

WorldCourts™

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 2/84; Case No. 9058
Session:	Sixty-Second Session (11 – 18 May 1984)
Title/Style of Cause:	Orlando Bosch, Freddy Lugo, Hernan Ricardo Lozano, and Luis Posada v. Venezuela
Doc. Type:	Resolution
Decided by:	Chairman: Mr. Cesar Sepúlveda First Vice Chairman: Mr. Luis Demetrio Tinoco Castro; Members: Mr. Andrés Aguilar; Mr. Marco Gerardo Monroy Cabra; Mrs. Gilda Maciel Russomano; Mr. Luis Adolfo Siles Salinas; Mr. Bruce McColm.
Dated:	17 May 1984
Citation:	Bosch v. Venez., Case 9058, Inter-Am. C.H.R., Report No. 2/84, OEA/Ser.L/V/II.63, doc. 10 (1983-1984)
Terms of Use:	Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

BACKGROUND:

1. On October 6, 1976, a "Compania Cubana de Aviacion" aircraft took off from Barbados, Lesser Antilles, for Cuba, carrying 70 persons, including passengers and crew. Most of the passengers were athletes.

The aircraft disintegrated in flight, killing all aboard. The tragedy was attributed to an explosive device placed on board for terrorist purposes.

Following various investigations, Orlando Bosch, Luis Posada, Hernan Ricardo Lozano, and Freddy Lugo were apprehended and charged before Venezuelan courts with planning and executing the terrorist act.

2. On February 15, 1983, the Inter-American Commission on Human Rights received a note that made the following complaint:

In October 1976, the Office of the Attorney General of Venezuela, during the Administration of President Carlos Andres Perez, ruled that Orlando Bosch, Freddy Lugo, Hernan Ricardo Lozano, and Luis Posada, indicted in the case of the Cuban Airliner should be brought to trial in the Ordinary Courts. Thus, on November 1, 1976, the Attorney General's Office delivered the bonds to the Judge in First Instance of the Criminal Court, Dr. Delia Estaba Moreno.

In August 1977, Dr. Delia Estaba decided that this case was not within her competence, and referred it together with the records, to the Military Courts, specifically to the First Military Court of First Instance.

On September 27, 1977, the Military Prosecutor petitioned for the dismissal of the charges against the four indicted men, because "the innocence of the four accused has been credibly proven" (in the words of the Prosecutor). The War Council endorsed the Prosecutor's judgment and ruled that the charges be dismissed. The War Council's judgment covers 865 pages.

The Permanent War Council of Caracas referred the case and the records to the Court Martial for consultation.

Since the case has been pending in the Court Martial there have been three prosecutors; each time a new prosecutor is appointed, he must study the record to form his own judgment and, therefore, the case is delayed. The most recent removal of a prosecutor was in December of last year.

We will simply state that the detainees have been living for six years and four months with this case pending, and two years and four months after having been acquitted of the charges by the Permanent War Council of Caracas.

3. Through a note dated February 17 of the same year, the Commission forwarded to the Government of Venezuela the pertinent parts of the denunciation, and requested the corresponding information. It explained that the request did not entail a prejudgment of the admissibility of the denunciation.

4. The IACHR subsequently received other letters on the same charges. Some of them contained newspaper clippings from various papers, giving accounts of the situation of the men. Even before that, the Commission had received a similar complaint referring solely to the situation of Dr. Orlando Bosch. The pertinent parts of these communications were forwarded to the Venezuelan Government by a note dated August 25, 1982, with regard to Case 8043, which, because it concerns the same individuals and refers to the same violation, was merged with this case.

5. On March 22, 1983, the Commission received further information from the complainants, reporting that Dr. Orlando Bosch, detained at the San Carlos Garrison, in Caracas, Venezuela, had gone on an indefinite hunger strike on Wednesday, March 16, 1983, to protest the fact that the Court Martial had allowed more than two and a half years to elapse without making a decision on the verdict of dismissal of charges handed down in his favor by the War Council. It was stated that Dr. Orlando Bosch's state of health was critical, because of his hunger strike, and that he had been denied visits by his family, and particularly his wife, Adriana, as well as his personal physician and his friends.

