

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 4/85; Case No. 9474
Session:	Sixty-Fifth Session (24 June – 1 July 1985)
Title/Style of Cause:	Gilberto Mario Fernandez Lopez 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:	Fernandez Lopez v. Chile, Case 9474, Inter-Am. C.H.R., Report No. 4/85, 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 November 29, 1984 of the pertinent parts of a complaint received by the Inter-American Commission on Human Rights, reporting the death of Mr. Gilberto Mario Fernandez Lopez, who was detained in an establishment of the National Intelligence Agency (CNI).
2. The reiteration of this request to the Government of Chile by the Commission on March 25, 1985.
3. The communication of May 17, 1985 in which the Commission again reiterated to the Government of Chile its request for information, and informed it of the possible application, should the information not be received, of Article 42 of its Regulations, in accordance with which the facts reported in the petition shall be considered true if the other evidence in the case were not clearly contrary thereto.

WHEREAS:

1. In accordance with the information supplied to the Commission, Mr. Gilberto Mario Fernandez Lopez was arrested in his home located at 99 Puente de los Cristi Street in the city of Ovalle, on October 17, 1984, by personnel who did not identify themselves but who, it is presumed, belonged to the National Intelligence Agency and who proceeded to search the house in the presence of the members of the affected person's family.
2. That on the same day, October 17, an application for amparo was filed on behalf of Mr.

Fernandez Lopez with the La Serena Appeal Court, which rejected it on October 19 on the grounds "that Mario Fernandez Lopez was deprived of his liberty pursuant to an order of an authority empowered for that purpose and in a case provided for by the Political Constitution of the State", when it was informed by the Regional Intendent, Colonel of the Army Hernan Ramirez Rurange, that Mr. Fernandez Lopez had been arrested pursuant to Exempt Decree 819 of the Ministry of the Interior, which directed that the person affected was to remain five days in the barracks of the Central Intelligence Agency of the city of La Serena.

3. Mr. Fernandez Lopez was taken to the establishment of the National Intelligence Agency, located at 2002 Colo Colo Street in the city of La Serena from which, on October 18, 1984, a call for an ambulance was made to the Regional Hospital of La Serena.

4. Personnel of that hospital went to the establishment of the National Intelligence Agency in the ambulance requested and proceeded to receive from the physician of the Regiment of the area Mr. Mario Fernandez Lopez, who died in the La Serena Hospital on October 18, 1984, as a result of "exsanguinating anemia caused by rupture of the abdominal viscera with external injuries", as stated in the Certificate of Death issued in that hospital, following an emergency operation on Mr. Lopez.

5. On October 20, the National Intelligence Agency issued a communique in which it stated that Mr. Fernandez Lopez was arrested by that agency, since explosive material and subversive propaganda had been found in his home, which reliably proved his participation in terrorist acts carried out in the IV Region and reported that the reason for his admission to the La Serena Hospital and the cause of his subsequent death was "a sharp fall in of arterial pressure".

6. On October 24, 1984, Mr. William Gilberto Fernandez Carcamo, the son of the victim, filed a criminal complaint with the Third Court of La Serena, against the persons responsible for the death of his father stating in the corresponding document that he had been able to ascertain that the body of Mr. Fernandez Lopez "showed multiple hematomas on the abdomen, deep lesions and large burns on his left wrist, such that the veins and deep scratches on his extremities could be seen".

7. On the basis of the judicial proceedings carried out the death due to "unnecessary violence" of Mr. Fernandez Lopez was proven and that, because there was sufficient evidence pointing to the Agents of the National Intelligence Agency, Marcos Belmar Oyarse and Miguel Escobar Sanguinetti as the perpetrators of that crime, the accused were arrested and the records were passed to the Office of the Military Prosecutor of La Serena.

8. The Office of the Military Prosecutor mentioned above submitted the records to the Military Court of Santiago so it could decide on its competence, which concluded that, because the period of five days of detention envisaged for indicting the accused had elapsed and because it had before it no evidence for doing so, proceeded to release them.

9. The information gathered on this case shows the inconsistency of the version provided by the CNI concerning the facts of this case and, on the contrary, the responsibility of the officials of the National Intelligence Agency in the death as a result of torture to which Mr. Mario Fernandez Lopez was subjected has been clearly established and the Government of Chile has not replied to the request for information made, it is in order to apply Article 42 of the Regulations of the Commission which provides:

The facts reported in the petition whose pertinent parts had 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 right to personal integrity and to life embodied in Article I of the American Declaration of the Rights and Duties of Man, because the death of Mr. Mario Gilberto Fernandez Lopez was the result of the tortures to which he was subjected while he was held in the power of the National Intelligence Agency.
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, because it did not provide an expeditious remedy to effectively protect the physical integrity and life of Mr. Mario Gilberto Fernandez Lopez.
3. To declare that the Government of Chile has violated the right of equality before the law, embodied in Article II of the American Declaration of the Rights and Duties of Man, because it has not judicially clarified the facts that caused the death by torture of Mr. Mario Gilberto Fernandez Lopez and has exempted the persons responsible from submitting to the legal provisions that provide for the punishment of so serious an offense.
4. To bring this Resolution to the knowledge of the Government of Chile so that it may make such observations as it deems pertinent within a period of forty-five days, calculated from the date of the respective communication.
5. To publish this Resolution for the purposes of Article 63 (g) of the Regulations of the Inter-American Commission on Human Rights if the Government of Chile has not provided sufficient evidence in the period mentioned in the foregoing paragraph.