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Institution:	Inter-American Commission on Human Rights
File Number(s):	Case No. 1715
Session:	Twenty-Ninth Ordinary Session (16 -27 October 1972)
Title/Style of Cause:	Raimundo Ongaro v. Argentine Republic
Doc. Type:	Resolution
Decided by:	President: Dr. Justino Jimenez de Aréchaga (Uruguay) Vice-President: Dr. Carlos A. Dunshee de Abranches (Brazil) Members: Prof. Manuel Bianchi (Chile); Dr. Gabino Fraga (Mexico); Mr. Robert F. Woodward (United States); Dr. Genaro R. Carrio (Argentina); Dr. Andrés Aguilar (Venezuela); All members attended the twenty-ninth session.
Dated:	14 March 1973
Citation:	Ongaro v. Arg., Case 1715, Inter-Am. C.H.R., OEA/Ser.L/V/II/.29, doc. 41 rev. 2 (1972)
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[1] Case No. 1715 of May 18, 1971, in which there is a denunciation of the arbitrary arrest of Mr. Raimundo Ongaro, Secretary General of the "C.G.T. de los Argentinos."

[2] In a note dated June 14, 1971, the Commission requested that the Government of Argentina supply the corresponding information, and at the same time transmitted to it the pertinent parts of the denunciation, in accordance with Articles 42 and 44 of its Regulations.

[3] In a note of July 30, 1971 (No. 2504), the Government of Argentina answered, supplying data according to which Mr. Ongaro had been arrested in view of statements that he made at a political meeting held in the city of Resistencia on May 7, 1971, that violated Article 209, First Part, of the Criminal Code of Argentina. Likewise, the government stated that a complaint had been filed against Mr. Ongaro by the Federal Prosecutor of Resistencia, that the corresponding proceedings were under way, and that, in the meanwhile, Mr. Ongaro was at the disposal of the Executive Branch in conformity with Decree No. 115'7 of May 12, 1971.

[4] In accordance with its Regulations, the Commission transmitted the pertinent parts of the information supplied by the Argentine Government to the petitioners, and in a note dated October 20, 1971, the latter, in turn, provided additional information on the case to the effect that the complaint had been filed by the governmental agent on instructions from the Executive Branch; that the Federal Judge who heard the case was not the one who ordered the arrest of the prisoner; and that, despite the fact that the legal possibility existed of obtaining release of the latter (in conformity with Article 377 of the Code of Criminal Procedure of Argentina), this was not feasible in view of the fact that, under Executive Decree, Mr. Ongaro was detained at the orders of the Executive Branch.

[5] On the basis of this information, the Commission examined this case at its Twenty-Sixth Session (October-November 1971) and designated Dr. Gabino Fraga as rapporteur. On the basis of the

recommendations of the rapporteur it adopted the following decisions: to transmit to the Government of Argentina the additional information provided by the petitioners, requesting that said government transmit to the Commission the observations that it considered appropriate; to request the petitioners to supplement their information on the case, clarifying whether or not they had availed themselves of the legal procedure established in Argentine legislation designed "to guarantee the freedom of persons arrested on orders of the authorities;" and to continue study of the case at its next session, after all pertinent information had been obtained, to which end the Secretariat should compile the applicable legislation.

[6] In conformity with this decision, the Commission addressed the Government of Argentina in a note dated November 17, 1971, and the petitioners on December 1, 1971.

[7] The Commission was unable to continue its consideration of Case No. 1715 at its Twenty-Seventh Session (February 28 - March 8, 1972) because neither the Argentine Government nor the petitioners had supplied the requested information. Consequently, it decided to repeat its requests for such data and to postpone its finding.

[8] This decision was communicated to the Government of the Argentine Republic in a note dated April 3, 1972, and to the petitioners on March 21, 1972.