The complainants asserted that the San Carlos Garrison did not have adequate services for anyone suffering from the debilitation that Dr. Bosch was experiencing, which could bring out his death, and they, therefore, requested his transfer to the Military Hospital. The complainants reiterated in this letter that the human rights of Dr. Bosch and the others involved in the case were being violated with their protracted imprisonment and the drawn proceedings, even after they had been found innocent and the Prosecutor had withdrawn the charges. They asked the IACHR to take the precautionary measures necessary to protect the health and safeguard the life of Dr. Orlando Bosch, and that the Commission request that respect be shown for due process and an early date be set for the Court Martial to hear this case.

6. The pertinent parts of this communication were sent to the Government of Venezuela in a note dated April 7, 1983, with the request that the appropriate steps be taken.

7. Subsequently, petitions in the same sense from groups of persons and organizations concerned with the protection of human rights were received; the pertinent portions of these were sent to the Government of Venezuela, via a note dated April 25, 1983.

8. On April 21, 1983, the Commission received a communication from the Government of Venezuela, containing note 0436 of the Foreign Policy Administration of the Ministry of Foreign Affairs, replying to the request for information made by the Commission. The pertinent parts follows:

In regard to this matter, the Office of the Attorney General, in accordance with the powers vested in it by

the Constitution to ensure that the administration of justice be carried out properly and speedily, and that the Nation's courts apply the law correctly in penal proceedings, under consultation, issued the following statement on the factual and legal elements of the situation of this case. In this regard, we report the following:

1. Citizens Luis Posada Carriles, Orlando Bosch Avila, Hernan Ricardo Lozano, and Freddy Lugo were brought to trial before the Permanent War Council of Caracas, for the alleged crimes of treason, murder in the second degree, forgery of documents, and others.

On September 26, 1980, the aforementioned Military Court decided as follows:

" ... In view of all the facts presented, this Permanent War Council of Caracas, administering justice on behalf of the Venezuelan State, and duly empowered by Law, CONDEMNS citizens Hernan Ricardo Lozano and Orlando Bosch Avila, sufficiently identified in the proceedings as having been the agents responsible for the criminal act of USING FORGED PASSPORTS, said offense being described in paragraph 3 of Article 327 of the Penal Code, which is applicable in the absence of a regulatory provision in the Code of Military Justice, and in accordance with Article 20 of the former, each one is sentenced to a prison term of four (4) months, twenty-two (22) days, and twelve (12) hours, and the ancillary penalties contemplated in Article 407 of the same Code, of political disqualification for the duration of the sentence, loss of the right to any awards and objects or instruments with which the crime was committed; ACQUITS fully citizens Hernan Ricardo Lozano, of the charges of TREASON, MURDER IN THE SECOND DEGREE, POSSESSION OF WEAPONS, AND PASSPORT FORGERY; Freddy Lugo and Luis Posada Carriles, sufficiently identified in the proceedings, of the charges of TREASON, MURDER IN THE SECOND DEGREE, and POSSESSION OF WEAPONS; and Orlando Bosch Avila, of the charges of MURDER IN THE SECOND DEGREE, POSSESSION OF WEAPONS, AND CONTEMPT OF COURT, charges brought by the Second Military Prosecutor at the Defendant's Hearing in this case. Let it be so recorded, let it be published, and let the defendants be notified; let the authenticated legal copies be issued; and let a consultation be made with the Court Martial as to its legal appropriateness."

2. This decision of the Permanent War Council of Caracas was brought to the Court Martial, in accordance with the provisions of Article 150 of the Code of Military Justice, which establishes:

... "Any definitive verdict of either acquittal or condemnation, issued by the Military Judges of First Instance, shall be routinely reviewed by the Superior Court, and such judgment may be appealed." Consequently, the judgment of acquittal made by the Permanent War Council of Caracas was referred to the Court Martial for review, and the individuals under process were not released from custody, in accordance with Article 335, paragraph 2, of the Code of Military Justice. This expressly states that conditional freedom shall be granted:

"... When in first instance a judgment of acquittal is issued and so long as this judgment is valid or until it is revoked, provided that the charges were not for the offenses of treason, espionage, rebellion, mutiny, insurrection, or any others that carry the penalty of imprisonment."

In this connection, the judgment of acquittal of the Permanent War Council of Caracas was issued in First Instance. However, the release of the defendants Luis Posada Carriles, Orlando Bosch Avila, Hernan Ricardo Lozano, and Freddy Lugo was not warranted, since the Second Military Prosecutor, in due course, had charged them with the crimes of treason, murder in the second degree, and others that carry prison sentences.

