

**REPORT No. 78/10**  
PETITIONS 621-03 – RAMÓN CAMPOS ESPARZA  
1378-04 – ROBERTO ANTONIO OLÓRTEGUI TRINIDAD  
ADMISSIBILITY  
PERÚ  
July 12, 2010

**I. SUMMARY**

1. The present report refers to two petitions submitted on behalf of Ramón Campos Esparza (P 621-03)<sup>1</sup> and Roberto Antonio Olórtegui Trinidad (P 1378-04)<sup>2</sup> (hereinafter the alleged victims) which allege the violation on the part of the Republic of Peru (hereinafter "Peru", "the State", or "the State of Peru") of rights enshrined in the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"). The petitions indicate that the alleged victims were arrested, tried and sentenced in the nineties under decree laws relating to the offense of terrorism. They state that these decrees, as well as the criminal procedure deriving from them are contrary to a series of provisions of the American Convention. They also point out that the alleged victims were tortured, placed in solitary confinement for long periods and subjected to inhuman prison conditions. The petitioners emphasized that the alleged victims underwent new criminal proceedings under a legislative framework enacted between January and February 2003 which they alleged is also incompatible with the Convention.

2. The State maintained that the alleged irregularities in the trials conducted throughout the nineties has changed in view of the enactment of a new legislative framework in matters of terrorism at the beginning of 2003. It indicated that this new framework and the criminal procedure derived from it accord with the rights and guarantees set out in the American Convention and Political Constitution of Peru. Lastly, it stressed that the facts set out in the complaints do not present colorable claims of violations of the dispositions of the Convention and requested that the IACHR declare them inadmissible by virtue of Article 47(b) and (c) of the said instrument.

3. After examining the position of the parties in the light of the requirements for admissibility laid down in Articles 46 and 47 of the Convention, the Commission concluded that it is competent to admit the petitions and that the same are admissible due to the alleged violation of the rights enshrined in Articles 5, 7, 9, 11, 8 and 25 of the American Convention, in relation to Articles 1.1 and 2 of the same instrument; and in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture. The IACHR concluded that petition 621-03 is also admissible with regard to Article 13 of the Convention. The Commission decided to consolidate the petitions and process them jointly at the merits stage, under case number 12.766. Lastly, it decided to notify the present Admissibility Report to the parties, publish it and include it in its Annual Report.

**II. PROCESSING BEFORE THE COMMISSION**

4. Petition 621-03 was received on August 8, 2003, and sent to the State on March 22, 2005, with a time limit of two months to submit a response. On October 18, 2007, the State submitted its response and on March 13 and October 2, 2009, and May 17, 2010, it sent additional information. The petitioners sent additional briefs on January 20, and December 11, 2006, February 28 and December 27, 2007, July 2, 2009, and March 12, 2010.

5. Petition 1378-04 was received on December 16, 2004, and on April 25, 2005, March 31 and April 12, 2006, the petitioners sent additional information. The relevant parts of these documents were sent to the State on September 4, 2008, with a time limit of two months to submit a response. On

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<sup>1</sup> Submitted on August 8, 2003, in his own name and by Gabriel E. Gastelú Martínez on August 8, 2003.

<sup>2</sup> Submitted on December 16, 2004, in his own name and by Giovana Olórtegui Trinidad on December 16, 2004.

December 17, 2008, the State sent its response, on January 6, 2009, it sent the respective annexes and on November 2, 2009, it sent additional information.

### III. POSITIONS OF THE PARTIES

#### *Preliminary considerations*

6. In the petitions dealt with by this report, the State and the petitioners described a first series of criminal trials throughout the 1990s, conducted by judges whose identity were not disclosed, and a second set of proceedings after 2003. The former trials were held under decree laws applicable to terrorism, enacted during the administration of President Alberto Fujimori. In January 2003, the Peruvian State adopted a new legislative framework that caused the voiding of a number of trials conducted for the crimes of terrorism and high treason. Before setting out the positions of the parties, the IACHR deems it to be appropriate addressing the two legal frameworks within which the incidents described by the parties took place.

#### *Antiterrorist legislation in force from May 1992 to January 2003*

7. Decree Law No. 25475, dealing with different forms of the crime of terrorism, was enacted in May 1992. In August of that year, Decree Law No. 25659 was enacted, criminalizing the offense of high treason and giving the military justice system competence over the prosecution of that crime. Those decrees, along with decrees Nos. 25708, 25744, 25880, and other complementary provisions, equipped the Peruvian legal system with new exceptional procedures for investigating, examining, and prosecuting individuals accused of terrorism or high treason.

