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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 35/96; Case 10.832
Session:	Ninty-Eighth Regular Session (17 February – 6 March 1998)
Title/Style of Cause:	Luis Lizardo Cabrera v. Dominican Republic
Doc. Type:	Report
Decided by:	Chairman: Carlos Ayala Corao; First Vice Chairman: Robert K. Goldman; Second Vice Chairman: Jean Joseph Exume.
Dated:	19 February 1998
Citation:	Lizardo Cabrera v. Dominican Republic, Case 10.832, Inter-Am. C.H.R., Report No. 35/96, OEA/Ser.L/V/II.102, doc. 6 rev. (1998)
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BACKGROUND

1. On March 18, 1991, the Inter-American Commission on Human Rights received a petition reporting the presumed arbitrary detention of Mr. Luis Lizardo Cabrera by agents of the Government of the Dominican Republic.

FACTS

2. According to the report, Mr. Luis Lizardo Cabrera was arrested on May 4, 1989, by the National Police, was confined for five days and tortured. On May 11, 1989, he was accused of participating in a bomb attack on the headquarters of the Dominican American Institute.

3. By a decision dated July 17, 1989, the judge of the First Criminal Division of the Lower Court of the National District of Santo Domingo received a petition for habeas corpus lodged in behalf of Luis Lizardo Cabrera and ordered his immediate release, it having been demonstrated that there was no evidence of his guilt. The court's decision was disobeyed by the National Police.

4. On November 30, 1989, the judge of the Fourth Criminal Division of the National District ordered the immediate release of Luis Lizardo Cabrera because there was no evidence of his guilt. This decision was also disobeyed by the National Police.

5. Once the accusation that he had participated in bomb attacks was rejected by the judiciary, the National Police accused him of having participated in an assault on Banco Metropolitano, which had occurred in September 1988.

6. At this new trial, on July 16, 1990, the judge of the First Criminal Division of the National District of Santo Domingo received a petition for habeas corpus lodged in behalf of Luis Lizardo Cabrera and ordered his immediate release, because there was no serious, conclusive, and consistent evidence of his criminal liability.

7. On August 31, 1992, the Supreme Court passed a resolution ordering the release of Luis Lizardo Cabrera.

8. The National Police has refused to abide by the judicial decisions in favor of Mr. Lizardo Cabrera, alleging that he must remain in prison because of "police regulations".

PROCEEDINGS BEFORE THE COMMISSION

9. The complaint was lodged by the petitioners on March 18, 1991, and the pertinent parts of said communication were transmitted to the Government of the Dominican Republic on the same date. The Commission granted the Government a period of 90 days to respond, pursuant to Article 34(5) of the Regulations.

10. On May 31, 1991, the petitioners submitted additional information, attaching documents to support their complaint. By a note dated July 17, 1991, the Commission forwarded such information to the government and granted it a period of 30 days to present its comments.

11. At the end of the initial period mentioned in paragraph 9, on June 16, 1991, the government requested an extension of the deadline for submitting a response. The Commission granted an extension of 30 days, by means of a note dated June 18, 1991.

12. In its response dated June 27, 1991, the government indicated that Mr. Luis Lizardo Cabrera had been accused of throwing an explosive device at the headquarters of the Dominican American Institute, as a result of which a minor was killed. He was therefore being tried in the Court of Investigation and Arraignment of the Fifth Division of the National Police. The government thus concluded that "domestic remedies were being exhausted". The Commission forwarded the government's response to the petitioner on July 15, 1991.

13. On August 15, 1991, the Commission received from the Government a request for an extension of time to respond to the petitioner's additional information. A 30-day extension was granted by a note dated August 22, 1991.

14. By a note dated September 20, 1991, the government provided the following response:

"we reiterate all the parts of the cablegram transmitted on June 27, 1991, inasmuch as no change in the case has occurred".

15. In its comments dated December 2, 1991, regarding the government's response, the petitioner reaffirmed the terms of the initial complaint, indicating that in the case against Luis Lizardo Cabrera there were two other defendants who had been released after a judge received petitions for habeas corpus lodged in their behalf. The petitioner indicated that the police

authorities' disregard of the judicial decisions ordering the release of Luis Lizardo Cabrera constituted a violation of Article 19 of Law 5353 on habeas corpus, Articles 114 and 119 of the Dominican Penal Code, Article 8 of the Constitution of the Dominican Republic, and Articles 5 and 7 of the American Convention.

16. The petitioner's observations were transmitted to the government by a note dated January 8, 1992, in order for it to exercise its right to respond. On February 10, 1992, the government requested another extension of time to file a response and the Commission granted 30 days on that same date.

17. In view of the parties' inactivity, on February 22, 1993, the Commission requested from the Government copies of the file in the case against Luis Lizardo Cabrera, together with a copy of the sentence passed by the competent tribunal. An identical request was submitted on September 28, 1993.

18. On July 6, 1994, the Commission received a communication from Mrs. Lucitania Roa Herrera de Lizardo, wife of Luis Lizardo Cabrera. The note contained the following information:

In May 1989, my husband was accused by the National Police of being responsible for placing an explosive device at the Dominican American Cultural Institute, which resulted in the death of a little girl.

I should emphasize that my husband was arrested days after this fatal attack and upon his arrest, there was nothing incriminating him. Later, during the investigation, the police investigators presented Luis Lizardo to the mother of the dead child, as the woman was considered the main witness, having been present when the bomb exploded at the institute. She denied that Lizardo was the man she saw leave the site of the tragedy. The woman had been in the vicinity and had described the perpetrator as a tall, dark bearded man, a physical description that is completely different from my husband's.

Despite the fact that the mother of the dead child herself denied that Lizardo was the perpetrator of this tragedy and that the police found nothing incriminating, the National Police accused him of the crime and indicted him, arguing that would not be put in liberty because he represents a danger for the country. Such declaration was made in a public communication, by the Former Police Chief Ramón Mota Paulino in 1990.