3. On March 24, 1983, the Court Martial declared itself incompetent to handle the case, based on a recent ruling of the Supreme Court of Justice, in deciding in the case of a woman journalist, that persons

must be judged by their natural judges; it decided to send the case, consisting of 23 pieces plus the exhibits, to the Superior Judge, XIV Criminal Court, Jose Erasmo Perez Espana, and to submit the conflict of competence to the Criminal Chamber of the Supreme Court of Justice.

As may be noted from the preceding, in the case concerned, the resources of internal jurisdiction have not been exhausted, in accordance with the Nation's laws; therefore, the Government of Venezuela shall keep the Inter-American Commission on Human Rights informed of the developments in this case.

9. The pertinent parts of the aforementioned communication from the Government were forwarded to the complainants through a note dated May 5, 1983.

10. The complainants also addressed themselves to the Inter-American Court of Human Rights, and requested the intercession of that high Court on behalf of Dr. Orlando Bosch. The Court, by a note that the Commission received on May 18, 1984, forwarded the note of the complainants, as well as a note to the complainants acknowledging receipt, in which it stated that the Court was unable to hear the complaint, under the provision of Article 61.1 of the American Convention on Human Rights.

11. The Commission studied the response of the Venezuelan Government, and observed that in the processing of the consultation to which, according to Venezuelan law, the verdict of absolute acquittal of Messrs. Orlando Bosch Avila, Hernan Ricardo Lozano, Freddy Lugo, and Luis Posada Carriles, would be subject, there had been a delay in the administration of justice, since the verdict of acquittal had been handed down on September 26, 1980; the Court Martial declared its incompetence on March 24, 1983; and to date no verdict had been reached by a competent court, to the consequent prejudice of Messrs. Bosch, Lozano, Lugo, and Posada. The Commission expressed its concern to the Government of Venezuela because of this situation through a note dated September 30, 1983, sent on October 3, 1983, requesting any information that might be deemed pertinent.

12. The Government of Venezuela did not reply to that communication, for which reason the Commission once more addressed that Government through a note dated February 8, 1984, in the following terms:

Through a note dated October 3, 1983, the Commission expressed its concern to the Venezuelan Government due to the fact that the mentioned persons have not been released, despite the verdict of acquittal handed down by the Permanent War Council of Caracas on September 26, 1980.

The Commission considered that in the case of Messrs. Bosch, Lugo, Lozano, and Posada there had been a delay in the administration of justice since, while it is true that in accordance with Venezuelan law, the mentioned verdict would be subject to a consultation with the Superior Court, as of the date of the aforementioned note (three years after the verdict of acquittal), the competent appellate court has failed to produce a decision to define the situation of the mentioned individuals.

To date, the Commission has not received a reply to its note of October 3, 1983, nor does it have any knowledge as to whether the competent court that is handling the consultation has pronounced itself.

In view of the preceding and of the fact that Messrs. Bosch, Lugo, Lozano, Ricardo, and Posada continue to be held, the IACHR has instructed me to address Your Excellency's distinguished Government to request that it provide us with all the information that it may deem pertinent with regard to the case of the aforementioned persons."

13. To date, the Commission has not received a reply to either of those notes, although newspaper accounts indicate that Superior Judge, XIV Criminal Court, Jose Erasmo Perez Espana, to whom the case had been referred after the Court Martial declared itself incompetent to continue with the proceedings, decided to remand the case to the stage of filing charges, and that the case had been transferred to the Court of first instance for the pertinent purposes.

WHEREAS:

That from the documents and allegations submitted by the complainants and the Government of Venezuela to the Commission for consideration, it is evident that the present case meet all the requirements for admissibility, since the denunciation was presented in proper form and in due time; that a State party to the Pact of San Jose is concerned; and that the right that has been allegedly violated is one of those protected by the aforementioned Convention;

Therefore, having seen the antecedents in this case and the considerations having been stated,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, RESOLVES:

1. To declare the petition made by the complainants in this case to be admissible because it meets the requirements established in the American Convention on Human Rights.
2. To urge the Government of Venezuela to adopt the pertinent measures so that the competent courts may expedite the proceedings in the case at hand, given the long period of time that has passed without any decision to define the situation of the indicted persons.
3. To communicate this resolution to the Government of Venezuela and to the complainants.

Note: Dr. Andres Aguilar excused himself from this case, in accordance with the provisions of Article 19 of the Rules of Procedure.