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Title/Style of Cause: Gustavo Westerkamp v. Argentina
Doc. Type: Resolution
Decided by: Chairman: Mr. Andrés Aguilar;
First Vice Chairman: Luis Demetrio Tinoco Castro;
Second Vice Chairman: Marco Gerardo Monroy Cabra;
Members: Carlos A. Dunshee de Abranches; Tom J. Farer; Francisco Bertrand Galindo; César Sepúlveda

Dated: 09 April 1980
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BACKGROUND:

1. In a communication dated November 17, 1976, the Commission received a denunciation on the detention, imprisonment and ill treatment of Mr. Gustavo Westerkamp by the Argentine authorities.

2. In response to an oral request by the Executive Secretariat of the IACHR, the Government of Argentina provided the pertinent information in a note dated February 4, 1977, indicating the following:

"With regard to the case of the Argentinean citizen Gustavo Westerkamp, he is at the disposition of the Executive by virtue of Decree 3076 of October 23, 1975, for having been involved in activities that are prejudicial to the public order and the basic interests of the State."

3. In a note dated May 24, 1977, the Commission transmitted to the claimant the pertinent parts of the Government of Argentina's reply, and asked him to put forward observations on that reply.

4. The Commission decided to officially transmit the pertinent parts of this denunciation to the Government of Argentina, and on June 30, 1977, it addressed the Government and requested that the corresponding information be provided.

5. The Government of Argentina, in a note dated September 29, 1977, replied to the Commission as follows:

A) Members of the subversive terrorists groups the ERP and Montoneros, at the disposition of the Executive, for having committed crimes of terrorism, illegal possession of arms and war supplies, illegal association and other terrorist subversive crimes, as set forth in the articles of Law 20.840 on security of the State.

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17. WESTERKAMP, Gustavo: PEN, document 3076 of October 23, 1975. Held at Sierra Chica.

6. The Commission, in a note dated October 13, the pertinent parts of the reply of the Government to the claimant, and requested that he formulate observations with regard to that reply.

7. In June 1978, the claimant provided the additional information as follows:

Gustavo was arrested on October 21, 1975 when he appeared at the military headquarters in Palermo, Buenos Aires, for the requisite medical and physical examination prior to entering compulsory military service. He appeared at headquarters early in the morning. When the examinations was completed, upon leaving the building, at approximately mid-day, he was violently overtaken by four armed men in civilian dress. After being severely beaten and blindfolded, he was violently and forcefully put into an automobile and taken to the Superintendence of Federal Security, located on Calle Moreno 1417 in the Capital. There Gustavo was barbarously tortured for 48 hours during which time he was given neither food or water. He remained blindfolded. As he lay on the floor, everyone that passed kicked him, spit on him, or urinated on him. The blindfold was repeatedly soaked in an irritant which produced burns around his eyes. He was tortured with an electric prod and his genitals were beaten with chains in an effort to obtain information. He was finally forced to sign a statement while blindfolded.

From approximately October 28, 1975 to September 6, 1976, Gustavo was confined to the prison Unit 2 in Villa Devoto in the city of Buenos Aires, where conditions were terrible. During a large part of the time he was confined to a cell for two persons which he shared with four other inmates. Three of them slept on a light mattress on the floor. Sewage water frequently flooded the cell. The only sanitary facility was a hole in the floor, surrounded by insects and rodents. He was permitted practically no activity. The diet was poor and scant, and on many occasions he was sent to the punishment cell without cause.

He was transferred to Sierra Chica prison (Unit 2), near Olivarría, in the province of Buenos Aires, together with approximately 60 other detainees, where he was brutally beaten. Marks from the blows could still be seen. Gustavo was forced to sign another statement however, which said that those marks resulted from an accident.

Gustavo was imprisoned in Sierra Chica prison for approximately one year, from September 6, 1976, to September 21, 1977. During most of this period, he was kept in a small cell, alone, for 23 hours each day. He had only 60 minutes of recreation. He was awakened at 5 in the morning and was only allowed go to bed at 9:00 p.m. During the day, the mattress was rolled up. He was not allowed to do any physical or intellectual work. The purpose of this was clearly to paralyze him, both mentally and physically; that is to say to bring about the progressive destruction of his personality. For the same reason he was not permitted to receive books or scientific publications, nor was he permitted a transistor radio. During the winter, which in that region is very severe, he was exposed to extremely low temperatures and provided no heat. The cell window, furthermore, had no glass. He was ill for a week without receiving medical attention or medication.

Finally, on September 21, 1977, Gustavo was transferred from Sierra Chica to Unit 9 in the city of La Plata. During the first two weeks he was again beaten while being submitted to interrogation. At this time, Gustavo was sharing his cell with another political prisoner. They were not allowed to read newspapers or books, nor to listen to the radio, watch television, or participate in any other form of diversion. The diet was very poor. Recreation limited to two hours in the morning and two hours in the afternoon. Discipline was very severe and on the whole designed to humiliate him, break his will, and destroy his mind.

