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Institution:	Inter-American Commission on Human Rights
File Number(s):	Case No. 1684
Session:	Twenty-Ninth Ordinary Session (16 -27 October 1972)
Title/Style of Cause:	Unknown v. Brazil
Doc. Type:	Decision
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:	Unknown v. Braz, Case 1684, Inter-Am. C.H.R., OEA/Ser.L/V/II/.29, doc. 41 rev. 2 (1972)
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[1] Case No. 1684, of June 25, 1970, in which there was denunciation of various acts committed in Brazil in 1969 and 1970, which allegedly violate the following rights set forth in the American Declaration: to life, liberty, and personal security; to protection from arbitrary arrest; and to due process of law (Articles I, XXV and XXVI, respectively).

[2] In conformity with its Regulations (Articles 42 and 44), in a note dated September 18, 1970, the Commission requested the corresponding information from the Government of Brazil. Furthermore, at its Twenty-Fourth Session (October 1970), given the seriousness and urgency of the denunciations, the Commission adopted the following decisions: to reiterate the request for information addressed to that government in its note of September 18, 1970; to appoint Dr. Durward V. Sandifer as rapporteur of this case (together with other cases pertaining to Brazil); and, in conformity with Articles 11.c of its Statute and 50 of its Regulations, to request the consent of the Government of Brazil so that the rapporteur, accompanied by the Executive Secretary of the Commission, might visit Brazil with the object of obtaining the information necessary for carrying out their functions. In this connection, it addressed a note to the Ministry of Foreign Affairs of Brazil on October 26, 1970, which was reiterated on December 10 1970.

[3] In a note of January 11, 1971, the Government of Brazil answered the Commission's notes, supplying information and various documents related to the charges lodged with the Commission as well as to other denunciations transmitted to it with requests for information. In brief, the aforementioned note stated the following: the charges were unfounded, inasmuch as the competent Brazilian authorities had repeatedly declared that they rejected and condemned any violation of human rights in Brazil. With reference to the request contained in the notes of October 26 and December 10, 1970, seeking authorization for the rapporteur to visit Brazil to obtain in loco the information necessary for carrying out his functions, the Government expressed "the greatest astonishment at that request," in view of the fact that there was no indication of the reason for such a decision nor any explanation of why--prior to

expiration of the period within which information was to be supplied--the Commission should suddenly, and without awaiting expiration of the period established in the regulations, wish to send a representative to Brazil. Moreover, the sending of an observer to Brazil had to be regarded as an exceptional measure "which should be applied only when no other means for verifying facts are available to the Commission".

[4] In view of the terms of this reply, in a note dated January 26, 1971, the Commission, while thanking the Government of Brazil for the information and documents supplied in connection with the denunciations, said that it should state for the record that it deplored the refusal of consent for the rapporteur of the case to visit Brazil. It also stated the following:

- a. That, in accordance with its Statute and Regulations, as well as established practice, in requesting consent to visit the territory of an American State, the Commission takes into account only the seriousness and urgency of the facts of a case, as expressed in the denunciation, and
- b. That such action did not constitute any prejudgment whatsoever on the part of the Commission.

[5] At its Twenty-Fifth Session (March 1971) the Commission considered Case No. 1684, together with information and documents transmitted by the Government of Brazil. During the session, the rapporteur, Dr. Durward V. Sandifer, presented a report (Doc. 7-25), the recommendations of which provided the basis for the Commission to decide to request of the Government of Brazil that it supply all available information on the allegations of torture of the persons mentioned in this case, and to transmit to the petitioners the pertinent parts of its reply. In accordance with these decisions, the Commission addressed the government concerned in a note of March 12, 1971, and the petitioners on April 8, 1971.

[6] In a note dated August 27, 1971 (No. 7), the Government of Brazil requested--in the light of the provisions of paragraph 2 of Article 51 of the Regulations of the Commission--a six-month extension for supplying the information requested by the Commission.

[7] The aforesaid request was considered at the Twenty-Sixth Session of the Commission (October-November 1971). During the session the rapporteur presented a "Second Report on Case No. 1684" (Doc. 13-26), in which he recommended that the aforementioned extension be granted.

During the same session, Dr. Carlos A. Dunshee de Abranches reiterated his observations regarding the procedure followed by the Commission in this case, and proposed that an extension of only three months be granted to the Government of Brazil, inasmuch as it had had sufficient time for providing the additional information, since the date on which the Commission had requested it (March 12, 1971). Dr. Dunshee de Abranches presented an explanation of his vote on these points.

At this session, in conformity with the recommendation of the rapporteur, as amended at the proposal of Dr. Dunshee de Abranches, the Commission agreed to grant to the Government of Brazil a period of up to December 28, 1971 for supplying the information requested, "so that the rapporteur of Case No. 1684 may have the necessary time to prepare his report and submit it to the Commission for consideration at its Twenty-Seventh Session."

[8] This decision was communicated to the Government of Brazil in a note dated November 17, 1971.

