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REPORT No. 110/14
PETITION 302-05
REPORT ON ARCHIVE

EDILBERTO LIÑAN BURGOS
PERU

Approved by the Commission at its session No. 2016 held on November 7, 2014
153 Regular Period of Sessions

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November 7, 2014.

REPORT No. 110/14
PETITION 302-05
ARCHIVE REPORT
EDILBERTO LIÑAN BURGOS
PERU
NOVEMBER 7, 2014

ALLEGED VICTIM: Edilberto Liñan Burgos

PETITIONERS: Edilberto Liñan Burgos

ALLEGED VIOLATIONS: Articles 1.1, 2, 5, 7, 8, 9, and 24 of the American Convention on Human Rights

DATE OF INITIAL PROCESSING September 8, 2008

I. POSITION OF THE PETITIONERS

1. The petitioner stated that he was arrested by members of the National Police of Peru on January 29, 1993, when he was on his way to his parents' house. He said that at the time of his arrest he was not informed of the charges against him and that he was subjected to torture and mistreatment. He indicated that he was taken to the police station, where he remained for five days, and was subsequently taken to the JECOTE facilities in Cajamarca, where he remained for 20 more days. He said that he was tortured during that time in order to get him to claim responsibility for acts of terrorism. He also said that the police drew up a police report, in violation of his right to a fair trial, primarily his right to defense since his attorney was not allowed to participate in all of the proceedings and also was prevented from meeting with him in private. The petitioner pointed out that he was brought before a military court, which sentenced him to life imprisonment. Likewise, he pointed out that he was held in various prisons during his detention and that he was subjected to inhumane detention conditions in all of them, which included being obliged to remain in his cell for 23½ hours a day and being subjected to visiting regulations whereby he could only be visited by immediate family for 30 minutes. The petitioner stated that the trial before the military criminal court was nullified as a result of the action of unconstitutionality of January 3, 2003, and a new trial was opened against him in the regular courts, thus violating his freedom from ex post facto laws. In that trial, he was sentenced to 13 years of deprivation of liberty for the crime of terrorism.

II. POSITION OF THE STATE

2. The State indicated that the facts set forth by the petitioner did not violate the human rights enshrined in the American Convention. It declared that, although the petitioner was initially tried by a military court, a new case was opened against him in the regular courts, in keeping with due process guarantees. It stated that on September 23, 2005, the National Criminal Chamber sentenced the petitioner to 13 years of deprivation of liberty for the crime of terrorism, a term that would end on May 7, 2006. It mentioned that in this trial the petitioner's criminal liability was fully established by the police report that proved that the petitioner was a member of the "Shining Path" armed group and took part in various terrorist acts. The State also indicated that the formal statement made by a third party who, brought into the petitioner's presence, attested that he recognized the petitioner as a member of that subversive group was deemed to be sufficient proof. Consequently, the National Criminal Chamber found the petitioner guilty, claiming that the evidence submitted fully established his liability as a member of the "Shining Path" armed group.

3. The State reported that the principles of legality, proportionality, reasonableness, and equality before the law and the right to a fair trial were respected during this trial since the petitioner was able to present and lay out the claims that could affect him in the trial brought before the military court.

Consequently, the State affirmed that there was no violation of due process or the right to a fair trial as enshrined in the American Convention.

III. PROCESSING BY THE IACHR

4. On March 18, 2005, the original petition was received and was registered as number 302-05. On September 8, 2008, the Commission transmitted the petition to the State, granting it two months to submit its response, in accordance with the IACHR Rules of Procedure then in effect. In a communication dated November 17, 2008, the State requested an extension, which was granted until December 9, 2008. On January 27, 2009, the Commission received the first response from the State, which was forwarded to the petitioner on February 6, 2009.

5. On November 24, 2009, and on December 2, 2013, the State submitted additional information on the petition. These communications were transmitted to the petitioner on December 2, 2009, and April 2, 2013, respectively, to the private address provided by the petitioner, with a request that he present his observations on the additional information. On August 4, 2014, the IACHR reiterated its request for updated information or for any additional information to determine whether the grounds for the present petition subsisted, indicating that if information was not sent within a month, the case could be archived. This notwithstanding, as of the date of publication of this report, the IACHR has not received any reply from the petitioner.

IV. BASIS FOR THE DECISION TO ARCHIVE

6. Both article 48.1.b) of the American Convention and article 42.1 of the Rules of Procedure of the Inter-American Commission provide that, at any stage of the proceedings, after the information has been received, or after the period established has elapsed and the information has not been received, the Commission shall ascertain whether the grounds for the petition exist or subsist and, if they do not, will order the petition to be archived.

7. In the case at hand, the petitioner submitted the last communication to the IACHR on March 18, 2005, and to date has not responded to diverse IACHR requests for updated information. Thus, pursuant to Article 48.1(b) of the Convention and Article 42.1.b of the Commission's Rules of Procedure and in view of the petitioner's unjustified procedural inactivity, which constitutes a serious indication of his lack of interest in the processing of the petition, the IACHR hereby decides to archive it.

Done and signed in the city of Washington, D.C., on the 7th day of the month of November, 2014.
(Signed): Tracy Robinson, President; Rose-Marie Belle Antoine, First Vice President; Felipe González, Second Vice President; Rosa María Ortiz, and James L. Cavallaro, Commissioners.