8. The decrees that made up what was known as the “antiterrorist legislation” had the stated purpose of reining in the escalation of targeted killings against officers of the judiciary, elected officials, and members of the security forces, as well as of disappearances, bombings, kidnappings and other indiscriminate acts of violence against the civilian population in different regions of Peru, attributed to outlawed insurgent groups.

9. Among other changes, these decrees allowed the holding of suspects incommunicado for specified lengths of time,<sup>3</sup> holding closed hearings, solitary confinement during the first year of prison terms,<sup>4</sup> and summary deadlines for presenting charges and issuing judgments in the case of the crime of high treason.<sup>5</sup> In addition, these decrees denied suspects the assistance of a legal representative prior to their first statement to an agent of the Public Prosecution Service<sup>6</sup> and restricted the attorney’s participation in the criminal proceedings, disallowed the recusal of judges or other judicial officers,<sup>7</sup> established concealed identities for judges and prosecutors (“faceless courts”),<sup>8</sup> prevented the summoning, as witnesses, of state agents who had participated in preparing the police arrest report.<sup>9</sup>

10. As for their provisions of material law, these decrees allowed for the possibility of applying more than one criminal offense to actions of a similar or identical nature; they did not

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<sup>3</sup> Decree Law No. 25475, Art. 12(d).

<sup>4</sup> Decree Law No. 25475, Art. 20.

<sup>5</sup> Investigations, prosecutions, and sentencing for high treason were governed by Decree Laws Nos. 25708 and 25744.

<sup>6</sup> The right to the assistance of freely chosen defense counsel from the very onset of criminal proceedings was later established by Article 2 of Law No. 26447.

<sup>7</sup> Decree Law No. 25475, Art. 13(h).

<sup>8</sup> With the enactment of Law 26671 on October 12, 1996, faceless judges and prosecutors were abolished.

<sup>9</sup> Decree Law No. 25744, Art. 2.

differentiate between different levels of *mens rea*;<sup>10</sup> and they only indicated minimum prison terms, without setting maximum penalties.<sup>11</sup>

11. On May 12, 1992, the Executive Branch of Government passed Decree-Law 25499, also called the Repentance Law, which regulated the reduction, exemption, remission or mitigation of imprisonment sentences for persons charged or convicted for the crime of terrorism who provided information leading to the capture of chiefs, heads, leaders or principal members of terrorist organizations.<sup>12</sup> By means of Supreme Decree No. 015-93-JUS of May 8, 1993, the Executive Branch adopted the Regulations for the Repentance Law, which provided, among other measures, the secrecy or change of identity for the repentant persons making the statement.<sup>13</sup> The Repentance Law expired on October 31, 1994.<sup>14</sup>

### ***Antiterrorist legislation in force as of January 2003***

12. On January 3, 2003, a series of provisions contained in the terrorism decree-laws enacted during the Fujimori administration were ruled unconstitutional by the Constitutional Court.<sup>15</sup> That decision ruled Decree Law 25659 unconstitutional and ordered accusations for the crime of high treason as defined therein to be tried as terrorism, as provided for in Decree Law 25475. In addition, it annulled the provisions that prevented the recusal of judges and the subpoena of officers involved in the police arrest report as witnesses and the provisions that allowed civilians to be tried by military courts. At the same time, absolute incommunicado detention and solitary confinement during the first year of prison terms were also ruled unconstitutional.

13. With reference to the crime of terrorism, the Constitutional Court upheld the legality of Article 2 of Decree Law No. 25475, but ruled that it would apply solely to willful acts; it also established interpretative guidelines for the subsumption of a punishable action in the definitions of the offense.

14. With regard to statements, arrest warrants, and technical and expert opinions given before faceless judges, the Constitutional Court ruled that they were not automatically tainted and that the regular civilian judges hearing the new charges would have to verify their worth as evidence, conscientiously and in conjunction with other substantiating elements as set down in regular criminal procedural law.<sup>16</sup>

15. Between January and February 2003, the Executive Branch<sup>17</sup> issued Legislative Decrees Nos. 921, 922, 923, 924, 925, 926, and 927,<sup>18</sup> with the aim of bringing the country's laws into line with the Constitutional Court's judgment of January 3, 2003. In general terms, those decrees ordered the voiding of all judgments and trials conducted before the military courts or faceless judicial officers, together with the referral of all such proceedings to the National Terrorism Chamber, further named National Criminal Chamber, which was created within the Supreme Court of Justice and charged with distributing the new

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<sup>10</sup> Decree Law No. 25475, Art. 2.

