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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 2/86; Case No. 9144
Session: Sixty-Seventh Session (8 – 18 April 1986)
Title/Style of Cause: José Giovanni Ulloa Peralta and Luis Alonso Díaz 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: Ulloa Peralta v. Nicar., Case 9144, Inter-Am. C.H.R., Report No. 2/86, OEA/Ser.L/V/II.68, doc. 8 rev. 1 (1985-1986)
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HAVING SEEN:

1. The petition received on July 6, 1983 by the Inter-American Commission on Human Rights reporting the disappearance of:

JOSE GIOVANNI ULLOA PERALTA, aged 22 years, a bachelor, electrical fitter, and resident of Corinto, Department of Chinandega. He was arrested on January 2, 1983 by border guards at a place known as Las Manos, and was subsequently taken to La Soledad Ranch. Since then the members of his family do not know where he is detained.

LUIS ALONSO DIAZ RIVERA, aged 22 years, bachelor, farmer and a resident of the Breyera Area, Pantasma District, Department of Jinotega. He was arrested on January 15, 1983 in Wiwili, Jinotega Sector. Members of his family have been looking for him in Jinotega and Matagalpa but have been unable to locate him.

2. The pertinent parts of this petition were transmitted to the Government of Nicaragua under the note of August 18, 1983, which requested 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 28, 1985, transmitting additional information concerning Mr. JOSE GIOVANNI ULLOA PERALTA provided by the petitioner, who stated that:

...for the purpose of locating the above-mentioned prisoner, contacts were made with the person in charge of the State Security Directorate, the Representative of the Ministry of the Interior in the Department of Estelí and the Officer in Charge of the Border Guards located in Las Manos, but no reply was received to our request for information.

However, on June 24, 1983, the family members of the above-mentioned prisoner reported that Mr. JOSE

GIOVANNI ULLOA PERALTA had been found dead in the city of Ocotal and his remains had been delivered to them by a soldier who identified himself to them as Capt. Agurcia, and officially informed them that a member of the Border Guards named Israel Pince had been responsible for the death and that he had been arrested and would be tried for that crime.

Despite what was stated on that occasion by the above-mentioned Capt. Agurcia, the family members reported that they had reliable information that the person responsible for the death of the deceased JOSE GIOVANNI ULLOA PERALTA was at present free and that the competent authorities had not made any investigations on the death of the prisoner nor sanctioned the guilty party who had been positively identified.

4. The communication of January 17, 1985 which repeated the request for information transmitted by the notes of August 18 and November 28, 1983.

5. The repetition of the request for information made by means of the communication of February 19, 1986 which informed the Government of Nicaragua that, should the information requested not be provided within a period of thirty days, the facts reported would presume to be true.

6. The approval of Resolution 2/86 by the IACHR and the transmittal of the same to the Government of Nicaragua in order for it to present whatever observations it deemed relevant within 60 days.

7. The observations presented by the Government of Nicaragua concerning the situation of Jose Giovanni Ulloa Peralta and Luis Diaz Rivera.

CONSIDERING:

1. That the Government of Nicaragua had 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 because of their nature, the facts that are the subject matter of the petition do not permit the application of the friendly settlement procedure in this case.

3. That Article 42 of the Regulations of the Commission stipulates 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 not so far permitted a member of the Commission and an official of the Secretariat to go to that country in order 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 petitioner has provided convincing information of the events surrounding the arrest and subsequent death of José Giovanni Ulloa Peralta.

6. That having transmitted Resolution 2/86 to the Government of Nicaragua, it presented the following observations:

That Mr. Jose Ulloa was killed by a member of the Border Patrol of the Popular Sandinista Army, Mr. Israel Ponce, who was judged and whose case was dismissed by the Military Tribunal of Esteli, in a judgment issued November 20, 1983, at 12 noon, having found that he acted in legitimate self-defense.

The facts occurred as follows: On December 31, 1982, the soldier Israel Ponce was in charge of an operative of the Popular Sandinista Army's Border Patrol, in a place known as La Laguna, in the Dipilto jurisdiction, when at 10:00 a.m. a man appeared, attempting to flee the country illegally. Israel Ponce decided to approach him, unarmed, leaving his men behind and hidden. The individual, who was Ulloa Peralta, upon seeing him took him for a counterrevolutionary and told him that he was looking for a way to leave the country since he was against the Government, and had participated in some actions such as blowing up the bridge over the Rio Negro. Having determined that Ulloa Peralta was a counterrevolutionary, Israel Ponce--who was unarmed--called one of his men to arrest him. Realizing that he was about to be arrested, Ulloa hurled himself at the soldier Carlos Cristino, taking his weapon, which was the reason for which Israel Ponce, in assistance to his subordinate entered into physical combat with Ulloa Peralta, a struggle which culminated in the death of the latter.

7. That the response of the Government reveals serious inconsistencies, regarding not only the differences of date and place of the arrest and death of Ulloa Peralta, but also the fact that it is difficult to understand why a notorious event, such as the death of a person in combat, was not immediately communicated to his parents, but was only communicated months after the event and when his detention was already acknowledged by the Nicaraguan authorities, facts which determine that the Government's version of the events does not contain elements which permit the IACHR to modify its conclusion adopted in the Resolution concerning Ulloa Peralta.

8. That the Government of Nicaragua in its observations to Resolution 2/86 affirms that "with respect to Mr. Luis Díaz Rivera, the relevant authorities inform us that he had not been detained and that his present whereabouts are unknown," a response which does not constitute evidence sufficient to modify the Commission's conclusion in this Resolution.

In view whereof:

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
RESOLVES:

1. To consider true the facts reported in the communication of July 6, 1983 concerning the arrest and subsequent death of Mr. José Giovanni Ulloa Peralta and the arrest and subsequent disappearance of Mr. Luis Alonso Díaz Rivera.
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, prosecute and punish them in accordance with the law and adopt all necessary measures for preventing the repetition of such serious events.
4. To confirm Resolution No. 2/86, to publish it in the Annual Report pursuant to Article 63, g of the Commission's Regulations, and to communicate it to the complainant.