

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 16/98; Case 11.324
Title/Style of Cause: Narciso Gonzalez v. Dominican Republic
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Decided by: Chairman: Carlos Ayala Corao;
First Vice Chairman: Robert K. Goldman;
Second Vice Chairman: Jean Joseph Exume.
Dated: 13 April 1998
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I. BACKGROUND

1. On July 1, 1994, the Inter-American Commission on Human Rights received a petition denouncing the alleged detention and disappearance of Mr. Narciso González at the hands of agents of the Dominican Republic.
2. The Commission initiated proceedings in the case in accordance with its regulations. As part of these proceedings, the parties appeared at a hearing it held on February 25, 1998, in an attempt to seek a friendly settlement.
3. At that hearing, the parties agreed to wait for one month in consideration of the efforts to settle the matter.
4. At the Commission's 98th session, held in February and March 1998, it decided to publish the present report of admissibility which was approved in 1996.

II. FACTS

5. According to the information in case file No. 11,324, on May 26, 1994, Narciso González was detained and disappeared clandestinely at the hands of Dominican military troops as he was leaving one of the movie theaters at the "Doble" Cinema located in the city of Santo Domingo.
6. The petitioners state that Narciso González, a Dominican national, was working as a journalist, attorney, and university professor in the School of Humanities at the Universidad Autónoma de Santo Domingo (UASD), and he was well known for the work he performed in promotion of local socio-cultural and human rights community groups.

7. According to the petitioners, Narciso González was arrested because of the various activities he performed in defiance of the authorities of the Dominican Republic, and to contest the elections held on May 16, 1994.

8. On the precise day he was detained, in fact, Professor González had appeared at the main office of the University to present to the members of the University Council a statement in which he condemned the alleged electoral fraud that occurred during the May 16, 1994 elections. Moreover, in the April-May issue of the magazine La Muralla, Narciso González had sharply criticized the May 16, 1994 electoral process.

9. The petitioners maintain that, according to information received, Narciso González was being detained at the facilities of the J-2, a military agency located outside the city of Santo Domingo, despite the fact that the Chief of the National Police and high officials have denied that report.

10. The petitioners indicate that to date, Professor González has not reappeared, and that the government of the Dominican Republic has not investigated and cleared up the matter. On May 28, 1994, a complaint was filed with the National Police in an attempt to determine the whereabouts of Narciso González, but the action undertaken pursuant to this complaint proved fruitless and ineffective.

III. PROCEEDINGS BEFORE THE COMMISSION

11. On July 6, 1994, the Commission initiated proceedings on the petition and opened a file on the case, assigning it number 11,324.

12. On that same date, in accordance with Article 48.1.a of the American Convention on Human Rights and Article 34 of its Regulations, the Commission forwarded to the government of the Dominican Republic the pertinent sections of the petition, and asked it to provide information on the events reported in that petition within ninety days. It also requested any evidence or elements of proof that would enable it to determine whether all domestic legal remedies had been exhausted in this case.

13. August 2, 1994, the Commission sent a letter to the government of the Dominican Republic to express its intention to visit the country in September 1994 for the purpose of compiling information relating to various cases, including the case of Narciso González.

14. In its initial reply on September 19, 1994, the government expressed its concern over the disappearance of Narciso González and asserted that the Dominican authorities were conducting a search for him. However, it did not provide any specific information related to his abduction and disappearance or to the exhaustion of domestic remedies. Nor did it provide any response to the proposed visit by the Commission.

15. The Commission forwarded to the petitioner the relevant sections of the government's reply. On January 20, 1995, it sent them once again.

16. On November 17, 1995, the Commission sent a second letter to the government of the Dominican Republic reiterating the original request for information and asking for specific information on this case.

17. In view of the failure of the government to respond, on January 2, 1996, the Commission repeated the preceding request, and granted a period of 30 days for it to reply. The Commission expressly indicated in its letter that if it did not receive the information requested, it would consider the possible application of Article 42 of its Regulations, which it transcribed in full.

18. On January 16, 1996, the government alleged that the letter had been late to arrive and requested a 30-day extension to respond to the request. On January 17, 1996, the Commission granted the requested extension. However, the Dominican government did not provide the information requested by the Commission.

19. On January 25, 1996, the petitioners sent additional information on the case to the Commission. This information included the conclusions of a Truth Committee set up by civilians in the Dominican Republic to seek information on the disappearance of Narciso González. These conclusions referred to a series of relevant facts related to the disappearance of Narciso González. They indicated that the vehicle in which González had been taken away belonged to police officers. Reference was made to certain telephone calls received by the sister-in-law of González in which she was advised that he was being held by the National Police of the Dominican Republic. Mention was made of remarks by an individual who was an acquaintance of González and who happened to be in custody at a police station and observed at that place a person who resembled Gonzalez. Finally, the information indicated that Professor González had been put under secret surveillance days before he was abducted.

20. On February 5, 1996, the Commission transmitted to the government of the Dominican Republic the pertinent sections of that information.

