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Title/Style of Cause:	Jhonny Justino Peralta Espinoza v. Bolivia
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Decided by:	President: Jose Zalaquett; First Vice-President: Clare K. Roberts; Second Vice-President: Susana Villaran; Commissioners: Evelio Fernandez Arevalo, Paulo Sergio Pinheiro, Freddy Gutierrez Trejo, Florentin Melendez.
Dated:	12 March 2004
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Represented by:	APPLICANT: Jorg Alfred Stippel
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I. SUMMARY

1. On August 16, 2001, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received a petition lodged by Mr. Jörg Alfred Stippel (hereinafter “the petitioner”) which alleges the responsibility of the State of Bolivia (hereinafter, “the State” or “the Bolivian State”) for having subjected Mr. Jhonny Justino Peralta Espinoza to a trial that failed to observe due process guarantees and culminated in a judgment issued on August 21, 1992 in which he was sentenced to 30 years’ imprisonment for the crime of aggravated terrorism and criminal association under an executive order issued during the de facto government of General Hugo Banzer. Subsequently, the victim appealed to various judicial instances seeking a 10-year reduction in sentence based on a new law (Law 1768, Articles 132 and 133 of the Criminal Code) that entered into force in 1997, in which the maximum penalty for the crime of terrorism was reduced to 20 years.

2. The petitioner holds that the State is responsible for violation of the principle of freedom from ex post facto laws provided in Article 9 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and of the general obligation to respect and ensure the rights protected in the Convention established in Article 1(1) to the detriment of the alleged victim, Jhonny Justino Peralta Espinoza. As to admissibility of the matter, the State argued that the remedies under domestic law had not been exhausted and claimed that the petitioner had not waited for the decision on the appeal for review filed by the Public Defenders Service before lodging his petition with the IACHR. For his part, the petitioner argued that he had pursued and exhausted the available remedies for securing the reduction in sentence from 30 to 20 years in prison and that the appeal for review which the State mentions is

an exceptional recourse initiated in a new proceeding separate from the matter which had been rendered res judicata by a final decision.

3. In this report, the Commission examines the available information in the light of the American Convention and concludes that the petition does not state facts that tend to establish a violation of the rights guaranteed in the Convention. Therefore, the Commission decides that the petition is inadmissible in accordance with Article 47(b) of the American Convention; transmits the report to the parties; makes it public; and orders its inclusion in the Annual Report of the IACHR.

II. PROCESSING BY THE COMMISSION

4. On November 6, 2001 the IACHR opened the petition, assigned it number 0554/2001 in accordance with the Rules of Procedure that came into force on May 1, 2001, and transmitted the pertinent portions of the petition to the State, giving it two months to submit observations. On February 1, 2002 the Bolivian State requested an extension to present its observations. On February 20, 2002, the IACHR granted it an extension of one month.

5. On March 20, 2002 the State sent its observations, which were transmitted to the petitioner on March 26, 2002, who was given 30 days to submit his reply. On April 10, 2002 the petitioner sent his observations to the reply of the State, which were forwarded to the Bolivian State on May 24, 2002. In addition, on April 29, 2002, the Bolivian State sent information to the IACHR, which was forwarded to the petitioner on June 13, 2002.

6. On July 17, 2002 the petitioner submitted his observations to the information sent by the State, which were transmitted to the Bolivian State. On August 13, 2002 the State presented its observations and these were forwarded to the petitioner on September 3, 2002. On October 23, 2002 the petitioner sent his observations to the last communication of the Bolivian State, which were transmitted to the State on November 4, 2002.

7. On December 4, 2002 the State sought an extension to submit information on the situation of Jhonny Justino Peralta Espinoza. On December 19, 2002 the IACHR granted it an extension of one month. On July 3, 2003 the IACHR reiterated to the Bolivian State the request to provide information within one month. On July 29, 2003 the State sent its observations, which were transmitted to the petitioner on August 11, 2003. On October 20, 2003 the petitioner conveyed his observations, which were transmitted to the State on November 25, 2003. This was the last communication contained in the record.

