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Institution:	Inter-American Commission on Human Rights
File Number(s):	Case No. 2126
Session:	Forty-Fourth Session (9 - 23 June 1978)
Title/Style of Cause:	Carlos Humberto Contreras Maluje v. Chile
Doc. Type:	Resolution
Decided by:	Chairman: Andrés Aguilar; Vice Chairman: Carlos A. Dunshee de Abranches Members: Gabino Fraga, Tom J. Farer, Carlos García Bauer, Fernando Volio Jiménez; Marco Gerardo Monroy Cabra. Marco Gerardo Monroy Cabra was elected to complete the term of Dr. José Joaquín Gori, who resigned after having been appointed Ambassador, Permanent Representative of the Mission of Colombia to the OAS.
Dated:	21 June 1978
Citation:	Contreras Maluje v. Chile, Case 2126, Inter-Am. C.H.R., OEA/Ser.L/V/II.47, doc. 13 rev. 1 (1978)
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BACKGROUND:

1. In a communication dated November 30, 1976, the following denunciation was made:

"Mr. Carlos Humberto Contreras Maluje, a pharmaceutical chemist, married, 29 years old, was detained on November 3, 1976, at approximately mid-day, in Nataniel Cox St. between Coqulebo and Aconcagua, by officials of the National Intelligence Bureau (DINA), assisted by personnel of the Carabineros. Mr. Contreras has been a town counselor in the Municipality of Concepción, representing the Chilean Communist Party, and for this reason, although his detention cannot be justified it seems empirically likely.

According to witnesses, Mr. Contreras was wounded at the time he was detained, either by a third party, or because he had been run over by a bus on the Vivacta Route, line 20. He was bleeding profusely from the head, and his glasses, which he must wear at all time, had either been taken away or destroyed.

Despite the fact he was so badly hurt, none of the Carabineros present gave him any help. Rather, they surrounded him to prevent any possible aid from coming, and to facilitate his being taken by the DINA officials. This was precisely what the DINA did.

Mr. Contreras, despite the fact that he was wounded, defenseless, and in such a precarious situation was desperate, and managed to shout out very loudly what was happening to him: that he was being detained, that he had been a victim of torture by security agents; he begged for help from the astonished witnesses, he gave his name and identity, and asked them to report what was happening to the 'Maluje' pharmacy in Concepción, which belonged to his mother.

After he had shouted out that he was being mistreated, the persons apprehending him decided to reduce him to silence, and beat him repeatedly, and mercilessly in the presence of the horrified onlookers. Then they put him into a light blue car, license plate No. EG 388, which some said was a Peugeot and others a Fiat 125.

His whereabouts are unknown, and there is a good reason to fear for his personal security and for his life."

2. In a communication dated March 5, 1977, the person filing the complaint informed the Commission as to the judicial proceedings that had taken place in the case, as follows:

"In a Resolution of January 31, 1977, the Fifth Circuit of the Court of Appeals of Santiago granted the writ of Amparo filed, stating 'that the background information collected... enables a well-founded inference to be drawn that on November 3 last, officials of the National Intelligence Bureau proceeded to detain the appellant', and that the detention 'was carried out without a proper warrant from any authority'. The Court, therefore, ordered the Ministry of the Interior to release Mr. Contreras immediately.

On January 31, 1977, the Secretary of the Court of Appeals reported that the license plate of the car in which Mr. Contreras was taken away 'belonged to the Chilean State Attorney (Fisco) and had been requested by the Bureau of Intelligence of the General Chiefs of Staff of the Chilean Air Force'.

On February 4, 1977, the Ministry of the Interior informed the Court of Appeals that DINA 'stated that there were no record on this person in that office and that he had not been detained by officers of that Agency'.

Since the Ministry of the Interior had failed to comply with the legal order mentioned above, the Court of Appeals in full session decided to send the case to the Supreme Court of Justice.

The Supreme Court of Justice decided on February 17, 1977 to postpone until March its decision on the alleged incomplicant by the Ministry of the Interior.

Nothing is known yet of the status of Mr. Contreras, from the time he was arrested on November 3, 1976 by DINA, despite the Court order, and we are led to conclude that his life is in serious danger and that we must intervene on his behalf as soon as possible."

3. Subsequently, a second complainant provided the Commission with the following additional information contained in a letter of July 14, 1977:

"In a decision of April 7, 1977, the Supreme Court of Justice returned the case of Carlos Humberto Contreras Maluje to the Court of Appeals, asking the Appeals Court to take steps to identify the security agency allegedly acting in the case of the appellant.

Copies were attached of sworn statements by Captain Clemente Nicolás Burgos Valenzuela and Major Robinson Ascencio Medina Galaz, both Carabineros of the Sixth Commissariat of Santiago, along with statements by other witnesses who confirmed the events denounced, including the fact that the four men who got out of the Fiat 125 identified themselves as belonging to DINA, showing their identification cards from that agency. Captain Burgos Valenzuela stated that he had reported the events in the Police Day Book as soon as he arrived at the police station.

In reply to the order from the Court letter to the Court dated April 28, 1977, of Appeals, DINA sent a and signed by Jacobo Atalia Barcudi, Air Force Brigadier General, as follows:

a. This Intelligence Bureau did not detain Carlos Humberto Contreras Maluje. This was reported to the First Military Magistrates Court, who inquired after this individual in Official Note No. 1606 of December 29, 1976.

b. With regard to your inquiry as to who was using the 1974 Fiat 125-S, license plate No. EG 388 on November 3, 1976 at approximately 11:30 a.m., I would report that this automobile was at the disposal of the Director of General Intelligence, Mr. Enrique Ruiz B., for his personal use. He was attending a meeting with the Director of Operations of the Air Force, Mr. Osvaldo Latorre H., at the time indicated."