<sup>11</sup> Decree Law No. 25475, Art. 3.

<sup>12</sup> Decree Law No. 25499, Articles 1.II.a and 1.III.

<sup>13</sup> Supreme Decree No. 015-93-JUS, Articles 8.a and 36.

<sup>14</sup> The Repentance Law was repealed by Law 26345 of August 30, 1994.

<sup>15</sup> Resolution of the Constitutional Court of January 3, 2003, File No. 010-2002-AI/TC, unconstitutionality suit filed by Marcelino Tineo Silva and other citizens.

<sup>16</sup> Resolution of the Constitutional Court of January 3, 2003, File No. 010-2002-AI/TC, unconstitutionality suit filed by Marcelino Tineo Silva and other citizens, grounds paragraph No. 159.

<sup>17</sup> On January 8, 2003, the Congress of the Republic of Peru enacted Law 27913, whereby it delegated the power to legislate on terrorism-related matters to the executive branch.

trials to the Specialized Criminal Courts. The new antiterrorist legislation also provided for partially public hearings during oral proceedings<sup>19</sup> and prohibited the imposition of harsher sentences than those that had been handed down in the voided trials.<sup>20</sup>

16. With reference to steps taken during criminal investigations and examination proceedings before faceless civilian or military judicial officers, Article 8 of Legislative Decree No. 922 upheld the validity of examination proceeding commencement deeds, police statements given in the presence of a representative of the Public Prosecution Service, technical reports, search records, statements given to the National Police, and statements made by repentants. Finally, Article 3 of that Legislative Decree ruled that the voiding of proceedings held by faceless judges would not trigger automatic release from prison, which could take place only if the Public Prosecution Service declined to press charges or if the judiciary refused to commence examination proceedings.

## **A. Petitioners**

### **1. Common claims**

17. In the petitions under consideration in the present report it is submitted that the alleged victims were arrested by officers of the National Police of Peru, in the absence of a situation of an offense in flagrante and without a judicial arrest warrant. They were tried and sentenced for the offense of breach of public order in the form of terrorism, and the criminal charges, trial and sentence were regulated by the “antiterrorist legislation” that came into force after May 1992.

18. The petitioners pointed out that the decrees conforming to this legislation are incompatible with the 1979 Constitution, in force at the time of their promulgation, and from 1993, as well as with international human rights treaties ratified by Peru. They also indicated that by having been enacted under a *de facto* regime, the 1992 decree laws were irretrievably defective.

19. In the petitions it is submitted that the alleged victims were initially tried by “secret identity” members of the judiciary, forced to make incriminating statements after being subjected to torture, and that they could not controvert evidence or meet in private with their lawyers. Also, the charges laid by the Public Prosecution Services were based on fabricated evidence (planted evidence), third party remarks made under duress and incriminating statements made by repentant, without the possibility of questioning those individuals who provided such information from the first stages of the criminal proceedings.

20. With regard to personal liberty, it is submitted that the alleged victims were arrested without being informed of the existence of criminal charges against them, and were not brought before a competent authority within a reasonable time. As to the detention conditions, it is alleged that they suffered solitary confinement for periods exceeding 23 hours per day, had no access to socio-pedagogic activities aimed at their rehabilitation, were transferred to places far away from their immediate families and suffered a series of restrictions on their right to receive visitors.

21. In the petitions it is alleged that trials conducted before “secret identity” members of the judiciary were annulled by the National Chamber for Terrorism from the beginning of January 2003, by virtue of a judgment of the Constitutional Court of January 3 of the same year and Legislative Decrees 921 to 927.<sup>21</sup> The alleged victims were convicted again for the crime of terrorism set out in Decree Law

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<sup>18</sup> Legislative Decree 927 regulated the criminal law enforcement in matters of terrorism. It was derogated by the Law 29423 of October 14, 2009, which rendered inapplicable the requests for reduction of prison sentence, partial liberty and conditional parole by persons convicted of terrorism.

<sup>19</sup> Legislative Decree No. 922, Art. 12(8).

<sup>20</sup> Legislative Decree No. 922, fifth complementary provision.

<sup>21</sup> In the case of Mr. Ramón Campos Esparza, it is alleged that he was tried from the outset before secret identity members of the judiciary, being definitively acquitted on November 28, 1996. Between 1998 and 2000, he was retried before

No. 25475, via judgments issued by the National Criminal Chamber and upheld by the Supreme Court of Justice.

