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Title/Style of Cause: Rodolfo Gerbert Asencios Lindo, Rodolfo Dynn timer Asencios Lindo, Marco Antonio Ambrosio Concha and Carlos Florentino Molero Coca v. Peru
Doc. Type: Decision
Decided by: Chairman: Carlos Ayala Corao;
First Vice Chairman: Robert K. Goldman;
Second Vice Chairman: Jean Joseph Exume.
Commissioners: Alvaro Tirado Mejia, Claudio Grossman, Helio Bicudo, Henry Forde.
Dated: 28 September 1998
Citation: Asencios Lindo v. Peru, Case 11.182, Inter-Am. C.H.R., Report No. 53/98, OEA/Ser.L/V/II.102, doc. 6 rev. (1998)
Represented by: APPLICANT: APRODEH
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I. THE EVENTS

1. Through a petition presented on June 23, 1992 to the Inter-American Commission on Human Rights (hereinafter "the Commission") by APRODEH, a nongovernmental organization, the Republic of Peru (hereinafter "Peru," "the State," or "the Peruvian State") was accused of violating the rights of Mr. Rodolfo Gerbert Asencios Lindo, Mr. Rodolfo Dynn timer Asencios Lindo, Mr. Marco Antonio Ambrosio Concha, and Mr. Carlos Florentino Molero Coca (hereinafter "the victims") by detaining and torturing them and then sentencing the first three to ten years in prison and the fourth to twelve years in prison. They were charged with terrorism in a trial totally lacking in due judicial guarantees and sentenced by "faceless" tribunals. The petitioner alleges that, as a result of the events mentioned above, the State violated the following rights of the victims: the right to personal integrity, espoused in article 5 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), the right to personal liberty, enshrined in article 7 of the Convention, and the right to a fair trial set forth in article 8 of the Convention.

II. PROCESSING BY THE COMMISSION

2. On July 30, 1993, the Commission opened the case, transmitted the relevant parts of the claim to the Peruvian State and requested information from the State, to be submitted within 90 days. The State responded on December 2, 1993, and the petitioner presented observations to that response on January 17, 1994. Both parties submitted additional information on several occasions.

III. POSITION OF THE PARTIES

A. The petitioner

3. The petitioner maintains the innocence of the victims, who are university students. The petitioner States that they were arrested on April 30, 1992 by DINCOTE officers. The arrests occurred on a public roadway, in the course of a police operation being carried out at a location known as "Devil's Curve" in the Villa El Salvador district of Lima. At the time of the arrest, the Asencios Lindo brothers were going to a relative's house, and Mr. Marco Antonio Ambrosio Concha and Mr. Carlos Florentino Molero Coca were waiting for public transport.

4. The petitioner alleges that after the arrest the victims were taken to DINCOTE, where they remained until May 14, 1994. During their detention, the victims were savagely tortured so they would incriminate themselves as terrorists and sign a Statement indicating that they had not been arrested on the street, but rather at a meeting of terrorists being held in the home of Mrs. Dolores Vargas Vergaray. The police later drew up a completely unfounded report accusing them of terrorism, and the Office of the Attorney General (Ministerio Público) filed the corresponding charges with the 43rd Criminal Court, which initiated the proceedings against them and issued warrants for their arrest.

5. The petitioner shows that upon completion of the preliminary investigations, both the Public Prosecutor and the 43rd Criminal Court determined that the victims were innocent. The judge, through a writ on August 19, 1992, ordered their immediate release. That writ was not executed, and the victims therefore remained in detention. Subsequently, in keeping with the provisions in the Peruvian Code of Criminal Proceedings, the 43rd Court sent the trial documents to the Special Division of the Superior Court, composed of "faceless" judges.

6. When the file had reached that higher body, a new "faceless" Superior Prosecutor (Fiscal Superior), without considering the earlier proceedings, requested that they be sentenced to 10 years in prison. The victims appeared in court on October 22, 23, and 24, 1992. Mr. Rodolfo Gerbert Asencios Lindo, Mr. Rodolfo Dynnik Asencios Lindo, and Mr. Marco Antonio Ambrosio Concha were sentenced to ten years in prison, while Mr. Carlos Florentino Molero Coca was sentenced to twelve years in prison, convicted of terrorism at a trial totally lacking in due judicial guarantees. Those sentences were appealed but that appeal was turned down on September 30, 1994, also by "faceless" judges of the Special Division of the Superior Court; as a result, the sentences were upheld.

7. The petitioner alleges that the conviction of the Asencios Lindo brothers was, essentially, the Peruvian State's retaliation for actions taken by their father as a lawyer, and that the conviction of Mr. Molero Coca was due, essentially, to retaliation by the State for actions taken by his father as a judge.

B. The State

8. The State maintains that the victims were arrested, tried, and convicted for committing terrorist acts.

IV. COMPETENCE OF THE COMMISSION

9. The Commission is competent to examine the petition in question. The petitioner is competent to appear before the Commission and has alleged serious violations by a State party of norms established in the Convention. The alleged events in the petition occurred when the obligation to observe and protect the rights established in the Convention was already in force in Peru.[FN1]

[FN1] Peru ratified the American Convention on Human Rights on July 28, 1978.

V. ADMISSIBILITY OF THE CASE

10. After establishing that the Commission is competent to hear this case, i.e. that with regard to the petition in question, the basic requirements governing its international responsibility to rule on alleged human rights violations have been met, the Commission is now set to determine the admissibility of this case, in light of the requirements established in articles 46 and 47 of the Convention.

V. Exhaustion of domestic remedies and timeliness of presentation

11. In the initial petition, the petitioner made no indication of the exhaustion of domestic remedies and subsequently argued that such remedies had been exhausted through the appeal of September 30, 1994, by "faceless" judges from the Special Division of the Superior Court, who declared there was no reason to annul the sentence. With that decision, the sentence handed down on October 24, 1992 was upheld.

12. The State has not questioned to the exhaustion of legal remedies in this case.

13. Based on the foregoing considerations, the Commission determines that the requirements established in articles 46(1)(a) and 46(1)(b) of the Convention have been met.

B. Procedural requirements

14. The petition fulfills the provisions of article 46(1)(d) of the Convention, regarding procedural requirements.

C. Duplication of proceedings and reproduction of a previously examined petition

15. The Commission understands that this petition is not pending in another international proceeding for settlement and does not reproduce a petition already examined by this or any

other international organization. Therefore, the requirements established in articles 46(1)(c) and 47(1)(d) have also been met.

D. Grounds for the petition

16. The Commission considers that, in principle, the written petition refers to events that could be characterized as a violation of rights protected in the Convention. Insofar as the petition is not manifestly groundless nor obviously out of order, the Commission finds that the requirements in article 47(b) and 47(c) of the Convention have been met.

VI. CONCLUSION

17. The Commission considers that it is competent to hear this case and that the case is admissible, in keeping with the requirements established in articles 46 and 47 of the Convention.

Based on these arguments of fact and of law and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible.
2. To notify the parties of this decision.
3. To continue to examine the merits of the case.
4. To place itself at the disposal of the parties concerned with a view to reaching a friendly settlement on the basis of respect for the human rights recognized in the Convention and to invite the parties to go on record regarding that possibility within two months.
5. To publish this report and include it in the annual report of the Commission to the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C. on September 28, 1998. (Signed): Carlos Ayala Corao, Chair; Robert K. Goldman, First Vice Chair; Jean Joseph Exumé, Second Vice Chair; and Alvaro Tirado Mejía, Claudio Grossman, Hélio Bicudo, and Henry Forde.