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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 48/82; Case No. 6586
Session: Fifty-Fifth Session (1 – 9 March 1982)
Title/Style of Cause: Marguerite Fenelon v. Haiti
Doc. Type: Resolution
Decided by: Chairman: Mr. Tom J. Farer;
First Vice Chairman: Marco Gerardo Monroy Cabra;
Second Vice Chairman: Francisco Bertrand Galindo;
Members: Andres Aguilar; Carlos A. Dunshee de Abranches; Luis Demetrio Tinoco Castro; César Sepúlveda.
Dated: 09 March 1982
Citation: Fenelon v. Haiti, Case 6586, Inter-Am. C.H.R., Report No. 48/82, OEA/Ser.L/V/II.61, doc. 22 rev. 1 (1982-1983)

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BACKGROUND:

1. In a communication dated December 4, 1979, the Inter-American Commission on Human Rights received the following complaint. Miss Marguerite Fenelon, 16 years of age, a student at the Professional School Socurs Salesiennes de Carrefour was deceived by secret agents who asked her to accompany them claiming that a cablegram has arrived from her parents (in exile) residing in Santo Domingo, Dominican Republic. Instead of taking her to the Telegraph Office, they took her to the National Palace and then to the national penitentiary in Port-au-Prince. After having been tortured and raped she was put in jail. To date, she has not appeared before a judge as is established by law. She is in jail without cause, without due process and without defense counsel.
2. Through a written communication of March 18, 1980, the Commission forwarded the pertinent parts of the complaint to the Haitian Government requesting that it provide the information it deemed appropriate, but no response was forthcoming.
3. This request for information was repeated by means of a written communication to the Government of Haiti on December 21, 1981, which mentioned the eventual application of Article 39 of the Commission's Regulations if the information requested was not received within a reasonable period of time. There was no answer to this communication either.

CONSIDERING:

1. That the period of time prescribed in Article 31 of the Commission's Regulations has elapsed without the Government of Haiti having responded to the request for information formulated in its written communication of March 18, 1980, and repeated in a communication of December 21st, 1981, which leads to the presumption that there are no remedies of internal jurisdiction that must be exhausted (Article 46 of the American Convention) in light of the procedures established in the same Convention.

2. That Article 39 of the Commission's Regulations states:

Article 39

The facts reported in the petition whose pertinent parts have been transmitted to the government of the state in reference shall be presumed to be true if, during the maximum term set by the Commission under the provisions of Article 31 paragraph 5, the government has not provided the pertinent information, as long as the other evidence does not lead to a different conclusion.

3. Article 1 of the American Convention on Human Rights reads:

Article 1. Obligation to Respect Rights

a. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth or any other social condition.

4. The Republic of Haiti is a State Party to the American Convention on Human Rights.

Therefore, in view of the background as outlined and the considerations made, and since the Commission lacks any other element of judgement that would lead it to conclude otherwise, on the grounds of Article 39 of its Regulations,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS
RESOLVES:

1. To presume to be true the events denounced in the communication of December 4, 1979, relating to the arbitrary arrest, torture and absence of due process of Miss Marguerite Fenelon.

2. To declare that those actions constitute a very serious violation of the right to personal integrity, the right to personal liberty and the right to judicial guarantees, Articles 5, 6 and 8, respectively, of the American Convention on Human Rights.

3. To recommend to the Government of Haiti that it:

- a) order the immediate release of Miss Marguerite Fenelon;
- b) order a complete and impartial investigation to determine where lies the responsibility for the actions denounced;
- c) sanction those responsible for the denounced actions in accordance with Haitian law;
- d) inform the Commission, within ninety days, of the steps taken to put the aforementioned recommendations into effect.

4. To communicate this resolution to the Government of Haiti and to the complainant.

5. To include this resolution in its Annual Report to the General Assembly of the Organization of American States.