IV. CONSIDERATIONS REGARDING ADMISSIBILITY

21. The Commission may hear cases submitted to it for its consideration provided they meet the official requirements of admissibility pursuant to Article 46 of the American Convention and Article 32 of the Commission's Regulations. Once the procedural steps specified in Article 34 of its Regulations were completed, the Commission began an analysis of this case to determine its admissibility.

22. Since, on the basis of *ratione loci*, the Commission is empowered to hear complaints regarding human rights violations affecting a person under the jurisdiction of a state party to the American Convention, the Commission is competent to hear this case against the Dominican Republic.

23. From the background information analyzed, it appears that the Commission is competent *ratione personae* and *materiae* to hear this case, since the complaint lodged reports events that represent alleged violations of the rights of Narciso González, as recognized in Articles 4 and 5 of the American Convention on Human Rights (Articles 44 and 47(b) of the Convention).

24. The Commission considers that there are no grounds supporting the allegation that the complaint is patently unfounded or without merit (Article 47(c)). Likewise, the complaint is not the substantial duplication of a petition already examined, nor is it pending proceedings by another international entity, although this objection has not been alleged by the parties, nor does it duplicate a petition already considered by the Commission or another international entity (Articles 46(c) and 47(d)).

25. From the various letters sent to the Commission, it is apparent that the domestic remedies pursued in the Dominican Republic have been unsuccessful in producing any information regarding the disappearance of Narciso González. On May 28, 1994, the petitioners filed a petition for investigation of the report that he was in the custody of the National Police. The investigation has not produced satisfactory results so far.

26. The government of the Dominican Republic, in the only information provided to the Commission during the entire year and a half of the process, merely indicated that "all elements in the country are looking for Dr. Gonzalez" and that "all necessary remedies will be exhausted to ensure a prompt and successful response in this case." However, it did not provide any specific information regarding the remedies that were being pursued. With these statements, the Dominican government would seem to be alleging that domestic remedies had not been exhausted.

27. In this case, following the principle of *onus probandis incumbit actoris*, the government has the obligation to show which are the remedies that must be exhausted and to prove that they have not been exhausted. The government of the Dominican Republic never responded specifically on these points, despite the repeated requests by the Commission.

28. In application of the aforesaid principle, the Inter-American Court of Human Rights has indicated as follows: "... the State that alleges non-exhaustion has responsibility for indicating the domestic remedies that must be exhausted and their effectiveness." [FN1]

[FN1] "Velásquez Rodríguez," Preliminary Exceptions, Judgment of June 26, 1987, par. 88.

29. In the case in point, the petitioners alleged that the domestic remedies were not effective and presented information in this regard. However, more than a year and a half following the disappearance of Professor Narciso González, the investigations pursued by the national authorities indicate that no progress has been made in clarifying the event. This demonstrates the ineffectiveness of the domestic remedies and constitutes an unjustified delay in any decision regarding those remedies. Finally, the Dominican government itself, which alleged that "all the necessary remedies for a prompt and successful response in this case have been exhausted," did not provide any proof at all of the existence and the effectiveness of those remedies, which represents a failure to fulfill its obligation under Article 43 of the American Convention.

30. The Commission considers finally that the case of Professor Narciso González entails the actual situation covered by Article 46.2.b of the Convention, and that therefore the condition of exhaustion of domestic remedies, as stipulated in Article 46.1.a., is not applicable.[FN2]

[FN2] The Inter-American Court of Human Rights, in Velásquez Rodríguez, Judgment of July 29, 1988, paragraph 155, states as follows: "The forced disappearance of human beings constitutes a multiple and continuous violation of a number of rights recognized under the Convention." These rights include, among others, the right "to lodge appropriate appeals to control the legality" of detention.

31. The provisions of Article 46.b of the Convention, which establish that any petition may be presented within a period of six months counting from the date on which the final decision was notified, are not applicable to the case in point, because there was no final decision of any kind with regard to the remedies put into play. In accordance with the terms of Article 38.2 of its Regulations, the Commission considers that the petition was presented within a reasonable period of time following the date on which the human rights violation occurred. The events took place on May 26, 1994, and the complaint was filed with the Commission on July 1 of the same year. During the time that lapsed between those two dates, the petitioners reasonably awaited the results ensuing from the judicial investigation. When they observed the irregularity of the investigations and the fact that they were not producing effective results, they decided to petition the Commission, but it cannot be maintained that they did so in an unreasonable period of time, in impairment of legal certainty.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

RESOLVES:

1. To declare the present case N° 11.324 admissible.
2. To place itself at the disposal of the parties, with a view to submitting the case to proceedings for a friendly settlement, based on respect for the human rights recognized in the American Convention. To this end, the parties are granted a period of ninety days to communicate to the Commission whether they are willing to submit the matter to proceedings of this sort.
3. For the purposes of moving forward in investigating the events denounced, and pursuant to Article 67.1 and 2 of its Regulations, the Commission invites the parties to hold a hearing during its session scheduled to take place in October of this year.
4. To notify the interested parties of this decision.
5. To continue processing this case.
6. To publish this report in the Annual Report to the General Assembly of the OAS.