III. POSITIONS OF THE PARTIES

A. Position of the petitioner

8. The petitioner asserts that in a ruling issued on August 21, 1992 Jhonny Justino Peralta Espinoza was sentenced[FN1] to 30 years in prison, in violation of Article 9 of the American Convention. [FN2] The petitioner says that as a result of a reform law passed in Bolivia (Law

1768 of March 10, 1997) the maximum penalty for the crime of terrorism was reduced from 30 to 20 years. [FN3]

[FN1] Mr. Jhonny Justino Peralta Espinoza was punished for the following acts: 1) the killing of Mr. Teofilo Nina Quispe by shooting him six times; 2) a dynamite attack on the police station at the United States Embassy in the Calacoto zone; 3) explosion of a dynamite charge as the retinue accompanying George Schultz, Secretary of State of the United States, was passing on the downhill lane of the highway; 4) a dynamite attack on the Honorable National Congress causing physical damages; and, 5) the killing of two United States citizens, Mr. Jeffrey Brent Ball and Mr. Todd Ray Wilson Burdenson, with a burst of bullets fired from a 9-mm submachine gun at the entrance to their home.

[FN2] The crimes provided in Executive Order 10426 of which Mr. Jhonny Justino Peralta Espinoza was convicted are as follows:

Article 132.- (Criminal association). Anyone who is part of a criminal association of four or more persons created with the intention of committing crimes shall be punished with six months' to two years' imprisonment or one month's to one year's labor.

The same penalty shall be imposed on anyone belonging to youth gangs intended to cause disturbances of the peace, outrage, injuries, or any other crime.

Article 133.- (Terrorism). Anyone who, in order to intimidate or terrorize all or part of a population or to provoke commotion or disorder, detonates bombs or explosive materials, spreads alarm, or threatens to cause a public disaster shall be punished with two to ten years' imprisonment.

[FN3] The aforementioned articles of the Criminal Code that amended the executive order provide:

Article 132.- (Criminal Organization) Anyone who is part of an association of three or more persons, organized in a permanent manner, with rules of discipline or control, intended to commit the following crimes: genocide; destruction or damage to state property or national heritage; abduction of minors or disabled persons; deprivation of liberty; mistreatment and torture; kidnapping; money laundering; manufacture of or trafficking in controlled substances; environmental crimes recognized in special laws; crimes against intellectual property; or use of commercial or business structures to commit such crimes, shall be punished with one to three years' imprisonment.

Leaders of such organizations shall be punished with two to six years' imprisonment.

The penalty shall be increased by one third if the organization uses minors or disabled person to commit the crimes mentioned in this Article, and if the member of the organization is a public official charged with prevention, investigation or prosecution of crimes.

Article 133.- (Terrorism) Anyone who takes part in, acts at the service of, or collaborates with an armed organization whose intention is to commit crimes against the common security, life, integrity of the person, freedom of movement, or property, in order to subvert the constitutional order or to keep the population or part thereof in a state of anxiety, alarm or collective panic, shall be punished with 15 to 20 years' imprisonment, without prejudice to imposition of the appropriate penalty for the commission of such crimes.

9. Consequently, the petitioner argues that the enactment of the new, more benign law had prompted Mr. Jhonny Justino Peralta Espinoza to seek a reduction in his sentence from 30 to 20 years. The foregoing notwithstanding, the petitioner adds that the principle of freedom from ex post facto laws was not applied even though the situation of Mr. Jhonny Justino Peralta Espinoza qualified for the only exception to the rule of non-retroactive application: a criminal law beneficial to the prisoner.