4. The Inter-American Commission on Human Rights transmitted the pertinent parts of these communications to the Government of Chile in a note of September 19, 1977, and asked it to provide the corresponding information.

5. In response to the Commission's request, the Government of Chile sent a note dated November

14, 1977, and, failing to refer to the events denounced as transmitted to it, merely reported to the Commission in the following terms:

"Case No. 2126 Contreras Maluje Carlos: The Fifth Major Criminal Court of Santiago declared itself without jurisdiction to hear Case No. 103.372-4, because this person has been kidnapped. The background information was transmitted on September 13 last to the Air Force Attorney's office of the Second Air Zone, which is investigating the situation of this person. This case is under investigation.

6. One of the complainants denounced the following additional facts in a communication dated November 10, 1977:

a. Having completed the steps ordered by the Full Session of the Supreme Court of Justice in its decision of April 7, 1977, the Fifth Court of Appeals of Santiago ordered as follows, in a decision handed down July 4, 1977:

The investigation ordered by the Supreme Court having been exhausted, let notification be made to the Supreme Court of the result of that investigation for all pertinent legal purposes.

b. In handing down the decision, according to the complainant, 'The Justices of the Court, Mr. Adolfo Bañados Cuadra and Mr. Marcos Libedinsky Tschorne submitted a complete report to the Supreme Court, and attached the principal items of evidence, which completely confirmed the decision'.

c. According to the person entering the denunciation, 'It was at that time, and only at that time, that on July 8, 1977, the Supreme Court requested that the Court of Appeals refer to it the case for the writ of Amparo, 1.020-76. Also at this time, attorney for the appellant presented a brief asking the Supreme Court to order the Chief of State to be the executing officer of the judgment'.

d. On receiving the decision of the Fifth Court of Appeals, the Supreme Court provided, on July 8, 1977, 'that the appellant's files be brought before it', and issued the following provision, by unanimous verdict, on July 22, 1977:

On the principal proceedings, having seen the statement by His Excellency the President of the Republic in his official note of March 22 last (1977), which on this date added to the proceedings, this principal proceeding is dismissed... Let the case be filed. C.26-77."

e. Thus, the proceedings were returned to the Fifth Court of Appeals, which filed the case on July 28, 1977.

f. The official note mentioned by the Supreme Court of Justice in its Order of July 22, 1977, is of great importance, according to the person filing the denunciation, who made the following comments:

The Supreme Court began an 'administrative' type of brief, up to folio 16. . .

In the same 'administrative' brief, there appears a photostatic copy, without page numeration, of an alleged communication sent by the President of the Republic to the Second Military Court of Santiago on March 22, 1977, in a secret note No. 1595."

g. This note, according to the photocopy provided the Commission by the complainant, includes the following points:

1. As you are aware, the Court of Appeals of Santiago heard the writ of amparo filed by attorney for the defense of Dr. Carlos Humberto Contreras Maluje, alleging that he had been arbitrarily deprived of his personal liberty.

2. The undersigned President of the Republic has verified that the presumed detention of the person referred to above was not ordered by the Executive --in exercise of the powers granted to it by the current state of siege--, and that in this case, as a consequence, none of the special powers granted to it was used.

3. The foregoing has made it absolutely impossible, both legally and in fact, for the Ministry of Interior to comply with the order of the Court of Appeals of Santiago, to implement the decision immediately to release the person in reference; this has been the Executive's invariable posture."

In the same note, the President asked the Military Judge to take:

"All measures and steps that might be pertinent to complete the investigation begun of these events, to find those responsible and determine who might appear to be responsible for them. . .

WHEREAS:

1. In the light of the background information reported above, it is inferred that there has been an unjustifiable delay in the final decision with regard to domestic remedies established for the protection of human rights alleged to have been violated;
2. While certain judicial proceedings have been continued before the Military Aviation Court, the Appeals Court and the Martial Court, there is doubt that jurisdictional channels on the writ of amparo filed on behalf of Mr. Maluje have been exhausted;
3. The Government of Chile in its note of November 14, 1977 made no reference to the events denounced in the note of September 19, 1977, and to date has not provided the corresponding information,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLVES:

1. To declare that the Commission has in its possession unequivocal proof of the fact that Mr. Carlos Humberto Contreras Maluje was illegally detained by agents of the Government of Chile on November 3, 1976, and since that time has disappeared.
2. To observe to the Government of Chile that these events constitute very serious violations of (Article I) right to liberty and personal security, (Article XVIII) right to a fair trial, (Article XXV) right to protection against arbitrary arrest and (Article XXVI) right to due process of the American Declaration of the Rights and Duties of Man.
3. To recommend to the Government:
 - a) without prejudice to such judicial proceedings as may be under way, to order a complete impartial investigation to determine responsibility for the events denounced, and to sanction those responsible for such events, in accordance with Chilean law;
 - b) to inform the Commission as to the measures to put into practice the recommendation contained in the preceding paragraph, within a maximum of 30 days.
4. To communicate this Resolution to the Government of Chile and to the complainant.
5. To include this Resolution in the Annual Report to the General Assembly of the Organization of American States (Article 9 (bis), paragraph c. iii of the Statute.)
6. To continue consideration of this case for all pertinent purposes.

(Approved at the 569th meeting of June 21, 1978 (44th Session) and transmitted to the Government of Chile on September 19, 1978).