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Institution:	Inter-American Commission on Human Rights
File Number(s):	Case No. 1742
Session:	Thirty-Fifth Session (20 - 30 May 1975)
Title/Style of Cause:	United States Citizens v. Cuba
Doc. Type:	Resolution
Decided by:	President: Dr. Andrés Aguilar (Venezuela) Vice-President: Dr. Carlos A. Dunshee de Abranches (Brazil) Members: Professor Manuel Bianchi (Chile); Dr. Gabino Fraga (Mexico); Dr. Justino Jimenez de Aréchaga (Uruguay); Mr. Robert F. Woodward (United States); Dr. Genaro R. Carrio (Argentina)
Dated:	15 April 1975
Citation:	United States Citizens v. Cuba, Case 1742, Inter-Am. C.H.R., OEA/Ser.L/V/II.37, doc. 20, corr. 1 (1975)
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[1] Case No. 1742, presented through a communication of April 10, 1972, alleges that a number of United States citizens residing in Cuba for 6 years have made efforts to return to their homeland; the reply they received from the Delegation of Switzerland in Cuba is "that they have not yet received from the Cuban Government the authorization necessary for their departure".

[2] The Commission considered this communication at its twenty-ninth session (October 1972) and agreed:

- i) to request the appropriate information from the Government of Cuba in accordance with Articles 42 and 44 of its Regulations and
- ii) to address the Government of the Swiss Confederation, requesting that it kindly inform the Commission, insofar as possible, whether it is true that the efforts being made through the Swiss Embassy in Cuba by many citizens of the U.S.A. to obtain authorization to travel to their country of origin (the United States) have been excessively delayed.

[3] Pursuant to these decisions, the Commission addressed its-self to the Governments of Cuba and Switzerland through notes dated November 1 and November 14, 1972, respectively.

[4] The Government of Switzerland replied as follows:

"In view of the legal nature of the mandate of protective power (mandat de puissance protectrice), it is not incumbent upon this Government to make to third states or intergovernmental organizations any value judgement on any position of the government of the state concerning which it exercises its protection. The Government of the Swiss Confederation therefore believes that only the Government of the United States of America is competent to receive the request of the Inter-American Commission on Human Rights".

[5] At its thirtieth session (April 1973), the Commission continued its examination of the case and, in view of the terms of the note of the Swiss Government, on the one hand, and the lack of reply from the Government of Cuba, on the other, it decided to address the Government of the United States, requesting information in accordance with Articles 42 and 44 of the Regulations. In implementation of this decision, a note was sent to that Government on June 17, 1973. In a letter dated June 18, 1973, the complainant was informed of the new procedure being used to deal with the matter.

[6] At the thirty-first session (October 1973), the Commission noted that the Government of the United States had not replied to the note of June 17, 1973, and decided to repeat the request for information and to postpone the examination of the case at that session.

[7] The Government of the United States, through its Mission to the OAS, in a note dated December 13, 1973, replied to the request of the Commission and sent information on the steps taken by United States citizens still resident in Cuba to leave that country vis a vis the Swiss delegation in Cuba and, in particular, on the status of such negotiations with respect to the relatives of the complainant.

[8] In a letter of December 28, 1973, the Commission transmitted, to the complainant the pertinent parts of the information supplied by the Mission of the United States to the OAS.

[9] With that information at hand, the Commission continued its examination of the case at its thirty-second session (April 1974) and decided:

- a) to request the Government of the United States of America to be good enough to report on the development of the procedure for the departure from Cuba of the persons mentioned in the complaint and
- b) to request the complainant to state whether she would have any objection to the names of her relatives resident in Cuba being made known to the Cuban Government in a request for information that the CIDH would send to the above-mentioned government in the event that the complainant gave her permission.

[10] In compliance with paragraph a of this decision, the CIDH addressed the Government of the United States on June 3, 1974, and the complainant on April 26, 1974, and informed them of the decision (paragraph b) on the case.

[11] The Government of the United States, in a note dated July 11, 1974, informed the CIDH that, for the time being, it had no new information about the matter to pass on to it, not only with respect to the persons involved in the case but also with respect to the general status of United States citizens that wished to leave Cuba.

[12] With respect to the complainant, in a letter dated May 4, 1974, she authorized the CIDH to report to the Government of Cuba the names of her relatives in the country.