From the legal viewpoint, Gustavo was being held at the disposition of the Executive by Decree No. 3076/75, without any charges or accusations against him. He is, therefore, a typical political prisoner. His detention is based on the powers granted to the President under Article 23 of the Constitution for cases during a state of siege. It is, however, well-known that the Constitution has been undermined by two institutional acts issued by the Military Junta, which in fact holds power. The first act, dated March 24, 1976, suspends the right of option to leave the country, which is set forth in the corresponding article of our Magna Carta. The second, signed into law on September 10, 1977, re-establishes that right, but

conditionally, making it subject to the decision of the President and requiring several conditions set forth in Law 31.650.

In our constitutional system, however, this power of the Executive is not entirely discretionary. Both the doctrine (cf. Germán S. Bidart Campos: *Derecho Constitucional*, Edlar, Buenos Aires 1964, vol. 1, p. 610 et seq.), and the jurisprudence of the Supreme Court, are almost in unanimous agreement that, "although the declaration of the state of siege is a political act, which is beyond the judgment of the Judiciary, it is the latter's responsibility to ensure that such state of siege is reasonably implemented by the executive in cases that are brought before the Judiciary (judgment rendered in the case, Zamorano, Carlos Mariano, La Opinión, August 13, 1977, and the decision in Pérez de Smith, Ana María, et al. re effective denial of fair trial, p. 327-XVII-ORIGINARIO of April 10, 1977).

In view of this, there can be no doubt that prolonged detention without cause, apparently for security reasons which are never specified, for more than two and a half years, exceeds any "test of reasonableness" and clearly constitutes distortion of the principle of the separation of powers set forth in the Constitution. In effect, by prolonging detention without bringing formal charges or initiating proceedings, the President, in effect, has handed down a sentence, thus assuming judicial functions, which is expressly prohibited by Article 95 of the Constitution.

It is true that Gustavo was previously detained on March 14, 1974 and charged with illegal association. However, proceedings were dismissed by the Federal Judge on June 17 of the same year, for which reason his detention at this time lacks any legal basis or even elementary rationale.

8. The Commission, in a note dated August 10, 1978, transmitted the foregoing additional information to the Government of Argentina, and requested that it provide information. To date, the Government has not replied.

9. In a note dated December 2, 1978, the claimant informed the Commission that Mr. Westerkamp has been again transferred from the prison of La Plata to Sierra Chica; he has been confined for three years and two months at the disposition of the Executive without due process of law, and he has been denied a second request to exercise the right of option to leave the country.

10. The Commission, in a note dated June 30, 1977, in requesting information on these events, asked the Government of Argentina for any opinion that would allow the Commission to determine whether or not all domestic legal remedies had been exhausted; the silence of the Government in this regard implies that there is no further remedy.

WHEREAS:

1. In light of the background information given above, it is found that Mr. Gustavo Westerkamp's case was one of arbitrary arrest; he was detained on October 21, 1975, when he voluntarily appeared at the military barracks in Palermo, Buenos Aires, in connection with his beginning obligatory military service, as stated in documents in the possession of the Commission, which include information provided by the Government of Argentina on February 4, 1977, and its subsequent note of September 29, 1977, stating that Mr. Westerkamp was at the disposal of the Executive by virtue of Decree 3076 of October 23, 1975.

2. That since that time, Mr. Westerkamp has been detained without due process and subjected to inhumane prison conditions.

3. The IACHR adopted Resolution No. 25 on the present case on March 5, 1979, at its 46th session.

4. In a note dated March 30, 1979, the Government of Argentina requested a reconsideration of the resolution adopted, the substance of which was taken up during the present session.

5. The IACHR has on several occasions stated its opinion with regard to prolonged detention *in die*, imposed without discrimination and without any criterion of reasonableness, which makes it a real punishment.

6. This situation has become more serious in that Mr. Westerkamp has been kept in detention, and no specific charges have been brought against him for breaking national security or other laws, and he has been denied, to date, the right to exercise his guarantees of normal due process.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLVES:

1. To declare that the Government of Argentina violated the right to personal security (Art. I); the right to protection against arbitrary arrest (Art. XXV), and the right to due process (Art. XXVI) of the American Declaration of the Rights and Duties of Man.

2. To recommend to the Government of Argentina;

a. that it immediately release Mr. Gustavo Westerkamp;

b. that it order a complete, impartial investigation to determine responsibility for the events denounced in reference to inhumane treatment;

c. that it punish those responsible for these acts, in accordance with Argentinean law, and

d. that it inform the Commission within sixty days of the measures taken to put these recommendations into practice.

3. To communicate this resolution to the Government of Argentina and to the claimant.

4. To include this Resolution in the Annual Report to the General Assembly of the Organization of American States, pursuant to Article 9 (bis), paragraph c.iii, of the Statute of the Commission, without prejudice to the Commission's being able to reconsider the case at its next session, in light of measures that the Government may have adopted.