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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 44/82; Case No. 2973
Session:	Fifty-Fifth Session (1 – 9 March 1982)
Title/Style of Cause:	Ildevert Foncine 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:	Foncine v. Haiti, Case 2973, Inter-Am. C.H.R., Report No. 44/82, OEA/Ser.L/V/II.61, doc. 22 rev. 1 (1982-1983)
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BACKGROUND:

1. On August 23, 1978, the Inter-American Commission on Human Rights received the following denunciation: Mr. Ildevert Foncine was arrested in November, 1975, by the police. The government has charged that he was a Communist. He was led away to the Dessalines barracks for interrogation and beaten there by the police under the order of Colonel Valme. Mr. Foncine was in the Dessalines barracks for two months and was then transferred for Fort Dimanche. He has not been seen since and it is not known whether he is still alive.
2. In a note dated January 3, 1979, the Commission transmitted the pertinent parts of the petition to the Haitian Government and requested it to furnish information that it considered appropriate but it has not received any reply.
3. This request for information was repeated in a note sent to the Government of Haiti on September 28, 1981, in which it mentioned the eventual application of Article 39 of the Regulations of the Commission. No reply has been received to this request.

WHEREAS:

1. The term provided for in Article 31 of the Regulations of the Commission has lapsed and to date the Government of Haiti has not replied to repeated requests for information made by the IACHR in its note of January 3, 1977, and reiterated in a communication dated September 28, 1981, making it necessary to presume that there are no remedies under domestic law which must be exhausted (Article 46 of the American Convention) in accordance with the procedures established in the same Convention.
2. Article 39 of the Regulations of the Commission reads:

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

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 foregoing information and the considerations made, and since the Commission does not have other information 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 facts denounced in the communication of August 23, 1978, relating to the arbitrary arrest, torture and lack of due process of Mr. Ildevert Foncine.
2. To declare that these facts constitute a grave violation of the rights to humane treatment, personal liberty and fair trial, Articles 5, 7 and 8, respectively, of the American Convention on Human Rights.
3. To recommend to the Government of Haiti:
 - a) that it provide for the immediate release of Mr. Ildevert Foncine;
 - b) that it provide for a full and impartial investigation to determine who is responsible for the facts denounced;
 - c) that in accordance with Haitian laws, it punish those responsible for the violation;
 - d) that it inform the Commission within a term of ninety days of the measures it has taken to put the foregoing recommendation into practice.
4. To communicate this resolution to the Government of Haiti and to the petitioner.
5. To include this resolution in the Annual Report to the General Assembly of the Organization of American States.