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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 12/86; Case No. 9289
Session: Sixty-Seventh Session (8 – 18 April 1986)
Title/Style of Cause: Pastor Cruz Herrera v. Nicaragua
Doc. Type: Resolution
Decided by: Chairman: Luis Adolfo Siles Salinas;
First Vice Chairman: Gilda Russomano;
Second Vice Chairman: Marco Tulio Bruni Celli;
Members: Dr. Marco Gerardo Monroy Cabra; Dr. Bruce McColm; Ms. Elsa Kelly; Messrs. Oliver Jackman
Dated: 16 April 1986
Citation: Cruz Herrera v. Nicar., Case 9289, Inter-Am. C.H.R., Report No. 12/86, OEA/Ser.L/V/II.68, doc. 8 rev. 1 (1985-1986)

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HAVING SEEN:

1. The petition received by the Inter-American Commission on Human Rights on April 9, 1984, according to which:

PASTOR CRUZ HERRERA, aged 26 years, single, a farmer and resident of San Marcos de Abajo, District of San Rafael del Norte, Jinotega, left his house in the company of friends on May 17, 1983, and has not returned.

On June 3, 1983, his family members were informed that he was under arrest in the State Security prison known as "Las Tejas", under investigation. When they went there, they were requested to return within fifteen days to learn the results of the investigation. On June 16 when they returned, they were informed that he had been transferred to Jinotega on the orders of the State Security. In addition, his family members were informed by a prisoner who was released that Pastor Cruz Herrera had actually been detained there since they had been together in the same cell. However, authorities in the State Security prisons of Jinotega and Matagalpa deny his detention.

2. The transmission of the pertinent parts of that petition to the Government of Nicaragua in the note of June 18, 1984, requesting it to provide any pertinent information as well as any other information in order to ascertain whether the remedies of domestic law had been exhausted.

3. The communication of January 18, 1985 which repeated the request for information of June 18, 1984.

4. The repetition of the request for information made in the note of February 26, 1986, which informed the Government of Nicaragua that, should such information not be provided within a period of thirty days pursuant to Article 42 of the Regulations, the facts reported would be considered to be true.

5. Resolution 12/86 approved by the Commission and transmitted to the Government of Nicaragua and the observations presented by the Government.

CONSIDERING:

1. That so far the Government of Nicaragua has not replied to the request for information made by the Commission concerning this case and that, in addition, the requirements of domestic law have been exhausted.

2. That, by reason of their nature, the facts that are the subject matter of the petition, do not permit the application in this case of the friendly settlement procedure.

3. That Article 42 of the Regulations of the Commission stipulate the following:

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.

4. That, in addition to not replying to the repeated requests for information, the Government of Nicaragua has so far not allowed a member of the Commission and an official of the Secretariat to go to that country to clarify certain aspects relating to this case, pursuant to the provisions of Article 48.1 d of the American Convention on Human Rights to which Nicaragua is a State Party.

5. That in its observations to Resolution 12/86 the Government of Nicaragua stated that Mr. Pastor Cruz Herrera has not been detained and that there exist no restrictions regarding his freedom of movement in the country, adding that:

The information supplied by the claimants does not appear to correspond with reality. It is relevant to point out to this Honorable Commission that the places where this person was allegedly detained are zones in which counterrevolutionary bands enter and leave and in which a climate of danger and movement typical of war zones exists. In such zones, in which the backwardness is most notorious, there is not even a population census. The above circumstances impede the rapid gathering of information.

6. The observations of the Government are a general response and do not address the details of the facts presented by the claimant, for which reason the Commission finds that these observations do not cast doubt upon the conclusions to which it arrived in Resolution 12/86.

7. That the General Assembly of the Organization of American States declared in Resolution 666 (XIII-0/83) that "The practice of the forced disappearance of persons in the Americas is an affront to the conscience of the hemisphere and constitutes a crime against humanity."

In view whereof:

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, RESOLVES:

1. To consider true the facts reported in the communication of April 9, 1984 concerning the arrest and subsequent disappearance of Mr. Pastor Cruz Herrera.

2. To declare that the Government of Nicaragua has violated the right to personal liberty (Article 7) and the right to life (Article 4) set forth in the American Convention on Human Rights to which

Nicaragua is a State Party.

3. To recommend to the Government of Nicaragua that it order a thorough investigation of the facts reported in order to identify the persons responsible, bring them to trial, and adopt the necessary measures to prevent the repetition of such serious events.

4. To include this resolution in its Annual Report to the General Assembly of the Organization of American States, in accordance with Article 63, g of the Regulations of the Commission, and to communicate it to the claimant.