On August 10, 1993, Luis Lizardo Cabrera, together with other prisoners, began a hunger strike that lasted 36 days and was supported by broad national sectors. Legal professionals expressed solidarity immediately and even the country's courts stopped working for 24 hours, demanding that President Joaquín Balaguer release him. The president's response was to take responsibility for disregarding the judicial decisions. In violation of the Constitution and the laws and breaching the separation of powers of the government — in this case the judiciary — the president appointed a so-called commission on December 1, 1993, by decree, supposedly to study my husband's case and other cases of police contempt of court and we are still waiting.

19. By a note dated August 2, 1994, the Commission informed the Government of the Dominican Republic of its intention to conduct an on-site investigation to obtain information on various cases, including that of Luis Lizardo Cabrera. No response having been received, the Commission reiterated the request on February 3, 1995, but no specific response has been received to date.

20. On February 7, 1995, the Commission received a communication from the petitioners that read as follows:

Luis Lizardo Cabrera's health is deteriorating as a result of a gastro-intestinal disease caused by bad food and polluted water in prison. His condition worsened as a result of the hunger strike that lasted 36 days and after a riot that took place in December 1994 to demand his release, as a consequence of which he was placed in solitary confinement for one week and left in the dark without food or water.

DECISION ON ADMISSIBILITY

21. During its Eighty-eighth Regular Session, held from February 6 to 17, 1995, the Commission ruled on the admissibility of the case.

22. In view of the antecedents and the handling of the complaint described in paragraphs 9 to 20, the Commission considered the case admissible under the following terms:

23. The Commission may hear a case submitted to it for consideration provided *prima facie* it meets the formal admissibility requirements set forth in Article 46 of the Convention and Article 32 of the Regulations of the IACHR.

24. Whereas the *ratione loci* jurisdiction authorizes the Commission to take cognizance of petitions regarding human rights violations affecting a person subject to the jurisdiction of a State Party to the American Convention, the Commission is competent to hear this case against the Dominican Republic.

25. In this case, the complaint lodged by the petitioners refers to events that describe a presumed violation of Mr. Luis Lizardo Cabrera's right to personal liberty, a right protected under Article 7 of the American Convention on Human Rights. The Commission therefore is competent *ratione personae materiae*, pursuant to Articles 44 and 47(b) of that international instrument.

26. The Commission believes that there are no reasons for alleging that the complaint is manifestly groundless, inasmuch as the petitioners have demonstrated that the presumed violation is attributable to a State's organ or agents, as set forth in Article 47(c) of the Convention.

27. The Commission considered that the case of Mr. Lizardo Cabrera was not pending in any other international jurisdiction, inasmuch as this exception has not been alleged by the parties. Nor is the subject of the complaint a duplication of a petition previously resolved by the

Commission or any other international organization (Article 47(d) of the Convention), so that the Commission is not prevented from taking cognizance of this complaint.

28. The Government of the Dominican Republic has indicated that in the case of Mr. Lizardo Cabrera, proceedings are in progress before the Court of Investigation and Arraignment of the Fifth Division of the National District, and it accordingly infers that "domestic remedies are being exhausted". However, pursuant to the principle of *onus probandis incumbit actoris*, the government is required to prove that such remedies have not been exhausted or, failing that, to indicate what remedies need to be exhausted or why such remedies have not worked.[FN1] In this case, the Dominican government has not given a concrete response on this matter and over the four-year period it has limited itself to indicating only "that domestic remedies are being exhausted", without specifying which were the remedies in question. Assuming that the domestic remedies have not been exhausted, the Commission considers that since May 4, 1989, the date of Mr. Lizardo's arrest, plenty of time has passed without a decision having been made on the aforementioned remedies, resulting in an unwarranted delay in the administration of justice, as set forth in the exception to the prior exhaustion of domestic remedies contained in Article 46(2.c) of the Convention and Article 37 (2.c) of the Regulations.

[FN1] In this regard, the Inter-American Court on Human Rights indicated the following in the preliminary exceptions to the Velásquez Rodríguez case: "... that the State alleging that [the remedies] have not been exhausted is responsible for indicating the internal remedies that have yet to be exhausted and their effectiveness." Decision of June 26, 1987, paragraph 88, page 77.

29. The Inter-American Court on Human Rights has indicated the following in this regard: "...when certain exceptions to the rule that applies when domestic remedies have not been exhausted are invoked — such as the ineffectiveness of such remedies or the lack of proper legal proceedings — not only is it being stated that the aggrieved party is not compelled to file such appeals, but also the State involved is indirectly being accused of an additional violation of its obligations under the Convention. Under such circumstances, the domestic remedies issue gets very close to the heart of the matter." [FN2] However, the use of domestic remedies in the case of Mr. Luis Lizardo Cabrera was unsuccessful and places the victim in a state of defenselessness, which is why the Commission must take cognizance of this case.

[FN2] Ibid, paragraph 91, p. 79.

30. For his part, the claimant believes to have used the domestic remedies provided by the laws of the Dominican Republic, inasmuch as four habeas corpus petitions ordering the release of Mr. Luis Lizardo Cabrera were granted in different courts and such judicial decisions were disobeyed (copies of these documents are in the file before the Commission). The Commission therefore believes that the requirement that domestic remedies be exhausted, set forth in Article 46 (1.a) of the Convention, has been fulfilled.

31. The six-month period provided for in Article 38 (1) of the Regulations of the IACHR (*ratione temporis*) for presentation of the complaint to the Commission, counted from the date on which the presumed victim whose rights were violated has been notified of the final decision (*res judicata*), does not apply since the case falls under the exception set forth in Article 37 (2.c) of the Regulations, which indicates that the delay will be a reasonable period of time, in the Commission's judgment, as from the date on which the presumed violation of rights has occurred, considering the circumstances of each specific case (Article 38.2).