10. As to exhaustion of domestic remedies, the petitioner says that after the law was amended they sought a reduction in sentence with the Sixth Criminal Court. On October 9, 1998 the aforesaid court rejected the application of Law 1768 by means of decision 121/99. In response to this refusal, the petitioner appealed to the Second Criminal Chamber of the Superior Court of the District of La Paz, which, by Decision 354/99 of August 3, 1999, annulled the decision and ruled that the judge should issue a new decision. On August 28, 1999 the Sixth Criminal Court adopted decision 91/99, granting the reduction requested. In response to this, the Attorney General's Office (Ministerio Público) appealed to the Second Criminal Chamber of the Superior Court of the District of La Paz, which, by decision 598/99 of November 1, 1999, declared the request for a reduction in sentence presented by the petitioner to be inadmissible. The petitioner lodged a cassation appeal[FN4] against that judgment with the Supreme Court of Justice, which, on January 16, 2001, by means of Supreme Order 34, rejected the appeal without examining the merits of the case, merely arguing that it was legally unfounded. The petitioner lodged an indirect or incidental constitutional appeal with the Constitutional Court, which, by Constitutional Order 043/01 of February 15, 2001, approved the Supreme Court's rejection. With respect to the appeal for review[FN5] subsequently presented by the State to the Supreme Court of Justice on March 14, 2002, which was found inadmissible, the petitioner argues that said remedy was not interposed by the petitioner but by an attorney with the Public Defenders Service, who neither sought prior consent from, nor gave prior or subsequent notification of the remedy to, the supposed defendant, namely Mr. Jhonny Justino Peralta Espinoza. The petitioner further argues that the appeal for review invoked by the State entered into force after the events alleged in the petition to the IACHR occurred. Said remedy, the petitioners argue, is of an exceptional nature and initiates a new proceeding separate from the matter which had been rendered res judicata by a final decision.

[FN4] Article 299 of Executive Order 104.226 (of August 23, 1972) provides that cassation appeals are admissible against sentences that have been carried out. Said article provides: Article 299.- (Decisions against which the appeal is admissible). An appeal for annulment or cassation shall be admissible:

1.- Against orders (autos de vista) issued by courts of second instance that confirm, reverse or annul lower court judgments.

[FN5] The new Code of Criminal Procedure (Law 1970, published on March 25, 1999) entered into force on June 1, 2001, and provides the following at Article 421:

Article 421.- (Admissibility). An appeal for review of judgments shall be admissible at all times on behalf of the convicted person in the following cases:

5.- When a more benign criminal law is applicable retroactively;

B. Position of the State

11. The State argues in its communication of March 26, 2002 that the petition does not meet the requirement of prior exhaustion of domestic remedies, since the appeal for review provided by the new Code of Criminal Procedure (Law 1970) which entered into full force on May 31, 2001 remains pending.[FN6] The State says that:

... in the instant case Mr. Peralta Espinoza has not used all the appropriate remedies, having left pending a recourse that precisely concerns review provided by Article 421(5) of the new Code of Criminal Procedure in force since May 31, 2001, which provides: An appeal for review of judgments shall be admissible at all times on behalf of the convicted person in the following cases: 5) When a more benign criminal law is applicable...

[FN6] The new Code of Criminal Procedure was promulgated by Law 1970, which was ratified on March 25, 1999. This law entered into effect on May 31, 1999, the date of its publication in the Official Gazette. After a period of two years of legal vacation (*vacatio legis*), the preparation period for the full implementation of the new Code of Criminal Procedure, the law entered into force on June 1, 2001. This information is available in “Auditoria de la Democracia, 2002”, Mitchell A. Seligson, Department of Political Sciences, University of Pittsburgh. Accessible on the Internet at <http://www.enlared.org/bo/culturapolitica/cgconte/cgdocs/Resúmenes.ppt> Last visited on January 23, 2004.

12. Furthermore, in respect of the aforementioned appeal for review, the State says that it must be filed with the Supreme Court of Justice by the convicted person or their counsel. Accordingly, Mr. Peralta Espinoza was entitled to present this appeal and, moreover, the Office of the Public Prosecutor, the Enforcing Judge, and the Ombudsman could also have done so in representation of his interests. Thus, the State says that Mr. Jhonny Justino Peralta Espinoza has not exhausted the remedies provided under domestic law.