[9] In a note dated May 4, 1972 (D.O.I. - DOEA) the Government of Argentina answered the request of the Commission, supplying new information on the case, which is summarized as follows:

a. That it regretted that, because of insufficient information, the Commission has continued to consider the case, inasmuch as it had been completed by the national authorities.

b. That the labor leader had been arrested at the disposal of the Executive Branch in conformity with the authority vested in the latter under Article 23 of the National Constitution, which provides that "in the event of internal disorder or foreign attack endangering the operation of this Constitution and of the authorities created thereby, the Province or territory in which the disturbance of order exists shall be declared in a state of siege, and the constitutional guarantees shall be suspended therein. But during such suspension the President of the Republic shall not convict or apply punishment upon his own authority. His power shall be limited, in such a case, with respect to persons, to arresting them or transferring them from one point of the Nation to another, if they do not prefer to leave Argentine territory."

c. That Mr. Raimundo Ongaro had been released on January 8, 1972, in accordance with Executive Decree No. 103 of January 7, 1972.

[10] At its Twenty-Ninth Session (October 16 - 27), the Commission continued consideration of Case No. 1715 and took cognizance of the new information supplied by the Government of Argentina. Likewise, it noted the fact that, in conformity with the procedures established in its Regulations, that information had been transmitted to the petitioners in a communication of May 31, 1972, but that they had not made any observations in that regard.

After reexamining the case, the Commission adopted the following Resolution (OAS/Ser.L/V/II.29, doc. 25, rev. 1):

RESOLUTION ON CASE 1715 (ARGENTINA)

WHEREAS:

[i] By communication of May 18, 1971, the arbitrary arrest of Mr. Raimundo Ongaro, "Secretario General del C.G.T. de los Argentinos" was denounced;

[ii] In accordance with the power conferred on it by Article 9 (bis) of its Statute, this Commission requested the corresponding information from the distinguished Government of Argentina by note of June 14, 1971, transmitting to it the pertinent parts of the aforesaid communication in accordance with Articles 42.1 and 44 of its Regulations;

[iii] The distinguished Government of Argentina, by note of July 30, 1971 (D.O.I.-DOEA No. 2504), informed this Commission that:

"The mentioned political trade union leader took the floor during a meeting of a political nature held on May 7, last, in the city of Resistencia, Chaco Province, and made statements that violated the provision of Article 209 of the Criminal Code, part one.

"The Argentine Government, considering it necessary to ensure public tranquility and exercising the powers granted to it by Article 23 of the National Constitution, issued Decree No. 1.154 on May 12, last, ordering that Mr. ONGARO be arrested and placed at the disposal of the National Executive Branch, a measure carried out May 13.

"On June 11 of this year, the Federal Prosecutor of the city of Resistencia, Chaco Province, Dr. José Camilo SCHANTON, brought charges for the public incitement of crimes against the above-mentioned trade union leader in the local Federal Court presided over by Dr. Antonio Juan RINESSI, with Dr. Tomas A. J. INDIA as Secretary, where the case is now being heard";

[iv] In accordance with Article 42 of the Regulations the pertinent portions of the information supplied by the distinguished Government of Argentina were transmitted to the petitioner in a communication of September 3, 1971;

[v] The petitioners, in a communication of October 20, 1971, submitted additional information about the case, stating that:

"As regards the charges brought by the Fiscal Agent Dr. Camilo Schanton for alleged violation of Article 209 of the Criminal Code, they were brought following specific instructions from the then Secretariat of State of Justice of the Nation, now the Ministry of Justice of the Nation, as specifically stated in the first writ of the proceedings, which is endorsed by the aforementioned Fiscal Agent. It should be noted that the National Executive Branch, through its Ministry of Justice, has the power to issue instructions such as those mentioned, and that in the constitutional structure of the Nation, the Ministers are responsible to the President of the Nation.

"The Federal Judge of Chaco Province, who was hearing the charge, at no time ordered the arrest of Ongaro, and he found that in fact, that person had been arrested on orders of the Executive Branch. It should be noted that, in the course of the Judicial proceeding and as a consequence of it, it is not impossible that Ongaro may be released (Art. 377 of the Code of Criminal Procedure), but such a petition has no practical interest at this time, because if the court should decide favorably thereon, he would continue to be deprived of freedom because he is at the disposal of the Executive Branch and therefore the decision would not be put into effect.