32. The grounds for the complaint by their nature could be resolved through the application of the friendly settlement procedure set forth in Article 48 (1.f) of the Convention and Article 45 of the Regulations, for which reason the Commission places itself at the disposal of the parties with a view to reaching a friendly settlement on the matter based on respect for human rights.

33. In order to verify the facts, the Commission may examine the complaint lodged and if necessary and advisable shall carry out an investigation, for the effective conduct of which it shall request, and the States concerned shall furnish, all necessary facilities, as set forth in Article 48 (1.d) of the American Convention.

REQUEST FOR PRECAUTIONARY MEASURES

34. Taking into account the communication of February 7, 1995, in which the petitioners indicate that Mr. Luis Lizardo Cabrera's health is deteriorating as a result of a gastrointestinal disease and the difficult conditions he faces in prison, the Commission considers it necessary that the government immediately adopt precautionary measures that will enable Mr. Lizardo to recover his health. The following request is based on the provision concerning precautionary measures contained in Article 29 of the IACHR's Regulations.

Taking into account the facts set out above the Inter-American Commission on Human Rights, resolved:

1. To declare this case admissible.
2. To conduct an on-site investigation for the purpose of verifying the detention conditions to which Mr. Luis Lizardo Cabrera is being subjected, developments in the state of his health, and the procedural status of the judicial proceedings against him. In addition, it will investigate and gather any other evidence that will help it to form an opinion on the substance of the matter.
3. For the purposes of the investigation resolved above, to request that the Government of the Dominican Republic furnish the members of this Commission appointed for this purpose and their colleagues all necessary facilities and any that may be requested.
4. To ask the Government of the Dominican Republic to take precautionary measures to guarantee the physical, mental, and moral integrity of Mr. Luis Lizardo Cabrera and to report immediately on the measures adopted to this end, measures that will be the exclusive responsibility of the government, inasmuch as they constitute an obligation thereof that may not be delegated.

5. To place itself at the disposal of the parties, with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in the American Convention. To this end, the Commission invites the parties to a meeting at the headquarters of the IACHR to be held on March 21, 1995.

6. That the IACHR will include the discussion of this case in its April 1995 special session, including the result of the friendly settlement.

7. That through the Secretariat, the parties concerned will be notified of this resolution.

35. On February 21, 1995, the Commission conveyed its resolution on the admissibility of the case to the parties.

36. On April 24, 1995, the Government responded to the report adopted by the IACHR and provided the following information:

Copy of a resolution dated January 28, 1994, called "qualifying decision", issued by the Court of Investigation and Arraignment of the Fifth Division of the National District. This Court stated that subsequent to the summary investigation undertaken, there was evidence of guilt against Mr. Lizardo for the crime of bearing and owning a firearm and it agreed to send the information to the competent criminal court so that he could be tried for this crime. (This investigation is about the facts occurred in may, 1989).[FN3]

Copy of a letter sent by the Commander of the Secret Department to the Commander of the Crime and Offense Investigation Department, both of the National Police, forwarding money found in the hands of Luis Lizardo Cabrera at the time of his arrest.

Copy of Luis Lizardo Cabrera's statement to the National Police made on May 8, 1989, four days after his arrest.

Copy from the Court of Investigation and Arraignment of the Second Division of the National District, certifying the existence of a case on file number 78-88 dated on July 18, 1989, which reads: "Mr. Luis Lizardo Cabrera and others are accused of violating several articles of the Criminal Code. These articles establish criminal offenses for association and robbery with aggravated circumstances, violations that are different from those in the IACHR's File". (This certification is about the facts occurred in september, 1988).[FN4]

[FN3] The information placed in parenthesis reflects IACHR's observations.

[FN4] The information placed in parenthesis reflects IACHR's observations.

37. After sending the government's response to the petitioners on April 29, 1995, and repeated demarches with the government authorities, given the lack of a response to the request to visit the Dominican Republic and the unsuccessful offer of a friendly settlement, the

Commission began to consider the merits of the case pursuant to Article 50 of the American Convention.

38. During its 90th regular session (September 1995), the Commission approved Report No. 9/95, pursuant to Article 50 of the Convention, and forwarded it to the Government of the Dominican Republic on September 25, 1995, granting a three-month period for the Government to adopt the measures needed to remedy the situation.

39. Upon expiration of the three-month period noted in the foregoing paragraph, on January 4, 1996, the Government of the Dominican Republic requested a 30-day extension for adopting the appropriate measures.

40. By note of January 24, 1996, the Government invited the IACHR to visit the Dominican Republic to investigate case 10.832, involving Mr. Luis Lizardo Cabrera.

41. During its 91st regular session (February 26 to March 8, 1996) the Commission decided to accept the Government's invitation, and in this connection designated the Special Delegation, which was to be made up of Dean Claudio Grossman, Chairman of the IACHR, and Bertha Santoscoy, Esq., Specialist in charge of matters in the Dominican Republic.

42. The investigative visit was carried out March 14-17, 1996. In the course of that visit, the Chairman of the Commission and the attorney in charge of the country interviewed representatives of the judicial and penitentiary system. The IACHR Delegation also visited the "Najayo" prison and met privately with Mr. Luis Lizardo Cabrera. Later the Delegation members spoke with Mr. Cabrera's wife and legal representatives in this case.

43. At its regular session of September 30 to October 20, 1996, the Commission analyzed the information obtained during its investigative visit to the Dominican Republic and considered that there was no new evidence that would suggest the absence of the human rights violations described in Report N° 9/95.

