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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 5/85; Case No. 9437
Session:	Sixty-Fifth Session (24 June – 1 July 1985)
Title/Style of Cause:	Juan Antonio Aguirre Ballesteros v. Chile
Doc. Type:	Resolution
Decided by:	Chairman: Drs. César Sepúlveda Second Vice Chairman: Luis Adolfo Siles Salinas; Members: Andrés Aguilar; Marco Gerardo Monroy Cabra; Gilda M. Russomano; Bruce McColm. For health reasons, Dr. Luis Demetrio Tinoco Castro, First Vice Chairman, could not attend the session.
Dated:	24 June 1985
Citation:	Aguirre Ballesteros v. Chile, Case 9437, Inter-Am. C.H.R., Report No. 5/85, OEA/Ser.L/V/II.66, doc. 10 rev. 1 (1984-1985)
Editor's Note:	In the original source the date of the resolution is 24 July 1985. As the Commission was not in session that date, the date of the decision has been amended to 24 June 1985.
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## CONSIDERING:

1. The transmittal to the Government of Chile on October 22, 1984 of the pertinent parts of a complaint that reports the arrest, torture and subsequent disappearance of Mr. JUAN ANTONIO AGUIRRE BALLESTEROS.
2. The communication of November 14, 1984 in which the Commission brings to the knowledge of the Government of Chile additional information on the case provided by the complainant.
3. The reiteration of the request for reports sent to the Government of Chile on February 22, 1983 and the new reiteration on May 7, 1985 in which that Government is informed that, if a reply is not received, the Commission will have to consider the application to this case of Article 42 of its Regulations, in accordance with which the facts reported will be presumed to be true if the evidence in the case does not lead to a different conclusion.

## WHEREAS:

1. In accordance with the information supplied to the Commission, Juan Antonio Aguirre Ballesteros was arrested in the commune of Pudahuel, Santiago, on September 4, 1984 by uniformed personnel of the Carabineros and put into a vehicle belonging to that institution together with other detainees and taken to the 26th Precinct of the Carabineros where he was tortured.
2. On September 5, 1984 an application for amparo was lodged with the Santiago Appeal Court on

behalf of Mr. Aguirre Ballesteros, which was rejected on September 26 of the same year on the basis of the information provided by the Ministry of Interior, according to which the person affected had not been arrested by Carabineros, the Plain Clothes Police, or the National Intelligence Agency, which decision was confirmed by the Supreme Court of Justice.

3. In processing the above-mentioned application for amparo, the Appeal Court rejected the petition that one of its judges go to the 26th Precinct of the Carabineros, that the Medico-Legal Institute be requested to report on the entry of unidentified bodies and that the Corps of Carabineros be requested to report on the identification of two of its officials identified by one of the detainees in his affidavit as those responsible for the arrest of Aguirre Ballesteros.

4. On September 24, a complaint was lodged with the Office of the Second Military Prosecutor of Santiago "against the officials of the Carabineros who are responsible for the commission of the crimes of unlawful arrest, kidnapping and application of torture of which ...Juan Antonio Aguirre Ballesteros has been the victim.

5. Both the application for amparo and the complaint filed with the Office of the Military Prosecutor were supported by testimony from three eye witnesses of the arrest of Aguirre Ballesteros by personnel of the Carabineros and of three additional persons who were detained in his company in the 26th Precinct of that institution and were tortured with him.

6. In the affidavit of Mr. Sergio Tapia Contreras, included in the records, he stated that he was tortured together with Mr. Aguirre Ballesteros in the 26th Precinct of the Carabineros and heard him scream, after an electric current was applied to him, which scream was followed by great agitation on the part of the officials responsible for inflicting the torture, who commented that the victim had not endured the treatment and that it was necessary to call an ambulance.

7. That on October 20, 1984 a decapitated body in an advanced state of decomposition and with other mutilations that prevented rapid identification was found on a small island in a creek in the locality of Codigua, despite which it was recognized by relatives as belonging to Juan Antonio Aguirre Ballesteros.

8. Despite the abundant evidentiary material available in this case, a reasonable period has elapsed without the issue of any judicial decision that demonstrates the will of the courts to clarify the facts and identify and punish the persons responsible for the unlawful arrest, torture and death of Juan Antonio Aguirre Ballesteros, which all the evidence indicates to be officials of the Corps of Carabineros of Chile.

9. Despite the repeated requests made, the Government of Chile has not informed the Commission about this case and therefore, together with the other evidence available to it, it is in order to apply Article 42 of the Regulations of the Commission which stipulates:

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 period set by the Commission under the provisions of Article 34, paragraph 5, the Government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion.

In virtue whereof,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, RESOLVES:

1. To declare that the Government of Chile has violated the rights of freedom and personal integrity

and the right to life, embodied in Article I of the American Declaration of the Rights and Duties of Man, by reason of the arrest and death of Juan Antonio Aguirre Ballesteros, as a consequence of the tortures to which he was subjected while he was detained in the 26th Precinct of Carabineros in Pudahuel, Santiago.

2. To declare that the Government of Chile has violated the right to a fair trial, embodied in Article XVIII of the American Declaration of the Rights and Duties of Man, by not providing an expeditious and effective remedy for protecting the freedom, physical integrity, and life of Juan Antonio Aguirre Ballesteros.

3. To declare that the Government of Chile has violated the right to equality before the law, embodied in Article II of the American Declaration of the Rights and Duties of Man, by not having judicially clarified the facts that culminated in the death by torture of Juan Antonio Aguirre Ballesteros, thus exempting the persons responsible from submitting to the legal provisions that provide for penalties for so serious an offense.

4. To communicate this Resolution to the Government of Chile so that it may make such observations as it deemed pertinent in a period of 45 days, calculated from the date of the respective communication.

5. To publish this Resolution for the purposes of Article 63 (g)[FN1] of the Regulations of the Inter-American Commission of Human Rights if the Government of Chile does not provide sufficient evidence in the period granted in the immediately foregoing paragraph.

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[FN1] The Regulations of the Commission were modified effective July 1st 1985, and this Article was previously Article 59 (g).

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