13. In support of this argument and in order to furnish new evidence, the State sent the IACHR a second communication on April 30, 2002, in which it attaches a copy of the appeal for review presented by the Public Defenders Service of Bolivia on March 14, 2002 on behalf of Mr. Jhonny Justino Peralta Espinoza, which was received by the Criminal Chamber of the Supreme Court on March 22, 2002.

14. In a communication of August 7, 2002 the State says that under Law 1970, causes in process shall continue to be governed by the previous Code of Criminal Procedure[FN7]. In this respect, in accordance with the previous Code, the criminal proceeding initiated against Jhonny Justino Peralta Espinoza would have concluded with cassation. Therefore, the appeal for review provided at Article 421 of the new Code of Criminal Procedure, is initiated as a new proceeding separate from the matter which had been rendered *res judicata* by a final decision because the appeal is of an exceptional nature. The review is commonly termed an appeal; however in reality it is not since it is filed and processed after the proceeding has concluded. Reaffirming the foregoing, the State adds that the cassation appeal was refused by Supreme Order No. 34 of

January 16, 2001 because such an appeal was not allowed at the judgment enforcement stage[FN8].

[FN7] In its first final provision the new Code of Criminal provides:

First.- (Entry into force). The instant Code shall enter fully into force twenty-four months after its publication and it shall apply to all causes initiated after this deadline expires.

[FN8] This is in accordance with Article 518 of the Code of Civil Procedure applicable to this case under Article 355 of the Code of Criminal Procedure.

15. In a communication of July 31, 2003 the State informs the IACHR about the Supreme Order issued by the Criminal Chamber of the Supreme Court of Justice on June 21, 2002, in which declares the appeal inadmissible because even though Law 1768 amended the penalty for the crime of terrorism, Mr. Peralta Espinoza had been convicted not only of the crime of aggravated terrorism, but also of unlawful criminal association, which merited the penalty of 30 years' imprisonment, a judicial decision based on actual overlapping of offences. According to the Supreme Court, this aspect constituted the chief grounds for its decision to declare the appeal for review inadmissible.

IV. ANALYSIS

A. Competence

16. The petitioner is entitled, in principle, under Article 44 of the American Convention to lodge petitions with the Commission. The petition names as an alleged victim an individual in respect of whom the Bolivian State undertook to observe and ensure the rights enshrined in the American Convention. As to the State, the Commission notes that Bolivia has been a state party to the Convention since July 19, 1979, the date on which it deposited its instrument of ratification. Therefore, the Commission has *ratione personae* competence to examine the petition.

17. The Commission has *ratione loci* competence to hear the petition, since it alleges violations of rights protected by the American Convention occurring within the territory of a state party thereto. The IACHR has *ratione temporis* competence inasmuch as the duty to respect and ensure the rights protected in the American Convention was in force for the State at the time the violations alleged in the petition are said to have occurred. Finally the Commission has *ratione materiae* competence because the petition alleges violations of human rights protected by the American Convention.

B. Admissibility Requirements

1. Characterization of the facts alleged

18. The Commission is not a fourth instance to examine errors of internal law or fact committed by the domestic courts acting within their jurisdiction unless they constitute violations of the Convention.[FN9] In this connection, the Commission notes that the domestic courts have

interpreted the Bolivian laws in force and have determined that the new legislation is no more favorable to the petitioner. In this respect, the IACHR does not find said decisions to be arbitrary or contrary to Article 9 of the Convention. Indeed, the Commission considers that the arguments of the petitioner regarding alleged violation of the right to freedom from ex post facto laws of the victim do not establish a violation of the right guaranteed in Article 9 of the American Convention, in connection with Article 1(1) thereof. To that effect it is necessary to analyze the provisions applicable to the crime for which Jhonny Justino Espinoza Peralta was sentenced when he was tried, as well as the laws in force.

[FN9]IACHR, Report N° 39/96, Case 11.673 Argentina, Section D. Competence of the Commission: The "fourth instance formula", October 15, 1996 in OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997.