44. After the deadline cited in paragraph 38 of the present report had expired, the Dominican Republic reported in a note dated February 20, 1997 that Luis Lizardo Cabrera had escaped from the Najayo Model Prison in San Cristobal Province and at the present time is still at large. Furthermore, the Commission did not receive any information from the family members or lawyers of Mr. Cabrera that altered the situation.

45. During its 98th Regular Session (February-March 1998), the Commission decided to transmit Report N° 35/96 to the Government of the Dominican Republic, establishing a period of 30 days within which the State must take the necessary steps to resolve Luis Lizardo Cabrera's situation pursuant to the recommendations set forth in the present report.

EXAMINATION OF THE CASE

POSITION OF THE PARTIES

A. PETITIONER

46. The petitioner claims that the imprisonment of Luis Lizardo Cabrera has become illegal and arbitrary inasmuch as the National Police did not comply with the judicial decisions ordering his release.

47. In addition, the petitioner considered that Article 5 of the American Convention had been violated. The petitioner believed that the continued imprisonment of Mr. Lizardo Cabrera constituted a form of torture or cruel, inhuman, and degrading treatment. In addition, the petitioner asserted that the Dominican habeas corpus law and Article 8 of the Constitution of the Dominican Republic had been violated.

B. GOVERNMENT

48. The government alleged that the domestic remedies had not been exhausted because the investigation into the events in which Mr. Lizardo allegedly participated remained open before a court of investigation and arraignment.

49. The government, in the processing of this case, did not dispute the fact that four judicial decisions ordering the release of Mr. Lizardo had been handed down. Nor did it deny the fact that the National Police authorities had failed to comply with said judicial decisions.

50. The government did not provide detailed information on the proceedings involving Luis Lizardo Cabrera. It only supplied a copy of a resolution dated January 28, 1994, called "qualifying decision", issued by the Court of Investigation and Arraignment of the Fifth Division of the National District, by virtue of which, following the summary investigation undertaken, evidence of guilt against Mr. Lizardo for the crime of bearing and owning a firearm was said to have been found and it was agreed that the information would be sent to the competent criminal court so that he could be tried for this crime. In addition, the Government supplied a copy of a certification from the Court of Investigation and Arraignment of the Second Division attesting to the existence of the file 78-88, accusing Mr. Lizardo Cabrera of Criminal Association and Robbery with aggravated circumstances, violations that following the Government's arguments were different from those in the IACHR's file number 10.832.

RELEVANT PROVISIONS IN DOMESTIC DOMINICAN LAW

Constitution of the Republic

51. Article 8 of the Constitution of the Dominican Republic recognizes as a principal purpose of the State to provide for the effective protection of human rights. The protection of the right to physical integrity is provided for in paragraph 1 of the provision that prohibits any penalty or procedure that is degrading or implies the loss or diminishment of the physical integrity or health of the individual.

52. Personal liberty is protected under paragraph 2 of the aforementioned provision,[FN5] while paragraph 2(j) of the same article guarantees the right to a fair trial.

[FN5]Article 8: ... To guarantee the accomplishment of these purposes, the following regulations are established: ...(2) Individual security. As a result:

(c) Any person deprived of his or her freedom without cause or without legal formalities, or outside the cases provided for under the laws, will be released immediately at his request or that of any other person.

Habeas Corpus Law

53. Article 19 of the Habeas Corpus Law (No. 5353) of October 22, 1914, provides:

Once the judge, court, or tribunal has ordered the release, no public official shall refuse to comply with the release order under any circumstances. Any public official who opposes fulfillment of the order shall be punished in accordance with Articles 114 and following of the Penal Code and shall be personally liable to the interested party for damages caused, at the rate of no less than one hundred pesos for every day that he remains imprisoned after the warrant has been issued.[FN6]

[FN6] Under Article 114 of the Penal Code, any public employee, agent, or delegate of the government who has ordered or committed an act against individual liberty shall be demoted. Due obedience is cause for dismissal of liability. Article 28 of the Code of Criminal Procedure establishes that a public employee is obliged to report any crime or minor offense of which he has knowledge.

Code of Criminal Procedure

54. Article 420 of the Code of Criminal Procedure provides as follows:

On penalty of prosecution for arbitrary arrest, prison directors shall not receive or retain in prison any individual without a warrant of arrest issued under the law and according to the procedures set forth therein or an ordinance from the qualifying chamber or a verdict of guilty...

55. Article 432 of the same code provides, under the heading "Means of ensuring individual liberty against illegal arrests or other arbitrary acts" that:

Any prison director or official in charge of prosecution and any investigating judge is required, on his own initiative or by virtue of the notice he may have received, subject to prosecution as an accomplice to arbitrary arrest, to proceed immediately to the place (where the detainee is being held) and have the detainee released or, if a legal motive for the detention is alleged, to have it brought before the competent judge. A written record will be kept of everything.

WHEREAS:

56. The petition contained an account of facts supported by several pieces of evidence. In its response to the original petition, the government did not discuss the facts presented by the petitioner. Nor did the government deny the validity of the evidence submitted. Its position was that the case was being investigated in the domestic jurisdiction and that the domestic remedies had therefore not been exhausted.

57. If a government duly summoned by an international organization appears as the Dominican Republic has done without substantially or pertinently disputing the facts presented in the petition and if such facts seem to be supported by logical and consistent evidence not disputed by the government, then such evidence is sufficient for the facts presented by the petitioner to be considered established.

58. In accordance with what was stated, the Commission considers the following facts established:

(a) Luis Lizardo Cabrera was arrested on May 4, 1989 accused of throwing an explosive device at the headquarters of the Dominican American Institute.

(b) On four occasions, July 17, 1989, November 30, 1989, July 16, 1990, and August 31, 1992, various courts ordered the unconditional release of Mr. Luis Lizardo Cabrera.

(c) The judicial decisions were disobeyed by the National Police, claiming "police regulations" and the fact that Mr. Lizardo Cabrera represented "a danger to the country" to justify the contempt of court.

