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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 44/90; Case No. 9905
Session: Seventy-Ninth Session (11 – 22 February 1991)
Title/Style of Cause: Vladimir David v. Haiti
Doc. Type: Report
Decided by: Chairman: Patrick L. Robinson;
First Vice Chairman: Marco Tulio Bruni Celli;
Second Vice Chairman: Oscar Lujan Fappiano;
Members: Gilda M.C.M. de Russomano; Oliver Jackman; Leo Valladares
Lanza; Michael Reisman
Dated: 22 February 1991
Citation: David v. Haiti, Case 9905, Inter-Am. C.H.R., Report No. 44/90,
OEA/Ser.L/V/II.79, doc. 12 rev. 1 (1990-1991)

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HAVING SEEN the records on the case, to wit:

1. The complaint received by the Inter-American Commission on Human Rights on March 15, 1987, whose pertinent sections read as follows:

Vladimir David (17 years of age) disappeared on November 7, 1986, on which date he participated in a demonstration protesting the disappearance of Charlot Jacquelin, which took place in Port-au-Prince. The march was conducted in a peaceful manner until the Army began to fire upon the demonstrators. According to eyewitnesses, Vladimir David was detained by police officers dressed in blue. Since that time nothing more has been known of him. His body was never delivered to his relatives and no serious investigation to determine his current whereabouts has been conducted. His relatives have demanded that the Haitian authorities take action to determine the whereabouts of Vladimir David and to punish the parties responsible for his disappearance.

2. Through a note of April 21, 1987, the Commission initiated the processing of this case and requested that the Government of Haiti provide information on the material events of that letter and to provide any other background information that would make it possible to determine whether in the case of this petition the remedies of domestic jurisdiction had been exhausted. The government was given a term of 90 days to reply to the request for information from the Commission.

3. On August 14, 1987, the Commission repeated its request to the Government of Haiti for information, stating that if such information was not received within 30 days, the Commission would then examine the possibility of applying Article 42 of its Regulations, which establishes the presumption that the facts reported in the complaint are true, as long as the Government in question does not provide the corresponding information within the period of time established by the Commission.

4. On December 30, 1987, the Commission again asked the Government of Haiti to provide

information on the disappearance of the young man, Vladimir David, with the warning that Article 42 of its Regulations would be applied.

5. In notes dated February 21 and September 26, 1989, the Commission issued further requests to the Government of Haiti for information, with the warning that Article 42 of its Regulations would be applied. To date no reply has been received.

CONSIDERING:

1. That the Commission is competent to hear this case because it involves violations of rights recognized by the American Convention on Human Rights, Article 4, pertaining to the right to life, and Article 7, pertaining to the right to personal liberty, as provided in Article 44 of that Convention, to which Haiti is a State Party.

2. That the petition meets the formal requirements of admissibility contained in the American Convention on Human Rights and in the Regulations of the Inter-American Commission on Human Rights;

3. That in this case it is obvious that the petitioner has not been able to achieve effective protection from the courts and thus the requirements relating to exhaustion of remedies under internal jurisdiction do not apply;

4. That the petition is not pending any other procedure under international arrangement nor is it a duplication of an earlier petition already examined by the Commission;

5. That, notwithstanding the length of time that has passed and the repeated requests made by the Commission, the Government of Haiti has provided no reply concerning the facts involved in this case.

6. Having provided no response the Government of Guatemala has failed to fulfill its international obligation to provide information to the Commission within a reasonable time frame as provided for in Article 48 of the American Convention.

7. That in this case there exists an aggravating factor in that the victim was a minor.

8. That, in its reports on the situation of human rights, the Commission has repeatedly expressed its total repudiation of this grave situation of forced disappearances of persons, expressing in various documents that:

... this practice is cruel and inhumane, and that ... disappearance not only constitutes an arbitrary deprivation of liberty, but also a very severe threat to the personal integrity, security, and the very life of the victim.

[FN1] Cf. Annual Reports 1978, 1980-1981, 1982-1983, 1985-1986, 1986-1987.

9. Moreover, in a number of resolutions the OAS General Assembly has emphasized the need for the practice of the forced disappearance of persons to be ended immediately in those countries in which it has occurred, and has also urged the governments to take the measures required to clarify the situation of those persons. In addition, and in response to a proposal by the Commission, the OAS General Assembly has declared that the forced disappearance of persons in the Americas is a crime against humanity.[FN2]

[FN2] Cf. AG/RES. 443 (IX-O/79), AG/RES. 510 (X-O/80), AG/RES. 543 (XI-O/81), AG/RES. 618 (XII-O/82), AG/RES. 666 (XIII-O/83), and AG/RES. 742 (XIV-O/84).

10. Furthermore, the Inter-American Court of Human Rights, in its July 29, 1988, judgment on the Velásquez Rodríguez case, declared the following: [FN3]

The practice of disappearances, in addition to directly violating many provisions of the Convention (...), constitutes a radical breach of the treaty in that it shows a crass abandonment of the values which emanate from the concept of human dignity and of the most basic principles of the inter-American system and the Convention.

[FN3] Cf. Inter-American Court of Human Rights, Velasquez Rodriguez case, Judgment July 29, 1988, Series C, no. 4, paragraph 158.

11. That Article 42 of the Commission's Regulations provides:

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.

12. That since the friendly settlement procedure (Article 48.1.f of the Convention) does not apply, given by virtue of the nature of the facts reported and of the lack of a reply from the Government, the Commission must implement the provisions of Article 50.1 of the American Convention by issuing its conclusions and recommendations on the complaint placed before it for consideration.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
RESOLVES:

1. To presume to be true the information reported in the March 15, 1986, note pertaining to the detention and subsequent disappearance of a young man, Vladimir David, by members of the police force of Port-au-Prince, on November 7, 1986.

2. To declare that the Government of Haiti has not complied with its obligations to observe the human rights and guarantees stipulated in Article 1 of the American Convention on Human Rights.

3. To declare that those facts constitute violations of the right to life and right to liberty enshrined in Articles 4 and 7 of the Convention.

4. To make the following recommendations to the Government of Haiti (Article 50.3 of the Convention and Article 47 of the Regulations of the Commission):

- a. That it conduct an exhaustive, swift, and impartial investigation of the reported facts, in order to identify the responsible parties, bring them to justice so that they may be duly punished.
- b. That it takes the necessary measures to prevent similar acts from being committed in the future.
- c. That it redresses the consequences of the situation created by the aforementioned violation of

rights and pay fare compensation to the injured parties.

5. To transmit this report to the Government of Haiti in order for that Government to report, within three months from the date of transmittal, on the measures adopted to resolve the situation reported. In accordance with Article 50 of the Convention, the Government is not at liberty to publish this report.

6. If, after a period of three months, this case has not been resolved by the Government of Haiti, the Commission may issue its opinion and findings on the matter placed before it for consideration, pursuant to Article 51.1 of the Convention, and shall include this report in its Annual Report to the General Assembly of the Organization of American States, pursuant to Article 63.g of the Commission's Regulations.