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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No.16/81; Case No. 3482
Session:	Fifty-Second Session (26 February – 7 March 1981)
Title/Style of Cause:	Raúl Héctor Cano v. Argentina
Doc. Type:	Resolution
Decided by:	Chairman: Tom J. Farer; First Vice Chairman: Marco Gerardo Monroy Cabra; Second Vice Chairman: Francisco Bertrand Galindo; Members: Carlos A. Dunshee de Abranches; Andrés Aguilar; Luis Demetrio Tinoco Castro; César Sepúlveda
Dated:	06 March 1981
Citation:	Cano v. Arg., Case 3482, Inter-Am. C.H.R., Report No. 16/81, OEA/Ser.L/V/II.54, doc. 9 rev. 1 (1980-1981)
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BACKGROUND:

1. In August 1978, the Inter-American Commission on Human Rights received the following denunciation:

“Raúl Héctor Cano, an auto mechanic, born in San Juan, province of San Juan, on November 19, 1948, was detained at the disposition of the Executive Department. From March 27, 1976, under Decree 657/76, he was lodged in jail unit 9 of the La Plata province of Buenos Aires.

A stay was ordered by the federal judge of San Juan, Dr. Mario Alberio Gerarduzzi, on February 10, 1977, but the prisoner remained under arrest. The prisoner has asked to leave Argentina and, on April 11, 1978, applied to the Embassies of Sweden and Belgium for a visa. On January 19, 1978, the Correctional Service, New Unit, Province of Buenos Aires, issued certification that the prisoner had applied for permission to leave the country under law 21,650.”

2. In its note of December 30, 1978, the Commission transmitted the pertinent portions of the denunciation to the Argentine Government, requesting that it supply any information it considered pertinent.

3. In a communication of August 9, 1979, the Argentine Government replied as follows to the Commission's request for information:

“The indicated person was detained on 3/29/76 and tried for violation of security law 20,840. On 6/2/76 he was placed at the disposition of the Executive Department, in exercise of its constitutional authority, on the assumption that the accused's activities might be a threat to peace and public order.

On 2/1/77, a provisional stay was ordered in the trial to be heard by Federal Court of the Province of San Juan and the stay was confirmed by the Federal Court of Appeals of Mendoza. A copy of the ruling is attached. It should be stressed that, under the provisions of the Code of

Penal Procedure, applicable in federal jurisdictions, the accused remains under prosecution when a provisional stay is issued (Art. 435 of the Code of Penal Procedure). The accused requested exercise of his option to leave the country, under the provisions of law 21,650, of 10/11/78.

The request was denied by Decree 197/79 based on the provisions of law 21,659 and in exercise of the authorities set forth therein. Under the provisions of Article 13 of the above law, the application can be resubmitted six months after the decree denying it. However, no application has thus far been made.”

4. In a communication of August 16, 1979, the Commission informed the claimant of the Government's reply and asked if he wishes to comment on it.

5. In a communication of February 20, 1980, the Commission was informed by the claimant that Mr. Raúl Héctor Cano continues to be detained after four years, solely at the disposition of the Executive Department, and that on December 17, 1979, exercise of the right to choose to leave the country was again denied.

6. This case was included by way of illustration in the report on the status of human rights in Argentina (Doc. OEA/Ser.L/V/II.49) published by the Commission, because the evidence available to the Commission constitutes prima facie proof of the truth of the facts.

WHEREAS:

1. In light of the above-mentioned background, Mr. Raúl Héctor Cano was arbitrarily arrested and deprived of his liberty on March 27, 1976;

2. On June 2, 1976, Mr. Cano was placed at the disposition of the Executive Department;

3. The Federal Court of the Province of San José issued on February 1, 1977, a temporary stay, which was confirmed by the Federal Court of Appeals;

4. On two occasions, exercise of the right to choose to leave the country as established in the Constitution and regulated in law 21,650, was denied;

5. The IACHR has, on several occasions, expressed its views on prolonged detentions, without a specified term and without justified cause, which are an unreasonable application of measures restricting liberty during a constitutional state of emergency and actually constitute punishment.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RESOLVES:

1. To declare that the Argentine Government violated the right of protection from arbitrary arrest (Art. XXV) and the right to due process of law (Art. XXVI) of the American Declaration of the Rights and Duties Of Man.

2. To recommend to the Government of Argentina:

- a) that it release Mr. Raúl Héctor Cano or grant him the right to choose to leave the country; and
- b) that it report to the Commission in ninety days on the measures taken to implement this recommendations.

3. To transmit 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 50(4) of the Commission's Regulations, if the Argentine Government does not implement the recommendations by the above deadline.