

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 18/78, Case No. 2088 A
Session:	Forty-Fifth Session (2 - 18 November 1978)
Title/Style of Cause:	Hipolito Solari Irigoyen v. Argentina
Doc. Type:	Resolution
Decided by:	Chairman: Dr. Carlos A. Dunshee de Abranches; Vice Chairman: Professor Tom J. Farer; Members: Dr. Andrés Aguilar, Dr. Gabino Fraga, Dr. Carlos García Bauer, Dr. Marco Gerardo Monroy Cabra; Dr. Fernando Volio Jiménez
Dated:	18 November 1978
Citation:	Solari Irigoyen v. Arg., Case 2088 A, Inter-Am. C.H.R., Report No. 18/78, OEA/Ser.L/V/II.50, doc. 13 rev. 1 (1979-1980)
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BACKGROUND:

1. The kidnapping in Buenos Aires of former Senator HIPOLITO SOLARI IRIGOYEN was denounced in a communication and cables dated August 24, 1976.
2. On August 26, 1976, via cable, the Commission transmitted the pertinent parts of this denunciation to the Government of Argentina, requesting that the pertinent information be supplied.
3. The Government of Argentina replied by cable on August 31, 1976, to the Commission's request and provided the following information:

"As a result of investigations, the relevant authorities on the 30th of this month obtained the release of former Senator Solari Irigoyen and former Congressman Amaya, who had been kidnapped by an as yet unidentified group."
4. In a communication dated September 2, 1976, the Commission transmitted to the claimants the pertinent parts of the information supplied by the Government of Argentina, and invited their observations.
5. The claimant, in a note dated September 14, 1976, reported that although former Senator Solari had appeared alive, he was detained and placed at the disposal of the Executive (PEN) by virtue of the enforcement of the state of siege, and that he was being held in the facilities of the Fifth Army Corps, in the city of Bahia Blanca, in the southern part of Buenos Aires province.
6. The Commission, meeting in its 39th Session, decided to request additional information from the Argentine Government regarding the arrest of Senator Solari Irigoyen, particularly whether any charges had been brought against him. The above-mentioned information was requested in a note dated December 6, 1976.

7. In a communication dated January 11, 1977, the Government of Argentina replied to the request of the Commission in the following terms:

"With regard to this matter, be advised that Dr. Hipolito Solari Irigoyen is detained at the disposal of the Executive by Decree 1831/76 because of his links with subversive activities; and is in excellent state of health.

Also, I wish to inform the Hon. President that he will be duly advised when Dr. Solari Irigoyen is called to appear before the courts of this nation."

8. In a letter dated January 14, 1977, the pertinent parts of the reply from the Argentine Government were transmitted to the claimants, and they were invited to make further observations.

9. The claimant, in a letter of January 14, 1977, presented the following comments:

"The communication of the Argentine Government indicates that "Dr. Solari Irigoyen is detained at the disposal of the Executive by Decree 1831/76 because of his links with subversive activities." We wish to remind you that Dr. Solari Irigoyen and his colleague, Dr. Mario Abel Amaya, who died in prison, were victims of an uninvestigated kidnapping, for which the parties responsible have gone unpunished. They were later detained at the disposal of the Executive, which is evidence that there have been no charges or trial, by virtue of the state of siege.

As to the affirmation that Dr. Solari Irigoyen has "links with subversive activities," this must be proven in a trial, which has not as yet taken place although the communication assures that "you will be duly advised when Dr. Solari Irigoyen is called to appear before the courts of this nation." In this regard, it should be noted that according to Argentine law, a citizen may remain *incomunicado* for five days (5), and after this time he must be brought to trial or set free.

If he is called to appear, Dr. Solari Irigoyen can exercise his legitimate right of defense, and at the same time this will enable consideration to be given to all the details regarding the kidnapping of which he was a victim. But, the fact remains that Dr. Solari Irigoyen is serving a virtual *sine die* sentence, without having been brought to trial and without having been called to appear in court nor has there been any accusation made against him to this date.

The communication of the Argentine Government also states that Dr. Solari Irigoyen is in an "excellent state of health." Obviously the information of the authorities fails to include information from those persons who subject the former legislator to corporal and mental punishment. Moreover, the general conditions which exist in Rawson prison are a virtual aggravation of the sentence--in the case of Dr. Solari Irigoyen and the other prisoners at the disposal of PEN, an illegal sentence--since the physical and mental wellbeing of the political prisoners are being harmed in violation of the Constitution."

10. In a communication dated February 10, 1977, the claimant sent to the Commission a copy of the affidavit of the Federal Lower Court, containing the following:

"I HEREBY CERTIFY: Under the Law, that Dr. Hipolito SOLARI IRIGOYEN has not been brought to trial in any proceedings of this Court, that this Court has not sought nor is interested in his detention, and that there is no impediment in the court to his leaving the country. Furthermore, it is stated that the above-named professional man was questioned under the terms of article two hundred thirty-six, second paragraph, of the Criminal Code, in case N 378, folio 183, year 1976, entitled 'Annotated Summary to determine alleged violation of Law N 20.840, that he was at no time charged in the above-mentioned case, in which a temporary stay was issued on the second day of December 1976, (Art. 435 par. 1 of the Criminal Code), with a statement that no person had been brought to trial'."