(d) On January 28, 1994, the Court of Investigation and Arraignment of the Fifth Division of the National District ordered the trial of Mr. Lizardo Cabrera for the crime of illegally bearing and owning firearms, perpetrated in 1989.

(e) At the end of 1994 and as a consequence of a riot at the place where Mr. Lizardo Cabrera is imprisoned, he was held in solitary confinement for seven days without being allowed food or drink.

59. The petitioner reported that numerous provisions of Dominican domestic law have been infringed, such as those of the Habeas Corpus Law and Article 8 of the Constitution. The Commission noted that it was not competent to evaluate whether such infringement had occurred. Conversely, it did have jurisdiction to determine whether the Dominican State had fulfilled its obligations under the American Convention on Human Rights.

60. The case under review brought up several relevant points of law. The Commission was required to determine whether or not:

(1) the continued imprisonment of Mr. Luis Lizardo Cabrera after four judicial decisions ordering his immediate release were handed down:

a. constitutes illegal and arbitrary detention pursuant to Articles 7.2 and 7.3 of the American Convention.

b. constitutes torture or degrading treatment pursuant to Article 5 of the American Convention.

- c. constitutes a violation of the right to a hearing by a competent, independent, and impartial tribunal, recognized by Article 8.1 of the American Convention.
- d. constitutes a violation of the right of the person accused of a criminal offense to be presumed innocent so long as his guilt has not been proven according to law (Article 8.2 of the American Convention).
- e. constitutes a violation of the right to judicial protection set forth in Article 25 of the American Convention.

(2) the new trial of Mr. Lizardo for facts occurred in 1988 and contained in the file number 78-88:

- a. constitutes a violation of the right to be tried within a reasonable time or to be released without prejudice to the continuation of the proceedings, which is established in Article 7.5 of the Convention.
- b. constitutes a violation of the right to judicial guarantees established in Article 8.1 of the American Convention.
- c. constitutes a violation of the right of every person accused of a criminal offense to be presumed innocent as long as his guilt has not been proven, a right set forth in Article 8.2 of the American Convention.

(3) the solitary confinement to which Mr. Lizardo Cabrera was subjected constitutes torture or inhumane or degrading treatment under the terms of Article 5 of the American Convention.

The Commission reviewed each provision of the Convention it considered to have been violated by the Dominican State.

1. Violation of Article 7 of the American Convention on Human Rights

1.1 Illegal detention:

61. Article 7.2 of the American Convention provides:

No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.

62. According to the Dominican Constitution, no one may be deprived of personal liberty except by virtue of an order issued by the competent judicial authority, unless the person is caught in flagrante delicto.

63. The Dominican State did not provide any information that would allow the Commission to conclude that Mr. Lizardo's deprivation of liberty was justified pursuant to the requirements set forth in Article 7.2 of the Convention. The file documents forwarded by the government were insufficient in this respect. The Commission established that the deprivation of liberty of Mr. Lizardo continued despite the fact that four courts, at different times, had ordered his immediate release. The Commission concludes that Mr. Lizardo's detention was illegal.

1.2 Arbitrary arrest

64. Article 7.3 of the American Convention provides:

No one shall be subject to arbitrary arrest or imprisonment.

65. The scope of the term arbitrary has been established by the practice of numerous international bodies. The United Nations Commission on Human Rights has maintained that the term arbitrary is not synonymous with illegal and that it denotes a broad concept. An arrest consistent with the law may be arbitrary. According to the U.N. Commission, the arrest is arbitrary when it occurs:

- (a) for reasons or according to procedures other than those prescribed by the law or
- (b) pursuant to a law the basic purpose of which is incompatible with respect for the individual's right to liberty and security.[FN7]

[FN7] U.N. Commission on Human Rights, *Pietroroia v. Uruguay*, paragraphs 2.2 and 2.5, quoted by Daniel O'Donnell in "La Protección Internacional de los Derechos Humanos" [International protection of human rights], Andean Jurists Commission, 1988.

66. The Inter-American Commission has established that the term "arbitrary" is synonymous with "irregular, abusive, contrary to law". It has considered to be arbitrary any detention by the government of any person who has already served the court-imposed sentence or whose release has been ordered by a court and the imposing of measures to deprive a person of liberty for security reasons.[FN8]

[FN8] Report on the Human Rights Situation in Argentina, 1980, page 153; Report on the Human Rights Situation in Cuba, 1983, page 179.

67. In the case under review, the Commission considers that the reasons upheld by the National Police of the Dominican Republic to keep Mr. Lizardo in prison after his release was ordered by court decision are incompatible with those prescribed by law.

68. In addition, the Commission considers that the arrest of a person can only be justified if he is suspected of having engaged in behavior contrary to legal rights estimated as socially valuable in a democratic society. The Commission notes that, inasmuch as four courts concluded that Mr. Lizardo Cabrera should be released, suspicion against him ceased to exist and his arrest became arbitrary.

1.3 Right to trial within a reasonable time or to be released

69. Article 7.5 of the American Convention provides:

5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

70. The right to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings imposes on the State the duty to give priority to the processing of the criminal trial in the case of persons deprived of liberty.[FN9] The time limitation is established not in the interest of justice but in the interest of the accused.

[FN9] European Human Rights Court, Wemhoff case, decision of June 27, 1968, Series A No. 7 p. 22 & 17; European Commission on Human Rights, Wouklan Moudefo case, report of July 8, 1987, page 19, paragraph 73.

71. In addition, the rationality of Article 7.5 is that an individual must be released as soon as his continued imprisonment stops being reasonable, that is, as soon as the deprivation of liberty goes beyond the limits of the sacrifice that can reasonably be required from a person who is presumed innocent.[FN10]

[FN10] European Human Rights Court, Wemhoff case, decision of June 27, 1968, Series A No. 7 p. 22 & 5.

