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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 6/85; Case No. 9472
Session: Sixty-Fifth Session (24 June – 1 July 1985)
Title/Style of Cause: Nelson Adrian Herrera Riveros and Mario Octavio Lagos Rodriguez 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: Herrera Riveros v. Chile, Case 9472, Inter-Am. C.H.R., Report No. 6/85, 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 27, 1984 of the pertinent parts of a complaint reporting the death of NELSON HERRERA RIVEROS and MARIO OCTAVIO LAGOS RODRIGUEZ, which occurred in Concepcion on August 23, 1984, and for which officials of the National Intelligence Agency are responsible.
2. The communication of March 25, 1985 in which the Commission again requested the Government of Chile for information and the communication of May 21, 1985 in which the Commission again requested the Government of Chile for information on the facts reported and announced that if it does not do so, it will have to consider the application of Article 42 [FN1] of its Regulations which stipulates that, in default of a reply from the Government and of other evidence that indicates the contrary, the facts complained of shall be presumed to be true.

[FN1] This provision used to correspond to Article 39 of the previous Regulations.

WHEREAS:

1. In accordance with the information furnished to the Commission, on August 24, 1984, Messrs Nelson Herrera Riveros and Mario Octavio Lagos Rodriguez were riding in a Talcahuano-Concepcion bus, license plates UCR 065, driven by Mr. Pedro Segundo Aguayo Aguayo, when the vehicle was

stopped at the Vega Monumental by police officials, in uniform and in civilian clothes, who required passengers to leave the bus.

2. When Nelson Herrera and Mario Lagos got out of the bus with their hands above their heads, Mr. Lagos was shot down by the police although he offered no resistance, in view of which Nelson Herrera tried to flee and was hit by shots fired at him and later died as a consequence of them.

3. That version of the facts is provided by the driver of the bus in his declarations to the Military Investigating Judge and to the press, and follows from the autopsy made on Mario Octavio Lagos, according to which the bullet that caused his death entered the thorax through the right axilla, which would indicate that the victim was holding his hands above his head.

4. That the Office of the Regional Intendant of Concepcion issued a document in which it states that Nelson Herrera and Mario Lagos, when they noticed that they were being followed by personnel of the National Intelligence Agency, boarded the public transportation vehicle mentioned and took the passengers hostage, which caused a chase by members of the CNI who, after a prolonged exchange of shots, succeeded in killing Herrera and Lagos and freeing all the occupants of the vehicle unharmed.

5. On August 28, 1984, the Archbishop of Concepcion, Monsignor Jose Manuel Santos, requested the Appeal Court of that city to appoint an investigating judge since "two completely different and therefore worrying versions have been issued: one, the official version, which speaks of death in clashes and the other, that of eyewitnesses, which speaks of murders. Because of its gravity, that situation should be thoroughly investigated so that when the facts have been clarified and the truth established, calm may return to all the sectors and a continuation of this spiral of hate, violence and doubt may be avoided".

6. The above-mentioned request was denied by the Concepcion Appeal Court since it was of the opinion that the facts reported were not within the competence of the ordinary courts of justice.

7. The Government of Chile has not provided any information concerning the circumstances of the death of Nelson Herrera and Mario Octavio Lagos, while there are abundant indications that they were summarily executed, as follows from the statement made in this preambular part and it is therefore appropriate to apply Article 42 of the Regulations of the Commission which stipulates that:

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 life embodied in Article I of the American Declaration on the Rights and Duties of Man, because Nelson Adrian Herrera Riveros and Mario Octavio Lagos Rodriguez were summarily executed by personnel of the National Intelligence Agency.

2. To recommend to the Government of Chile that it speedily and exhaustively investigate the facts reported so as to identify the guilty parties and bring them to trial so they will receive the corresponding penalties.

3. To transmit this resolution to the Government of Chile so that it may make such observations as it deems pertinent in a period of 45 days, calculated from the date of the respective communication.

4. 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 does not provide sufficient evidence in the period granted in the foregoing paragraph.