19. Mr. Jhonny Justino Peralta Espinoza was convicted of the crime of aggravated terrorism and criminal association. The old Bolivian Criminal Code of 1972 (Executive Order 10426) defined the crime of terrorism and criminal association as follows:

Article 132.- (Criminal association). Anyone who is part of a criminal association of four or more persons created with the intention of committing crimes shall be punished with six months' to two years' imprisonment or one month's to one year's labor.

The same penalty shall be imposed on to anyone belonging to youth gangs intended to cause disturbances of the peace, outrage, injuries, or any other crime.

Article 133.- (Terrorism). Anyone who, in order to intimidate or terrorize all or part of a population or to provoke commotion or disorder, detonates bombs or explosive materials, spreads alarm, or threatens to cause a public disaster shall be punished with two to ten years' imprisonment.

Any loss of life or serious personal injuries resulting from the act shall incur a penalty of 20 to 30 years' imprisonment.

20. The new law amends the previous law and provides the following:

Article 132.- (Criminal Organization) Anyone who is part of an association of three or more persons, organized in a permanent manner, with rules of discipline or control, intended to commit the following crimes: genocide; destruction or damage to state property or national heritage; abduction of minors or disabled persons; deprivation of liberty; mistreatment and torture; kidnapping; money laundering; manufacture of or trafficking in controlled substances; environmental crimes recognized in special laws; crimes against intellectual property; or use of commercial or business structures to commit such crimes, shall be punished with one to three years' imprisonment.

Leaders of such organizations shall be punished with two to six years' imprisonment.

The penalty shall be increased by one third if the organization uses minors or disabled person to commit the crimes mentioned in this Article, and if the member of the organization is a public official charged with prevention, investigation or prosecution of crimes.

Article 133.- (Terrorism) Anyone who takes part in, acts at the service of, or collaborates with an armed organization whose intention is to commit crimes against the common security, life, integrity of the person, freedom of movement, or property, in order to subvert the constitutional order or to keep the population or a part thereof in a state of anxiety, alarm or collective panic, shall be punished with 15 to 20 years' imprisonment, without prejudice to imposition of the appropriate penalty for the commission of such crimes.

21. Indeed, Law 1768 provided that the crime of terrorism would be punished with a maximum penalty of 15 to 20 years in prison, without prejudice to application of the appropriate penalties in the event of crimes, inter alia, against the common security, life, and integrity of the person. In the instant case the victim was convicted of aggravated terrorism and criminal association and given the maximum penalty of 30 years in prison, with the punishment for murder subsumed into that for terrorism. Indeed, paragraph three of the 1992 judgment issued by the Sixth Criminal Court determined that:

The concatenation of the facts, from the killing of Teofilo Nina Quispe on July 17, 1988 to the murder of the United States citizens, Jeffrey Brent Ball and Todd Ray Willson on May 24, 1989, shows us that, given their nature and particular circumstances, it is essential to judge all of these acts together as a single indivisible offense even if they occurred at different times and places. Based on the foregoing it is logical to apply procedural rules consistent with the legal reality, in order to reach a single judgment.

22. Jhonny Justino Peralta Espinoza was tried along with seven others. Of this group of defendants only Jhonny Justino Peralta Espinoza and Victor Eduardo Prieto Encinas were sentenced to 30 years in prison; another defendant was sentenced to 15 years, another to nine, another to eight, and the remainder were acquitted. Mr. Jhonny Justino Peralta Espinoza was convicted of the crime of aggravated terrorism and criminal association, with the punishment for murder subsumed into that for aggravated terrorism. For that reason he was sentenced to the maximum penalty of 30 years in prison. Furthermore, paragraph four of the judgment mentioned that owing to the acts committed by the defendants the rules on technical and overlapping offenses (*concurso real e ideal*) would be applied. Paragraph four of the judgment said:

(...) in carrying out the acts the defendants committed several crimes, and there was both technical and actual overlapping of offenses, in accordance with Articles 44 and 45 of the Criminal Code. Consequently, grading is necessary in order precisely to determine the participation and responsibility of each of the defendants in the commission of the crimes under prosecution (...)

