforesaid facts.

"The administrative and judicial authorities continue their efforts to bring the investigation to a successful conclusion."

[11] At the Twenty-Eighth Session (May 1 - 5) the Commission entrusted to Drs. Carlos A. Dunshee de Abranches and Gabino Fraga, who had been acting successively as rapporteurs in this case, a joint study of the dossier, so that, acting as a subcommittee, they should present a final report containing conclusions and recommendations.

The rapporteurs presented a report (OAS/Ser.L/V/II.28, Doc. 16), including their recommendations. At its sixth meeting the Commission approved the following Resolution (OAS/Ser.L/V/II.28, Doc. 21):

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

HAVING SEEN the report and recommendations of the rapporteurs appointed for the purpose of examining violations of human rights in the case of the kidnapping and disappearance, in Buenos Aires, of Néstor Martins, a lawyer, and his client Nildo Centeno Delgadillo (case 1701), and

WHEREAS:

1. Both the claimants and the Government of the Republic of Argentina have reported that this case is under the jurisdiction of Judge Víctor J. Irurzún, Juez Nacional de Primera Instancia en lo Criminal de Instrucción;
2. International protection cannot be invoked without proof of the direct or indirect participation of representatives of the government, or of their inaction in curbing the criminal act; and
3. Article 9 (bis), paragraph d), of its Statute reads: "To verify, as a condition precedent to the exercise of the powers set forth in paragraphs b) and c) of the present Article, whether the internal legal procedures and remedies of each member state have been duly applied and exhausted,"

RESOLVES:

To approve the "Report on Case 1701 (Argentina)" prepared by the rapporteurs; and

DECIDES:

1. That the case be filed without prejudice, awaiting the findings of the investigation now under way.
2. That this decision and the report of the rapporteurs be transmitted to the Government of the Republic of Argentina and to the claimants.

[12] In accordance with this resolution, the Commission addressed the Government of the Argentine Republic in a note dated May 5, 1972, and the petitioners in a letter of May 12, 1972.