72. The determination of what is meant by being brought "promptly" before a judge or to be tried "within a reasonable time" should be made while taking into account the particularities of each case. In the case at hand, the Commission notes that from the time that Mr. Lizardo's detention became arbitrary, five years passed until the decision was handed down ordering his trial based on evidence against him for the crime of illegally bearing firearms. the lack of penal action in the case of Mr. Lizardo is a flagrant denial of justice.

73. The Commission is of the opinion that the excessive delay in bringing new charges violates his right to be brought promptly before a judge. It furthermore considers that such delay is incompatible with the duty of the State to diligently proceed with a criminal trial in the case of persons deprived of their liberty.

2. Violation of Article 5 of the American Convention

2.1 Scope of Article 5 of the Convention

74. Article 5 of the American Convention on Human Rights provides as follows:

1. Every person has the right to have his physical, mental, and moral integrity respected.

2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.

75. The Convention does not establish criteria to define what is understood by torture or cruel, inhuman, or degrading punishment or treatment. With regard to the concept of torture, the Inter-American Convention to Prevent and Punish Torture, ratified by the Dominican Republic, establishes:

... (T)orture shall be understood to be any act intentionally performed whereby physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish.[FN11]

[FN11] See Article 2 of the Convention.

The following shall be held guilty of the crime of torture:

a. A public servant or employee who acting in that capacity orders, instigates or induces the use of torture, or who directly commits it or who, being able to prevent it, fails to do so.

b. A person who at the instigation of a public servant or employee mentioned in subparagraph (a) orders, instigates or induces the use of torture, directly commits it or is an accomplice thereto.[FN12]

[FN12] See Article 3 of the Convention.

76. Neither the American Convention nor the Convention to Prevent and Punish Torture establish what should be understood by "inhuman or degrading treatment" or where the border is between torture and inhuman or degrading treatment.

77. With regard to the concept of inhuman and degrading treatment, the European Commission on Human Rights has indicated that "inhuman treatment is that which deliberately causes severe mental or psychological suffering, which, given the particular situation, is unjustifiable" and that "treatment or punishment of an individual may be degrading if he is severely humiliated in front of others or he is compelled to act against his wishes or conscience".[FN13]

[FN13] Yearbook of the European Convention on Human Rights, The Greek Case, Chapter 4, page 186. 1969.

78. On the same subject, the European Human Rights Court has indicated that for treatment to be "inhuman or degrading" it has to attain a minimum level of severity. The evaluation of this "minimum" level is relative and depends on the circumstances in each case, such as the duration of the treatment, its physical and mental effects, and, in some cases, the sex, age, and health of the victim. The European Court has further expressed that the prohibition against torture and inhuman or degrading treatment is absolute, regardless of the victim's conduct.[FN14]

[FN14] European Human Rights Court, case of Ireland against the United Kingdom, Series A No. 25 paragraphs 162 and 163.

79. With regard to the conceptual difference between the term "torture" and "inhuman or degrading treatment", the European Commission on Human Rights has indicated that the term "torture" includes "inhuman treatment", that the concept of "inhuman treatment" includes that of "degrading treatment",[FN15] and that torture is "inhuman treatment" with a purpose, which is to obtain information or confessions, or to inflict punishment, and is generally an aggravated form of inhuman treatment".[FN16]

[FN15] Yearbook of the European Convention on Human Rights No. 12, year 1969, page 186. Greek case.

[FN16] Ibid.

80. In the view of the European Human Rights Court, the essential criterion to distinguish between one concept and the other "primarily results from the intensity of the suffering inflicted".[FN17] and [FN18]

[FN17] European Human Rights Court, case of Ireland against the United Kingdom, Series A No. 25, paragraph 167 *infra*.

[FN18] The Court supported this criterion in the text of Resolution 3452 (XXX) adopted by the United Nations General Assembly on December 9, 1975. The Declaration against Torture defines this concept as follows: "Torture constitutes a deliberate and aggravated form of punishment or cruel, inhuman or degrading treatment".

81. The Inter-American Convention to Prevent and Punish Torture does not use as a criterion in defining torture the intensity or degree of physical or mental suffering experienced by the victim. The criteria the Convention establishes to qualify an act as torture are that:

- (a) it is an intentional act or method;
- (b) it inflicts physical or mental pain or anguish on the person;
- (c) it has a purpose;
- (d) it is perpetrated by a public servant or employee or by a private person at the instigation of a public servant or employee.

82. The Commission considers that both the American Convention and the Inter-American Convention to Prevent and Punish Torture give it certain latitude to assess whether, in view of its seriousness or intensity, an act or practice constitutes torture or inhuman or degrading punishment or treatment.

83. The Commission considers that such classification should be done on a case-by-case basis, taking into account the peculiarities thereof, the duration of the suffering, the physical and mental effects on each specific victim, and the personal circumstances of the victim.

84. The Commission made reference separately to the continued imprisonment of Mr. Lizardo and to his solitary confinement in order to determine whether Article 5 of the American Convention was violated.

2.2 The continued imprisonment of Mr. Lizardo constitutes torture

85. With regard to the continued imprisonment of Mr. Lizardo, the Commission believes that this act constitutes torture inasmuch as:

- (a) Imprisonment has been imposed as a deliberate act by the police authorities who justified it citing "police regulations". According to the petitioners, the police has also argued that it is due to "superior orders" or because Mr. Lizardo represents "a danger to the country."
- (b) The measure affecting Mr. Lizardo constitutes a severe attack on his mental and moral integrity. The severity derives from the constant uncertainty over Mr. Lizardo's future, which has lasted six years. The Commission is also taking into account that the origin of the state of uncertainty is found in an entirely discretionary act by State agents who have exceeded their authority and competence.
- (c) The Commission understands that the justifications argued by the Dominican National police to keep Mr. Lizardo in prison illustrate the purposes of the act of torture to which Article 2 of the Inter-American Convention to Prevent Torture refers.
- (d) The measure applied to Mr. Lizardo has been imposed by agents of the Dominican government who, while acting beyond their authority, have done so in the course of official duties.

