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Title/Style of Cause: Edgardo Condeza Vaccaro v. Chile
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Decided by: Chairman: Dr. César Sepúlveda
Members: Andrés Aguilar; Marco Gerardo Monroy Cabra; Gilda M. Russomano; Bruce McColm
Dated: 05 March 1985
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CONSIDERING:

1. The complaint filed with the Inter-American Commission on Human Rights on September 15, 1982 which reports of the refusal of the Government of Chile to permit the entry of the Chilean citizen Edgardo Condeza Vaccaro into that country.
2. Mr. Condeza Vaccaro had left Chile in 1974 seeking political asylum and at present resides in Colombia.
3. An application for amparo had been filed with the Appeal Court so that the right of the person affected to live in his homeland might be recognized, which remedy was rejected by that tribunal and by the Supreme Court of Justice of Chile.
4. In its reply of November 8, 1983, the Government states, without providing proof thereof, that Mr. Condeza Vaccaro is a member of the military branch of the Movimiento de Izquierda Revolucionaria (MIR), an expert in rural and urban guerrilla warfare, who has undergone training in Chile and participated in a campaign against Chile in Colombia. The Government also states that it considers him to be a highly dangerous person and that, on September 14, 1981, his return to the country was temporarily prohibited.
5. In his observations on the information of the Government the complainant states that he had belonged to the Movimiento de Izquierda Revolucionaria up to 1967, since when he has been a member of the Socialist Party of Chile. He also states that he has never been a member of any armed group, evidence of which is the fact that there is no specific charge against him in the Courts of Chile.
6. The reply of the Government to the observations of the complainant states that there is no evidence that Mr. Condeza Vaccaro has ceased to be a member of the Movimiento de Izquierda Revolucionaria and that, if he is a member of the Socialist Party, it would be a common case of dual membership. It also adds that Mr. Condeza Vaccaro may file a remedy of amparo with the ordinary courts

of justice in order to assert his rights.

7. On September 11, 1984, a list of 4,942 Chilean citizens whose entry into the country is prohibited by the Government of Chile, including Mr. Condeza Vaccaro, was published.

WHEREAS:

1. The remedies of internal jurisdiction available to Mr. Edgardo Condeza Vaccaro for asserting his right to reside in Chile have been exhausted.

2. The measure affecting Mr. Condeza Vaccaro has been adopted pursuant to the provisions of Transitory Provision 24 of the Constitution, which can only be appealed to the authority that ordered it, i.e., the President of Chile.

3. The jurisprudence of the Supreme Court of Justice of Chile, established by the decision of July 9, 1984 in the case of Messrs Jaime Insunza Becker and Leopoldo Ortega Rodriguez, suggests that the remedy of amparo in favor of Mr. Condeza Vaccaro would not be in order since, in accordance with that judgment, the Judiciary of that country may only verify fulfillment of the merely formal requirements of the decisions taken by the President in the exercise of the powers granted him by the above-mentioned Transitory Provision 24.

4. According to the jurisprudence mentioned in the foregoing paragraph, the factual bases of the decision of the President of Chile cannot be reviewed by the Judiciary, which is the case in the situation affecting Mr. Condeza Vaccaro.

5. The Government of Chile has not provided any reliable evidence that may be used to support its statement that Mr. Condeza Vaccaro is a highly dangerous person.

6. Since it is the Government of Chile that is applying a penalty on the basis of the foregoing considerations, the burden of proof is on it, in accordance with the general principles of law.

7. The nature of the decision adopted by the Government of Chile in the case of Mr. Condeza Vaccaro and the procedure established by Transitory Provision 24 of the Constitution prevents the person affected from asserting his rights in accordance with the rules that guarantee due process.

8. Since the Government of Chile has not produced any convincing evidence in the case of Mr. Condeza Vaccaro, it must be concluded that the prohibition of entry into the country of which he is a citizen is based on political considerations deriving from the ideas of the person affected, which constitutes a violation of his right to equality before the law and of his political rights in general.

9. The American Declaration of the Rights and Duties of Man embodies the right to residence and movement in Article VIII in the following terms:

Every person has the right to fix his residence within the territory of the State of which he is a national, to move about freely within such territory, and not to leave it except by his own will.

10. The American Declaration of the Rights and Duties of Man embodies the right to due process in Article XXVI, which stipulates that:

Every accused person is presumed to be innocent until proved guilty.

Every person accused of an offense has the right to be given an impartial and public hearing, and be tried

by courts previously established in accordance with preexisting laws, and not to receive cruel, infamous or unusual punishment.

11. The American Declaration of the Rights and Duties of Man recognizes the right to a fair trial in Article XVIII, which provides:

Every person may resort to the Courts to ensure respect for his legal rights. There should likewise be available to him a simple, brief procedure whereby the courts will protect him from acts of authority that, to his prejudice, violate any fundamental constitutional rights.

12. The right to residence and movement is recognized by Article 19 (7) (a) of the Constitution of Chile.

In view of the foregoing considerations,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, RESOLVES:

1. To declare that the Government of Chile has violated the right to residence and movement of Mr. Edgardo Condeza Vaccaro, embodied in Article VIII of the American Declaration of the Rights and Duties of Man by preventing his return to that country of which he is a citizen.

2. To declare that the Government of Chile has violated the right to due process and the right to a fair trial of Mr. Edgardo Condeza Vaccaro, embodied in Article XXVI and XVIII of the American Declaration of the Rights and Duties of Man, respectively.

3. To recommend to the Government of Chile that it rescind, within a period of 60 days, the prohibition of entry into the national territory that affects Mr. Edgardo Condeza Vaccaro and that, should it find that there are sufficient grounds, it bring him to a trial in which the rules of due process are respected.

4. To communicate this resolution to the Government of Chile.

5. If the Government of Chile does not fulfill the recommendation made in paragraph 3 above within the time limit specified, to include this resolution in the report that will be submitted to the General Assembly in accordance with the provisions of Article 59 (g) of the Regulations of the Commission.