23. Articles 44 and 45 of the Criminal Code define technical and actual overlapping of offenses as follows:

Article 44.- (Technical overlapping [Concurso ideal]). Anyone who, by a single deed or omission, violates several legal provisions that are not exclusive of each other shall be liable to the most severe penalty, and the judge may increase the upper limit by up to one quarter.

Article 45.- (Actual overlapping [Concurso real]). Anyone who, with independent intentions, commits, by one or more deeds or omissions, two or more offenses, shall be liable to the most severe penalty, and the judge may increase the upper limit by up to one half.

24. In the whereas clauses of its decision, the Sixth Criminal Court sentences Jhonny Justino Peralta Espinoza to 30 years in prison. Under the rules on overlapping offenses it was appropriate to impose the most severe penalty on the accused man. In this case, the most severe penalty was provided in the second clause of Article 133 of the 1992 Criminal Code, which was 30 years in prison for the crime of terrorism with loss of life. In its judgment the Sixth Court:

(...) finds Jhonny Justino Peralta Espinoza and Victor Eduardo Prieto to be in rebellion and the direct perpetrators of the crimes of aggravated terrorism and criminal association provided for and punished at Articles 133(2) and 132(1) of the Criminal Code, and sentences them to a term of imprisonment of 30 years, which they shall serve at San Pedro de Chonchocoro Penitentiary (...)

25. In this respect, the Commission considers relevant what the Supreme Court of Justice said in its decision on the appeal for review filed by the Public Defenders Service of Bolivia on March 14, 2002 on behalf of Mr. Jhonny Justino Peralta Espinoza. In declaring the appeal inadmissible on April 10, 2002, the Criminal Chamber of the Supreme Court said:

(...) there are no grounds to study the main body of the proceeding because the appellant was sentenced by the lower courts to 30 years in prison for the crime of terrorism, which is considered a crime of lese-humanity, inasmuch as he was found to have taken part in the dynamite attack on the police station at the United States Embassy in the Calacoto zone of La Paz; in the explosion of a dynamite charge as the retinue accompanying George Schultz, Secretary of State of the United States, was passing on the downhill lane of the La Paz Highway; in addition to the murder of the university student Teófilo Nina Quispe, and of the United States citizens Jeffrey Brent Ball and Todd Ray Wilson Bunderson with a burst of bullets from a submachine gun. It was precisely in view of said murders that he was sentenced to 30 years' imprisonment without the right of pardon, in accordance with the last part of Article 133 of the Criminal Code then in force, which provided the basis for the judgment at first instance. The aforementioned legal provision was subsequently amended by Law 1768 which provides a punishment of 15 to 20 years in prison; however, the provision makes an exception when the commission of such crimes leads to the loss of human life as occurred in the instant case. That is what the aforementioned Article 133 of the amended Criminal Code provides in fine when it says "shall be punished with 15 to 20 years' imprisonment, without prejudice to imposition of the appropriate punishment for the commission of such crimes," in other words, murder, as categorized by Article 252 of the Criminal Code, which provides a punishment of 30 years in prison without the right of pardon.

26. An examination of the above-cited precepts and decisions of the Bolivian courts shows that there are several circumstances that merit analysis by the Commission. As to the sentence, the Commission notes that according to the laws under which Jhonny Justino was convicted, the punishment for the crime of aggravated terrorism was 30 years in prison and that under the new criminal legislation the maximum penalty for persons guilty of that offense is 20 years. However, the new Criminal Code provides that imposition of the maximum penalty shall be without prejudice to the application of the appropriate penalties if, as a result of the crime of terrorism, offenses are committed, inter alia, against life and the common security.

27. As to determination of the most favorable law or favorability, generally speaking, this can be a simple matter when it is merely a question of comparing criminal law frameworks[FN10]. However, the foregoing can be complex if there are variations in the mitigating circumstances, in procedural rules, and in the circumstances that determine the punishment.[FN11]

[FN10] Juan Bustos Ramírez, *Manual de Derecho Penal Español, Parte General*, 1984, p. 99.