2.3 The solitary confinement to which Mr. Lizardo Cabrera was subjected constitutes torture

86. With regard to the solitary confinement imposed on Mr. Lizardo, the Commission believes that it too constitutes torture inasmuch as:

- (a) The solitary confinement was deliberately imposed on Mr. Lizardo.

(b) The measure was imposed under circumstances in which Mr. Lizardo's health was in a delicate state. Mr. Lizardo had previously been involved in a hunger strike that lasted 36 days. The Commission has received information that Mr. Lizardo was suffering from a gastrointestinal illness resulting from the conditions of his imprisonment. The solitary confinement lasted longer than was prudent (seven days) and was extreme in that he was deprived of food and drink and was not allowed access to sunlight. The circumstances of this solitary confinement together with Mr. Lizardo's personal circumstances lead the Commission to conclude that the measure seriously endangered Mr. Lizardo's physical integrity.

(c) The solitary confinement was imposed as a consequence of a riot that occurred in the prison in which Mr. Lizardo is being held. The Commission understands that the measure was imposed for the purpose of personal punishment.

(d) The act of torture is attributable to the State inasmuch as it was perpetrated by its agents acting in the course of official duties.

87. The Commission is taking into account that in the ruling handed down on the substance of the *Velásquez Rodríguez* case, the Inter-American Court on Human Rights qualified coercive solitary confinement per se as cruel and inhuman treatment.[FN19] However, it considers that, given the specific circumstances of this case, Mr. Lizardo's solitary confinement falls within the concept of torture defined by the Inter-American Convention on Torture. The Commission concludes that the Dominican State violated Articles 5.1 and 5.2 of the American Convention to the detriment of Luis Lizardo Cabrera.

[FN19] Inter-American Court on Human Rights, *Velásquez Rodríguez* case, decision on the substance, July 29, 1988, paragraph 156.

3. Violation of Article 8 of the American Convention

3.1 Right to judicial guarantees

88. Article 8.1 of the Convention provides as follows:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal or Judge, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

3.2 Applicability of Article 8 to the case under review

89. The Commission considers that the term "accusation of a criminal nature" constitutes an autonomous notion in the American Convention that must be interpreted according to the treaty's own rules of interpretation.[FN20]

[FN20] European Human Rights Court, case of Engel et al., decision of June 8, 1976, Series A No. 22, page 34 & 81; Konig case, decision of June 28, 1978, Series A No. 27, page 29 and following; Deweer case, decision of February 27, 1980, Series A No. 35, page 22.

90. The Commission observes that the mere fact that a State does not qualify a specific conduct as a crime does not mean that Article 8, paragraph 1, of the Convention remains, per se, unapplied. Moreover, if a State defines a certain conduct as a crime, the Commission believes that the application of Article 8 is automatic.

91. In the case under review, the Commission notes that Mr. Lizardo Cabrera was first charged with having participated in attacks using explosive devices that resulted in one death and then with illegal possession and bearing of firearms.

92. Both conducts are defined as crimes under Dominican legislation. The Commission believes that, on the basis of the previously described criteria, the application of Article 8 of the Convention to this case is automatic.

3.3 Scope of the right to judicial guarantees

93. The Inter-American Court on Human Rights has maintained that Article 8 of the Convention establishes "a set of requirements that must be observed in the procedural jurisdictions to be able to speak of genuine and proper judicial guarantees according to the Convention".[FN21] It has also stated that said provision "covers the conditions that must be fulfilled to ensure the adequate defense of those whose rights and obligations are under legal consideration".[FN22]

[FN21] Inter-American Court on Human Rights, Advisory Opinion OC-9/87 of October 6, 1987, Judicial Guarantees under States of Emergency (Articles 27.2, 25, and 8 of the American Convention on Human Rights), paragraph 27.

[FN22] Ibid, paragraph 28.

94. The Commission considers that in the case under review two basic guarantees of a fair trial have been violated to the detriment of Mr. Lizardo, to wit, the right to a hearing by a competent, independent, and impartial tribunal and the right to be tried within a reasonable time.

3.4 Guarantee to a hearing by a competent, independent, and impartial tribunal

95. It is an established fact that the police authorities did not carry out the judges' orders for the release of Mr. Lizardo. It has also been established that no judicial action was undertaken to punish those responsible for this contempt of court. The Commission believes that this contempt of court and the impunity of those responsible for it constitute undue interference with the independence of the courts.

96. The basic principles regarding the independence of the judiciary establish that there should be no inappropriate interference with the judicial process and that the decisions of the courts should not be subject to review, except in those cases in which the law grants the authorities the right to commute or reduce sentences. Article 8.1 of the American Convention can be interpreted in light of these principles. The Commission believes that in the case of contempt, the government authorities unduly granted themselves the authority to review judicial decisions, which constitutes a violation of internal legislation and has repercussions on the victim and his rights under the Convention.

3.5 Guarantee to a hearing within a reasonable time

97. The rationale for this guarantee is that no one may be tried unless the proceedings include activity by both the prosecution in gathering incriminating evidence and the defense in refuting such evidence. Both activities must take place within a reasonable time.

98. While the State has the right to exercise its punitive authority to sanction behavior considered to be criminal, the natural limit to its action is respect for human rights. The legitimacy of the values for which the State dispenses criminal protection does not justify an undue extension of the criminal proceedings because it places the individual involved in a constant state of uncertainty over the fate of his trial.