[9] With a note dated December 28, 1971, delivered to the Secretariat on January 8, 1972, the Government of Brazil enclosed an Introduction and six volumes of documents relating to this case. Two volumes pertain to exhaustion of internal legal procedures and remedies regarding the persons on whom it had provided information to the Commission previously, while the remaining four volumes contain the same kind of information in relation to persons regarding whom information had not been supplied

previously.

[10] In a communication dated December 6, 1971, the petitioners transmitted additional information on the acts denounced, and formulated observations on the information provided by the Government of Brazil.

[11] Likewise, on February 15, 1972, the Commission received a petition bearing more than 150 signatures of persons of 13 countries, of which 9 are member states of the Organization of American States, urging that the Inter-American Commission on Human Rights insist on an on-the-spot investigation by an international organ on the situation regarding human rights in Brazil.

[12] At its Twenty-Seventh Session (February-March 1972), the Commission continued to consider Case No. 1654, taking into account the new information provided by the Government of Brazil and the petitioners.

The rapporteur presented a third report (Doc. 4-27) in which, after stating that this case constituted "one of the most extensive and complex dossiers ever presented to the Commission, to judge by the number of petitioning persons and entities, as well as the number of alleged victims of violations of human rights and the volume of documents received," he made various recommendations on the basis of which the Commission adopted the following decisions:

- a) To hold a Special Session for consideration of this case, as well as other matters on which decisions were pending at the Twenty-Seventh Session;
- b) To request that Dr. Justino Jimenez de Aréchaga Chairman of the Commission cooperate with the rapporteur in preparing a report on this case; and
- c) To hold the aforesaid Special Session at the headquarters of the Commission, May 1- 5, 1972.

In accordance with point b) of the aforementioned decision, with the collaboration of Dr. Justino Jimenez de Aréchaga, Chairman of the Commission, the rapporteur prepared the document entitled "Fourth Report on Case No. 1684 (Brazil)" (Doc. 6-28, Rev. 1).

The aforesaid report consists of an introduction followed by a study of the preliminary matters of the case, namely: transmittal to the complainants of the information supplied by the government denounced verification of exhaustion of internal legal procedures and remedies, and action taken by the Council for the Defense of Human Rights in Brazil. The report is then divided into five chapters: The Subject Matter of the Denunciation (I); The Replies of the Government of Brazil (II); Obstacles to Investigation of the Acts Denounced (III); Conclusions (IV); and Recommendations (V). The document is supplemented by a draft resolution along the lines of the recommendations in Chapter V.

[13] On the basis of this report the Commission analyzed Case No. 1684 at its Twenty-Eighth Session (May 1 - 5).

First, during long and detailed discussion, the Commission examined the fundamental premise of the report embodied in point 2 of the Conclusions, to the effect that Case No. 1684 was a "general case" of violation of human rights and that, consequently, in relation to its consideration of the case, the Commission could dispense with the requirement established in paragraph d) of Article 9 (bis) of its Statute and Article 54 of its Regulations of verifying "as a condition precedent . . . whether the internal legal procedures and remedies . . . have been duly applied and exhausted."

Furthermore, together with this matter for prior decision, other incidental points were considered, such as the following: the scope of the procedural principle of equality of parties in consideration of cases before

the Commission, especially whether equal validity should be accorded to denunciations and to information from the government denounced; the scope of Articles 9 c) and 9 (bis) of the Statute of the Commission depending on whether it is a matter of "general cases" or "individual cases" of alleged violations of human rights, in relation to exhaustion of internal legal procedures and remedies and the making of recommendations to the governments concerned; the scope of the requests for consent provided in paragraph c) of Article 11 of the Statute of the Commission, for the latter to visit the territory of an American state; and other points pertaining to the matter for prior decision to which we have referred.

Pursuant to this decision, the Commission considered the substance of Case No. 1684 at that session, on the basis of the draft resolution presented by Drs. Aréchaga and Sandifer, the rapporteurs.

When the matter for prior decision was put to a vote, it was agreed to accept the interpretation that Case No. 1684 was a "general case" of violations of human rights and that, consequently, the Commission did not have to require, for consideration of the substance of the matter, the stipulation provided in paragraph d) of Article 9 (bis) of its Statute relative to exhaustion of internal legal procedures and remedies. At the same time, various declarations were adopted regarding changes of style to be introduced in Document 6-28 presented by the rapporteurs.

At that same session the Commission approved a resolution on Case No. 1684 (OEA/Ser.L/V/II.28, doc.14), by the affirmative vote of a majority of its members. Drs. Acuña, Abranches, and Fraga cast opposing votes.

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

[14] In conformity with the provisions of the resolution mentioned above, the Commission addressed the Government of Brazil in a note dated May 5, 1972, and the petitioners in a communication on May 11 of that year.

[15] At the Twenty-Ninth Session (October 16-27) the Commission again considered this case, with regard to whether the Government of Brazil had supplied information on the action taken on the recommendations contained in the resolution of May 3, 1972.

Inasmuch as the 180-day period stipulated in Article 51 of the Regulations for the Government of Brazil to supply the corresponding information on measures adopted in accordance with the aforementioned resolution, the Commission decided to postpone consideration of Case No. 1684 until its next session.