"In summary: Raimundo José Ongaro is the object both of detention at the disposal of the National Executive Branch and of a criminal charge instituted at the behest of that same Executive Branch, a case now under way and in which the sitting magistrate has not taken any decision restrictive of freedom, yet the detention at the disposal of the National Executive Branch constitutes in practice an insurmountable obstacle to obtaining his freedom by means of the legal procedure of release from prison.

"As a marginal note, we draw the Secretary's attention to the fact that the report of the Government of Argentina states categorically that the statements made by Ongaro are in violation of Article 209 of the Criminal Code, although there has not yet been any judicial decision, thereby arrogating to itself a judgment belonging exclusively to the Judicial Branch. In conclusion, the imprisonment that Raimundo

José Ongaro suffers to this date is the sole and exclusive consequence of his being at the disposal of the National Executive Branch and not subject to proceedings before the Federal Courts";

[vi] During its twenty-sixth session, held at Washington, D.C. from October 26 through November 4, 1971, this Commission studied this case on the basis of the denunciations, the information supplied by the Government of Argentina, and the additional information provided by the petitioners, and appointed a rapporteur to study the case;

[vii] In accordance with the recommendations of the rapporteur, this Commission again addressed the distinguished Government of Argentina by note of November 177 1971, also transmitting the pertinent parts of the additional information presented by the petitioners, with the request that it make known to the Commission any observations it considered appropriate regarding the reply of the petitioners;

[viii] Likewise, in accordance with the recommendations of the rapporteur, this Commission addressed the petitioners, by communication of December 1, 1971, requesting more information on the status of the case, and especially whether Mr. Raimundo Ongaro or his legal representative had made use of the internal legal procedures and remedies that the laws of the Argentine Republic establish to protect the rights of individuals;

[ix] The distinguished Government of Argentina, by note of May 4, 1972, transmitted through the Permanent Mission of Argentina to the Organization of American States (SG 123 (7.2.50), informed this Commission that:

"By Decree 103 of January 7, 1972, the Executive Branch of the Nation ordered the freedom of Mr. Ongaro, which was made effective early the following day.

"The trade union leader in question was under detention, at the disposal of the Executive Branch, by virtue of the authority granted to it by Article 23 of the National Constitution, which states: 'In the event of internal disorder or foreign attack endangering the operation of this Constitution and of the authorities created thereby, the Province or territory in which the disturbance of order exists shall be declared in a state of siege and the constitutional guarantees shall be suspended therein. But during such suspension, the President of the Republic shall not convict or apply punishment upon his own authority. His power shall be limited, in such a case, with respect to persons, to arresting them or transferring them from one point of the nation to another, if they do not prefer to leave Argentine territory.'

"A state of siege is contemplated in the majority of the constitutions of the American countries, and in the case of our country it dates from 1853, when our Constitution was adopted. I believe that this information constitutes an indisputable element of judgment for verifying that in the matter that gave rise to the petitions, there was fulfillment of the provisions of the first paragraph of Article XXV of the American Declaration of the Rights and Duties of Man, which reads as follows:

"No person may be deprived of his liberty except in the cases and according to the procedures established by pre-existing laws';

[x] This Commission made known to the petitioners, by communication of May 31, 1972, the new information from the Government of Argentina; and

[xi] The petitioners have made no observations on the said information,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

RESOLVES:

[i] To declare, in view of the information that the Commission has had available, that the violation of

human rights, subject of the denunciation, is not verified.

[ii] To transmit the text of this resolution to the distinguished Government of Argentina and to the petitioners.

[11] Implementing the provision of paragraph 2 of this resolution, the Commission, by note of November 1, 1972, transmitted the text of the approved resolution to the Government of Argentina. The Secretariat, by communication of November 15, 1972, transmitted the same resolution to the petitioners.