99. In this case, the right to a hearing within a reasonable time has another connotation. This right presupposes access to the court so that the criminal accusation made against the individual can be substantiated. The right of access to the court is one of the basic judicial guarantees set forth in Article 8.1 of the Convention.

100. Access to the court must be expeditious. In this sense, the expression "reasonable time" used in Article 8.1 is analogous to the expressions "promptly" and "reasonable time" used in Article 7.5 in the case of people deprived of liberty. The meaning of the term "reasonable time" in Article 8.1 may be different in the context of Article 7.5. This difference lies in the fact that the diligence that may be required from the authorities to initiate and conduct a trial is greater in the case of a person deprived of liberty. In this case, establishing such a difference is irrelevant. Mr. Lizardo was under illegal and arbitrary arrest for five years before he was accused of a specific crime in a court of law. The Commission considers that Article 8.1 of the American Convention has been violated.

3.6 Violation of the right to be presumed innocent so long as guilt has not been proven according to law

101. Article 8.2 of the Inter-American Convention on Human Rights provides as follows:

"Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law".

102. Article 8.2 requires States to gather incriminating material against the person accused of a criminal offense, for the purpose of establishing his guilt. The establishment of guilt requires a judicial process whereby a person is accused, tried, convicted, and sentenced for a crime.

103. In the case under review, Mr. Lizardo Cabrera remained in detention for seven years without his guilt having been legally established by the Dominican State.

104. The prolonged detention of Mr. Lizardo is not compatible with the right to be presumed innocent. Notwithstanding the fact that no judicial sentence has been rendered legally establishing his guilt with regard to the acts that allegedly occurred in 1989, he was treated as if such guilt had been established. This treatment is incompatible with the one an innocent person in a democratic society deserves.

4. Violation of Article 25 of the American Convention

105. Article 25.1 of the Convention provides as follows:

"Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the State concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties".

106. Article 25.2(c) of the Convention provides as follows:

"The States Parties undertake:

(c) to ensure that the competent authorities shall enforce such remedies when granted".

107. The Inter-American Court has interpreted Article 25.1 to mean that not only simple and prompt recourse is guaranteed, but also effective recourse to protect the rights recognized in the Convention.[FN23] Indeed, Article 25.1 incorporates the principle, recognized in international human rights law, of the effectiveness of the instruments or procedural means intended to guarantee such rights.[FN24] It is not enough for the legislation of the State to formally recognize the remedy in question, but rather the possibilities of an effective remedy must be developed and such a remedy must be substantiated in accordance with the rules of due legal process.[FN25]

[FN23] Inter-American Court on Human Rights, *Judicial Guarantees in States of Emergency* (Articles 27.2, 25, and 8 of the Inter-American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987, Series A No. 9, paragraph 23.

[FN24] *Ibid*, paragraph 24.

[FN25] Inter-American Court on Human Rights, *Velásquez Rodríguez, Fairén Garbi, and Solís Corrales and Godínez Cruz Cases*, Preliminary Exceptions, decisions of June 26, 1987, paragraphs 91, 90, and 92, respectively.

108. The States' obligation to provide effective remedies includes the obligation, established in paragraph (c) of Article 25.2 of the Convention, to ensure that competent authorities shall enforce any decision in which the remedy has been deemed proper.

109. Article 25.1 recognizes the procedural institution of amparo, understood as the simple and brief judicial procedure whose purpose is the protection of all the rights recognized in the Convention and in the constitutions and laws of States Parties. Article 7.6 of the American Convention recognizes the remedy of habeas corpus, a form of remedy of amparo, whose specific characteristic is the protection of individual liberty.[FN26]

[FN26] Inter-American Court on Human Rights, Habeas Corpus under Suspension of Guarantees, Advisory Opinion OC-8/87 of January 30, 1987, paragraphs 32 and 34.

110. Both the effectiveness of the generic remedy established in Article 25 and the specific remedy established in Article 7.6 of the Convention may be impaired if, as the Court has said, the judiciary branch lacks the independence necessary to decide impartially and the means to execute its decisions, or if there is any other situation that constitutes justice denied as when there is an unwarranted delay in the decision or for any other reason the alleged injured party is not allowed access to judicial recourse.[FN27]

[FN27] Inter-American Court on Human Rights, Judicial Guarantees in States of Emergency (Articles 27.2, 25, and 8 of the American Convention on Human Rights), Advisory Opinion OC-9/87 of October 6, 1987, paragraph 24.

111. In the case under review, the judicial decisions ordering the release of Mr. Lizardo Cabrera were ineffective because the police authorities refused to execute such decisions and because the competent authorities did not sanction the contempt-of-court offense. The State did not guarantee Mr. Cabrera an effective remedy against the arbitrary deprivation of his liberty.

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112. Concludes that the State of the Dominican Republic has violated to the detriment of Mr. Lizardo Cabrera:

1. The right to personal integrity (Article 5 of the Convention), in relation to Article 1.1 of the Convention.
2. The right to personal liberty established in Article 7 of the Convention, in relation to Article 1.1 thereof.
3. The right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, established in Article 8.1 of the American Convention, in relation to Article 1.1 thereof.

4. The right to be presumed innocent so long as his guilt has not been proven according to law, established in Article 8.2 of the American Convention, in relation to Article 1.1 thereof.

5. The right to judicial protection recognized in Article 25 of the American Convention, in relation to Article 1.1 thereof.

113. The Inter-American Commission on Human Rights recommends the Dominican State:

1. To arrange for formal dismissal of charges against Mr. Luis Lizardo Cabrera.

2. To sanction the police authorities responsible for the contempt-of-court offense in relation to Mr. Lizardo Cabrera.

3. To make amends for the consequences of the measure that resulted in the violation of Mr. Luis Lizardo Cabrera's rights and grant the injured party fair compensation for the damages inflicted.