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Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 124/09; Petition 4616-02
Session: Hundred Thirty-Seventh Regular Session (28 October – 13 November 2009)
Title/Style of Cause: Epifanio Escalona Cisternas v. Chile
Doc. Type: Decision to Archive
Decided by: First Vice President: Victor Abramovich;
Commissioners: Sir Clare K. Roberts, Florentin Melendez, Paolo G. Carozza.
Commissioner Felipe Gonzalez, a national of Chile, did not participate in the deliberations or the decision of this petition, according to the provisions of article 17(2)(a) of the Rules of the Commission.
Dated: 12 November 2009
Citation: Escalona Cisternas v. Chile, Petition 4616-02, Inter-Am. C.H.R., Report No. 124/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
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ALLEGED VICTIM: Epifanio Escalona Cisternas

PETITIONER: Epifanio Escalona Cisternas

ALLEGED VIOLATIONS: The petitioner does not make express reference to but infers possible violations of article 10 of the American Convention on Human Rights

PROCEEDING START DATE: June 10, 2004

I. POSITION OF THE PETITIONER

1. On December 10, 2002, the Inter-American Commission on Human Rights received a complaint filed by Epifanio Escalona Cisternas for the presumed violation of his right to compensation from the Chilean State.

2. In his communication, the petitioner stated that he was deprived of his liberty from November 9, 1973 to June 2, 1974. He added that he was detained in the regiment barracks in September 1973, where he was interrogated, tortured and flagellated by members of the military.

3. He added that in 1993 a law was passed for those exonerated and politically exiled but that the compensation provided was not sufficient, and accordingly he filed a complaint with the Ministry of Interior but never received a response. He indicated that a new law was passed on August 31, 1998, but no part of it ordered any further compensation.

II. POSITION OF THE STATE

4. The State asked the Commission to declare the petition inadmissible because it falls under the provisions of article 47(c) of the American Convention on Human Rights. In this regard, it alleges that the very claim presented by the petitioner is proof of its own inappropriateness, as it deals with events that occurred before the Instrument of Ratification of the American Convention on Human Rights was presented and prior to its effective date of March 11, 1990.

III. PROCEDURE BEFORE THE IACHR

5. The petition was received by the Commission on December 10th, 2002. The IACHR, after receiving new communications from the petitioner on May 9th, 2003 and June 12, 2003, sent the claim to the Chilean State on June 10th and 30th, 2004, and asked it to provide the information it felt necessary within two months.

6. The Chilean State presented its response to the petition on February 16th, 2005, the pertinent parts of which the petitioner was notified of on March 14th, 2005. The petitioner presented his observations on August 31st, 2005, which were subsequently sent to the State on March 29th, 2007.

7. The petitioner presented additional information on September 27th, 2004 and on May 17, 2005.

8. On July 2nd, 2008, the Commission asked the petitioner for additional information, in order to determine if he receives any kind of pension and if he attempted to use any internal remedy, among other things. Due to a lack of response, the Commission reiterated its request of information on April 20th, 2009 and let the petitioner know that, failing a response, the case could be archived.

IV. LEGAL BASIS FOR THE DECISION TO CLOSE THE CASE

9. Both Article 48.b. of the American Convention on Human Rights and Article 30.6 of the Rules of Procedure of the Inter-American Commission on Human Rights provide that in the processing of a petition once the observations have been received or the period set has elapsed with no observations received, the IACHR shall verify whether the grounds for the petition exist or subsist, and if they do not it shall order the case archived.

10. To date, the petitioner has yet to respond to the request for additional information that the IACHR first made on July 2nd, 2008 and reiterated on April 20th 2009.

11. Five years have elapsed since processing began on June 10th, 2004, yet the petitioner has failed to respond to repeated requests for information from the IACHR. The Commission therefore lacks the necessary elements to determine whether the grounds for the original petition subsist or to reach a decision on the alleged human rights violations, and pursuant to Article 48.b of the Convention and Article 30.6 of the IACHR Rules of Procedure decides to archive this petition.

Done and signed in the city of Washington, D.C., on the 12th day of the month of November, 2009. (Signed): Víctor Abramovich, First Vice-President; Sir Clare K. Roberts, Florentín Meléndez, and Paolo G. Carozza, members of the Commission.