[13] On the basis of this information, the CIDH examined the case at its thirty-fourth session (October 1974) and decided:

- a) to request the Government of Cuba, in accordance with Articles 42 and 44 of its Regulations to

provide the pertinent information on the individual status of the persons affected, mentioned in the complaint, who are still waiting to leave that country because of the lack of the necessary authorization from Cuban authorities and

b) to inform the complainant of its decision.

[14] In implementation of the foregoing, the Commission:

a) Sent to complainant a letter on November 18, 1974, and

b) again sent a letter to the Government of Cuba on December 17, 1974.

[15] At the thirty-fifth session (May 1975), the Commission continued its examination of this case, bearing in mind, above all, the fact that the Government of Cuba continued to fail to reply to the repeated requests made by the Commission to provide the appropriate information. Therefore, since the 180-day period provided for under Article 51 had elapsed as had the extensions provided for provision of the corresponding information, it approved the following resolution, in application of the provisions contained in Article 51, presuming confirmation of the allegations, in the complaint, (OEA/Ser.L/V/II.35, doc.7, rev.1, of April 15, 1975):

WHEREAS:

[i] By communication of April 10, 1972, acts are denounced allegedly in violation of the right to residence and movement, set forth in Article VIII of the American Declaration of the Rights and Duties of Man, imputable to the Government of Cuba and claiming as victims numerous foreigners in that country who are being prevented or delayed in leaving Cuba.

[ii] By communication of April 28 of the same year, the following was specifically denounced:

"My brother Alberto Castillo, my nephew Arturo Castillo his wife and four children were among the first group who applied for repatriation as recorded in the Swiss Embassy in Havana. Furthermore, my nephew completed the necessary requirements and arrangements to send his eldest son without delay to the States by way of Spain about six years ago. The funds covering all expenses were sent to Cuba, and that was the end of our transactions. We never heard what happened to the cheque.

"The names and nationalities of the persons who are subject to your claim:

"Alberto Castillo (my brother). Born in West Florida (over 70 years of age) always lived in the United States where he was educated. Attended school in Key West, Atlanta and Montreal, Canada. Traveled to Cuba for pleasure.

"Arturo Castillo (my nephew). Son of my brother, Arturo Castillo, M.D. (also American born). This nephew happened to be born in Cuba but legally adopted his father's American citizenship. His four children were born in Cuba but since they are too young no legal action has been taken to legalize their American citizenship.

"The reasons given by the Government of Cuba in not permitting them to leave Cuba:

"They frequently visit the Swiss Embassy in Havana to inquire when they are scheduled to leave and the only reply they receive is that the Cuban government has not as yet authorized their departure."

[iii] In exercise of the authority granted it by Article 9 (bis) of its Statute, the Commission requested that the Government of Cuba, by notes of November 1, 1972 and December 17, 1974, to provide the appropriate information and transmitted to it, at the same time, the pertinent parts of the aforementioned communications, in the manner established in Articles 49 (1) and 44 of its Regulations.

[iv] Article 5.1 of the Regulations reads as follows:

1. The occurrence of the events on which information has been requested will be presumed to be confirmed if the Government referred to has not supplied such information within 180 days of the request, provided always, that the invalidity of the events denounced is not shown by other elements of proof.
2. The Commission may make an extension to the term of 180 days in cases in which it finds it justified."

[v] Neither the formulation of observations nor, in general, the competence of the Commission to take cognizance of denunciations regarding violations of human rights committed in the territory of Cuba is barred by the measures adopted by the Organization of American States with respect to the present government of that country, since that government has not denounced the Charter of the Organization, provided for in Article 148 of the Charter, for which reason it is reason it is the duty of the Commission to continue to take cognizance of these denunciations.

[vi] In view of the systematic silence of the present Government of Cuba in the face of the numerous communications received from the Commission, it would serve no practical purpose to make the type of recommendations envisaged in Articles 9 b and 9 (bis) b of the Statute. However, this does not prevent the Commission from making known its considered opinion on the allegations to the General Assembly of the Organization of American States.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS; RESOLVES:

[i] To presume the confirmation of the occurrence of the allegations contained in the communications of April 10 and 28, 1972, in application of Article 51 of the Regulations.

[ii] To include this resolution in the Annual Report that the Commission presents to the General Assembly of the Organization (Article 9 (bis) c of its Statute) making known that the allegations constitute a serious and repeated case of the violation of the right to residence and movement, set forth in Article VIII of the American Declaration of the Rights and-Duties of Man.

[iii] To transmit this resolution to the Government of Cuba and to the claimants.

[16] This resolution was brought to the attention of the Government of Cuba and the complainant through notes of June 1, 1975, and June 4, 1975, respectively.