11. In notes dated May 9 and 19, 1977, the Government of Argentina advised the following:

"I am pleased to write to you with regard to case 2088 and, on instructions from the Ministry of Foreign Affairs of Argentina, to advise you that by Executive Decree N 1098 authorization has been granted for the person detained at the disposal of the Executive, Hipolito Solari Irigoyen, to leave the country. Dr. Hipolito Solari Irigoyen left for Venezuela on May 17 of this year, on VIASA Flight 941."

12. The Commission received from the claimants a letter dated October 16, 1977, containing the following declaration of Mr. Hipolito Solari Irigoyen:

"I have noted the reply of the military Government of Argentina dated September 1, 1976, and the report dated January 11, 1977, regarding the arbitrary detention to which I was subjected.

I feel obliged to indicate that the affirmations contained in those reports are false:

1) I was never 'kidnapped by unidentified groups.' I was arrested on August 17, 1976 in a military operation ordered by the Chief of Security and the Second Chief of the V Army Corps, with headquarters in Bahia Blanca; the order was carried out in Area 536, with headquarters in Trelew. I was arrested at my home address, Puerto Madryn, Province of Chubut, by uniformed military who later plundered my home and blew up my car.

2) It is not true that I was 'set free' by police authorities on August 30, 1976. I was transferred from Communications Regiment 181 in Bahia Blanca, where I had been kept, to the city of Vidma, where I was thrown on to the side of the road, and immediately picked up by a police car. My illegal arrest thus became a legal arrest. Both before and after the alleged 'liberation' I was subject to cruel torments.

3) I have never had links with subversive activities of any kind. I have always condemned any kind of violence. I was never charged before a Court, nor have I been brought to trial. I was detained for nine months at the disposal of the Executive until I was expelled from the country and forbidden to return.

4) Congressman Mario Abel Amaya was also arrested on August 17, 1976 at his home address in Trelew, Province of Chubut and went through the same events as I until September 11, 1976 when we were both transferred in a navy airplane from Bahia Blanca to the Naval Air Base 'Almirante Zar' in Trelew, and from there to Rawson prison. As a consequence of the brutal punishment we received in the Base and in the prison, and the lack of medical attention during the early days, Congressman Amaya who was in critical condition, was transferred to the hospital of Villa Devoto Prison in Buenos Aires, where he died on October 19, 1976."

13. In letter dated August 1, 1978, the claimants provided the following additional information:

We also wish to point out the violation of human rights being committed in cases in which the individual is prohibited from returning to his country. In fact, according to the so-called Law 21.228 decreed by the Military Government on June 25, 1976, the penal code included--in art. 281(ter.)--sentences of up to four years in prison for those persons who leave the country, and there is a decree placing them at the disposal of the Executive, as in this case, should they ever return.

A further flagrant violation of human rights is the treatment received by Congressman Amaya and by Dr. Solari during the time they were in prison. As a consequence of the beatings and tortures they were subjected to, Congressman Arnaya died and Dr. Solari's health seriously deteriorated."

14. In a note dated August 4, 1978, the Commission transmitted to the Government of Argentina the pertinent parts of the additional information supplied by the claimants. As of this date, there has been no reply from the Argentine Government.

WHEREAS:

1. In the light of the preceding, it appears that Dr. Hipolito Solari Irigoyen was detained and tortured by the Argentine authorities;

2. In a note dated January 11, 1977, the Government of Argentina told the Commission that it would duly advise it when Dr. Solari was to be called to appear before the courts of the nation, but such information has not been supplied by this date;

3. Dr. Solari Irigoyen, due to a lack of guarantees for his personal safety, was obliged to abandon Argentina and was authorized to do so by the Government through Executive Decree N 1098 of 1977,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, RESOLVES:

1. To advise the Government of Argentina that such acts constitute very serious violations of the right to liberty and personal security (Art. I); to the right to residence (Art. VIII); to the right to a fair trial (Art. XVIII); and the right to protection against arbitrary arrest (Art. XXV) of the American Declaration of the Rights and Duties of Man.

2. To recommend to the Government of Argentina:

- a. that it order a complete and impartial investigation in order to determine responsibility for the reported actions;
- b. that in accordance with Argentine law, the persons responsible be duly punished, and
- c. that a report be made to the Commission, within a maximum period of 30 days, regarding the measures taken to implement the recommendations listed in the present Resolution.

3. To communicate this Resolution to the Government of Argentina and to the claimants.

4. To include this Resolution in the Annual Report to the General Assembly of the Organization of American States pursuant to Art. 9 (bis), paragraph c. iii of the Statute of the Commission.