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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 13/86; Case No. 9295
Session: Sixty-Seventh Session (8 – 18 April 1986)
Title/Style of Cause: Felipe Santiago Jiménez Gutiérrez 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: Jiménez Gutiérrez v. Nicar., Case 9295, Inter-Am. C.H.R., Report No. 13/86, 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:

FELIPE SANTIAGO JIMENEZ GUTIERREZ, 38 years of age, single, a farmer and resident of San Pedro de las Calles, District of San Juan de Teupaneca in the Department of Madriz, was arrested on August 30, 1983 in his home, accused of collaborating with counter revolutionaries by six individuals dressed as militia men who were serving in the Commando of San Juan de Telpaneca, where his family members subsequently recognized the arresting officers; however, those arresting officers denied that he was detained in that Commando. A search has been made for him in the "La Barranca" and "La Chácara" prisons in Estelí but it has not been possible to locate him.

2. The transmission of the pertinent parts of that petition to the Government of Nicaragua by note of June 18, 1984, requesting it to provide such information as it deemed pertinent, as well as any information that would make it possible to ascertain whether, in the case that is the subject matter of this petition, the remedies of domestic law had been exhausted.

3. The communication of January 18, 1985, which repeated the request for information of June 18, 1983.

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 presumed to be true.

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 the Government of Nicaragua did not present observations to Resolution 13/86 which had been transmitted to it.

6. 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. Felipe Santiago Jiménez Gutiérrez.

2. To declare that the Government of Nicaragua has violated the right to personal liberty (Article 7) and the right to life (Article 4) embodied 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, and prosecute and punish them in accordance with the law and that it 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 transmit it to the claimant.