[FN11] *Id.*

28. According to the petitioner, under the amended Article 133 the punishment applicable to the victim would be 20 years. However, the Commission finds no arbitrariness in the determination of the Bolivian courts that under the new legal provision the punishment should be 30 years in prison. The foregoing deduction is founded on the system of laws itself, since under the new article the maximum punishment for the crime of terrorism is 20 years; that article then adds that this punishment shall be imposed without prejudice to the application of the appropriate penalty for the commission of crimes against the common security, life, integrity of the person, freedom of movement, or property, in order to subvert the constitutional order or to keep the population or a part thereof in a state of anxiety, alarm or collective panic.

29. In determining the sentence, according to the last paragraph of Article 133 of the new Code, the victim would be liable both to the highest penalty for the crime of terrorism, which is 20 years in prison since that is the maximum term, and to the appropriate punishment for the crime of murder and an offense against the common security. Furthermore, it should also be mentioned that when the new Criminal Code amended the crime of terrorism it also amended the rules that previously applied to murder. Under the new Code, the punishment for murder, which was the death penalty, was changed to 30 years in prison.[FN12] Therefore, in light of the acts of which Mr. Jhonny Justino was convicted, he was liable to a sentence of 30 years' imprisonment even if the highest penalty provided for the crime of terrorism was lowered to 20 years.

[FN12] Article 252 of the new Criminal Code provides the following:

Article 252.- (Murder).- The penalty of 30 years in prison without the right of pardon shall be imposed on anyone who kills:

- 1) Their heirs, spouse, or living partner, knowing them to be such.
- 2) For idle or base motives.

- 3) With malice aforethought or cruelty.
 - 4) For a price, a gift, or promises.
 - 5) By means of poisonous or other similar substances.
 - 6) To enable, consummate, or conceal another crime, or to ensure the results thereof.
 - 7) To subdue resistance from the victim or to prevent the criminal being detained.
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30. The new Criminal Code does not appraise the offense differently; rather, it divides the offense into parts. Article 133, on one hand, deals with the punishment to be imposed on persons found guilty of the crime of terrorism and, on the other, determines that it is also necessary to apply other rules contained in the Criminal Code to punish persons guilty of other crimes committed as a consequence of the crime terrorism.

31. The determination of the favorableness of a law cannot be appraised in abstract, in concrete circumstances in connection with the particular case under consideration.[FN13] Therefore, in the specific case of Mr. Jhonny Justino, the IACHR finds that the principle of freedom from ex post facto laws has not been violated, since in the particular circumstances of his case, the amended laws did not constitute a more benign rule. Furthermore, the Commission considers that the interpretation of the Bolivian courts does not contradict those standards.

[FN13] Juan Bustos Ramírez, *Manual de Derecho Penal Español, Parte General*, 1984, p. 99; Claus Roxin, *Derecho Penal, Parte General, Tomo I, Fundamentos. La Estructura de la Teoría del Delito*, 1997, p. 168.

32. Based on the foregoing, the Commission considers that it is not competent to decide the merits of the matter and, therefore, it abstains from its examination of the petition because the facts do not establish a violation of the rights recognized in the American Convention. Furthermore, the Commission decides that it will not analyze the other admissibility requirements set forth in the Convention.

V. CONCLUSIONS

33. Based on the factual and legal arguments given above, the Commission finds that the petition is inadmissible in accordance with the requirements contained in Article 47(b) of the American Convention on Human Rights.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition inadmissible because it does not state facts that tend to establish a violation of the human rights protected by the Convention.
2. To notify the State and the petitioner of this decision.

3. To publish this decision and include it in the Annual Report of the IACHR to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 12 day of March, 2004. (Signed): José Zalaquett, President; Clare Kamau Roberts, First Vice-President; Susana Villarán, Second Vice-President; Commissioners Evelio Fernández Arévalo, Paulo Sergio Pinheiro, Freddy Gutiérrez Trejo, and Florentín Meléndez.