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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 7/86; Case No. 9233
Session: Sixty-Seventh Session (8 – 18 April 1986)
Title/Style of Cause: Jorge Fernando Escobar Rivera 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: Escobar Rivera v. Nicar, Case 9233, Inter-Am. C.H.R., Report No. 7/86, OEA/Ser.L/V/II.68, doc. 8 rev. 1 (1985-1986)
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HAVING SEEN:

1. The petition submitted to the Inter-American Commission on Human Rights, according to which:

On December 19, 1982, Mr. JORGE FERNANDO ESCOBAR RIVERA, aged 56 years, married, by trade a mechanic, and a resident of Managua, disappeared in circumstances that have not yet been clarified.

Since the date of his disappearance an intense search has been made through newspapers, prisons, hospitals, etc., to ascertain his whereabouts. To the astonishment of members of his family, on December 20 of that same year two members of the Sandinista Police appeared in the Altagracia neighborhood asking where Mr. Fernando Escobar Rivera lived and then appeared at his house carrying the registration permit of his vehicle and stating that he was under arrest in No. 3 Substation of the Police because he had been in a collision, which subsequently proved to be false.

On December 24 of that same year, an anonymous telephone call informed his wife that Jorge Fernando was under arrest in El Chipote and the anonymous informant stated that he knew it because he had been detained in the same place. Following that telephone call, Mrs. Escobar Rivera contacted the State Security Department, which denied the information; she also reported the case to the Complaints Department of the Ministry of the Interior without any result.

In January 1983, Mrs. Escobar Rivera was summoned to the Police Processing Offices to make a declaration on the circumstances of his disappearance so that the pertinent investigation could be made although no information was obtained. An official of the above-mentioned office told her in confidence that Escobar Rivera was indeed under arrest in El Chipote but that that fact had been denied in order not to impede the investigation. However, on several occasions members of the Police Investigation Department located in La Plaza del Sol came to her house and took down a great many details of the circumstances of the disappearance without informing her of the results of the investigation.

On April 28, 1983, an appeal of habeas corpus was filed on behalf of Escobar Rivera and against the Director of State Security, who had denied the arrest. To that end, his wife was summoned on various

occasions in June and July of that same year to house No. 50 where she was interrogated, as was her daughter, about details of the life and activities of her husband and she was asked whether she could recognize his motorcycle, to which she replied that she could but that she would have to go to the facilities in Chipote; however, she did not do so because she feared she would be arrested. Subsequently, on August 4, 1983, a member of the State Security came to her house to summon her to House No. 50, which summons she complied with and was interviewed by Colonel Espinales, who told her that he had orders from above that he should hand over to her the motorcycle of her husband in the traffic offices. On August 5 and 6, Mrs. Escobar Rivera went to the traffic offices to take delivery of the motorcycle but was told that it would not be handed over to her until she brought the pertinent order from the state security; on August 8 she again had an interview with Col. Espinales in order to request the above-mentioned order but he did so by telephoning the traffic offices and on that same day Mrs. Escobar Rivera actually received the motorcycle her husband was driving on the day of his disappearance.

It should be pointed out that when the motorcycle was examined a paper was found under the seat. It was the driver's license and registration permit of Mr. Escobar Rivera, which greatly surprised his wife since the registration permit was the same one as that the members of the Sandinista Police who came to the house of Mr. Escobar Rivera on the day following his disappearance were carrying and therefore it is deduced that, if the State Security Authorities handed over the motorcycle and his documents to Mrs. Escobar Rivera, they were aware of the whereabouts of her husband; however, on December 6, 1983, when she visited the Public Relations Offices in El Chipote, she was informed that the case was closed but that she should not worry because her husband was alive.

In addition to the above-mentioned steps, on June 16, 1983, the Court of Appeals of the III Region ordered the Office of the General Prosecutor to ascertain the place of detention and the authority that ordered the arrest of ESCOBAR RIVERA, which step has not produced any result.

Furthermore, all the remedies, both judicial and legal, for establishing the whereabouts of Jorge Fernando Escobar Rivera have been exhausted; all of which proved fruitless.

2. The transmission of the petition to the Government of Nicaragua on February 29, 1984 requesting it to provide such information as it deemed pertinent.

3. The communication of October 25, 1984, in which the petitioner informs the Commission of the various steps taken to ascertain the whereabouts of Jorge Fernando Escobar Rivera, including the filing of an appeal of habeas corpus on April 28, 1983 to the Criminal Division of the Appeals Court, Region III.

4. The communication of November 14, 1984 which repeats to the Government of Nicaragua the request for information made, and states that, should that information not be received, the CIDH would consider the possibility of applying the then Article 39 of the Regulations, according to which:

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.

5. The communication of April 16, 1985 from the Government, in which it limits itself to stating that the General State Security Directorate has reported that Mr. Jorge Fernando Escobar Rivera has never been arrested on its orders.

CONSIDERING:

1. The petition presented satisfies the requirements for admissibility established by Article 46 of the American Convention on Human Rights 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 the facts reported by the petitioner disclose the existence of the initial recognition, by agents of the Government of Nicaragua, of the arrest of Mr. Jorge Fernando Escobar Rivera, which is also to be inferred from the fact that members of the police force were in possession of the personal documents of the victim when they appeared at his house on the day following his disappearance.

4. That the arrest of Mr. Escobar Rivera was similarly recognized on various subsequent occasions as a result of the many steps taken by members of his family, who were informed that he was under detention, on the order of the State Security, in the El Chipote prison, which information has since been denied.

5. That despite the steps taken and investigations carried out to ascertain the whereabouts of Mr. Escobar Rivera and of the time that has elapsed, the reply of the Government of Nicaragua of April 16, 1985 is extremely terse and reveals the lack of interest of that Government in providing the Commission with reliable information on so serious an event as that reported.

6. That the General Assembly of the Organization of American States declared, by 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."

7. That the Nicaraguan Government has not presented observations on Resolution No. 7 86 which was transmitted to it.

In view whereof:

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, RESOLVES:

1. To declare that the Government of Nicaragua has violated the right to personal liberty, set forth in Article 7 of the American Convention on Human Rights, and the right to life, recognized by Article 4 by the actions of its agents who were responsible for the arrest and subsequent disappearance of Mr. Jorge Fernando Escobar Rivera.

2. To recommend to the Government of Nicaragua that it conduct a thorough investigation of the facts reported in order to identify the persons responsible, and bring them to trial, so that the penalties so serious a way of proceeding demands may be imposed upon them and that it adopt the necessary measures to prevent the recurrence of such serious events.

3. To include this Resolution in its Annual Report for the purposes of Article 63 g of its Regulations and transmit it to the petitioner.