22. In a general way, the petitioners pointed out that the new anti-terrorist legislation was enacted after the acts imputed to the alleged victims took place, and stressed that the application of this legislation in their cases violated the non-retroactivity principle of criminal law. They indicated that a series of evidence produced before the “secret identity” members of the judiciary and without the guarantees of due process was accepted in the new trials begun from the start of 2003. They submit that the creation of the National Chamber for Terrorism, afterwards called the National Criminal Chamber, and its proceedings in the present cases after the facts stated would contravene the guarantee of natural judge. It is also alleged that the initiation of a second trial for the same acts already decided throughout the nineties would violate the principle *ne bis in idem*.

23. The petitioners stated that after the annulment of the trials undertaken by “faceless” judges, the alleged victims were imprisoned for some days or months, without a final conviction or procedural grounds justifying their pre-trial detention. They submitted that this violates their right to the presumption of innocence and personal liberty. They alleged that the offense of terrorism set out in Article 2 of Decree Law 25475, as well as that of aiding and abetting and membership of a terrorist organization, set out in Articles 4 and 5 of the same Decree, continue to be ambiguous and imprecise, despite the interpretative boundaries laid down by the Constitutional Court in its judgment of January 3, 2003.<sup>22</sup>

## 2. Specific allegations

### *Ramón Campos Esparza (P 621-03)*

24. According to the allegations, Mr. Ramón Campos Esparza was arrested for the first time on August 12, 1992, and tried for the crime of membership of a terrorist organization, being acquitted by judgment of the Special Criminal Chamber of the Superior Court of Justice of Lima on August 10, 1994, and upheld at last instance by the Supreme Court of Justice on November 28, 1996. Both courts were composed of “faceless” judges who based their decisions on the fact that Mr. Campos Esparza’s statements to the police had been given in a context of physical mis-treatment, confirmed by medical forensic examinations.<sup>23</sup> Mr. Campos Esparza was placed in preventive detention between August 12, 1992, and August 11, 1994.

25. The petitioners stated that after his release, Mr. Ramón Campos Esparza was re-arrested on October 15, 1998, by agents of the National Counter-Terrorism Agency of the National Police (DINCOTE). These policemen had broken into his home dressed in civilian clothes, without a judicial warrant and without the presence of a representative of the Public Prosecution Services. In the search report there is no indication of material that could implicate the alleged victim in any criminal activity whatsoever.

26. The petitioners alleged that Mr. Campos Esparza was taken to DINCOTE facilities, where he remained *incommunicado* for 15 days and was subjected to constant acts of physical and psychological torture to extract a confession. It is alleged that in the first 10 days of detention he was blindfolded and hung in handcuffs while being beaten on different parts of his body, thrown to the floor and forced to remain kneeling. A certain times of the night they threw buckets of water over him to prevent him from sleeping.

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members of the judiciary whose identity was not hidden, but the respective judicial procedures were annulled on August 3, 2005, on the basis of an alleged inconsistency between the opening of the evidence phase and the charges drawn up by the Public Prosecutor at the oral trial.

<sup>22</sup> See para. 15, above.

<sup>23</sup> Initial petition received on August 8, 2003, annexes, Judgment of the Superior Court of Justice of Lima of August 10, 1994, pages 2 and 3.

27. The petitioners confirmed that DINCOTE agents threatened to kill Mr. Campos Esparza's family, while continually submitting him to beatings and humiliation. They stressed that the alleged victim suffered permanent tremors in his hands, a deformation in his upper vertebrae, a loss of his sense of balance, acute and constant headaches and other symptoms in his bones and back. His condition has been corroborated by medical reports and was condemned before the Public Prosecutor and Judicial Branch on a number of occasions. It is also alleged that since 1998 Mr. Campos Esparza has been receiving specialist treatment in neurology and traumatology due to the blows he suffered in the DINCOTE facilities.

28. The petitioners argued that towards the end of October 1998, Mr. Campos Esparza was transferred to the Miguel Castro Castro Penitentiary, where he remained in solitary confinement for several months. They pointed out that on April 25, 2002, he was transferred to the Challapalca Penitentiary, located higher than 4,800 meters above sea level, where he was placed in a small cell without adequate access to safe drinking water, food or medical assistance. He was prevented from receiving reading material afforded by his immediate family.

29. The petitioners asserted that on October 28, 1998, the Public Prosecution Services drew up a criminal indictment against the alleged victim for the crime of aiding and abetting and membership of a criminal organization, in terms of Articles 4 and 5 of Decree Law 25475. They maintained that the offenses for which he was tried are mutually exclusive, in their view, to the detriment of his right to a defense.

30. According to the information submitted, on January 7, 2000, the Specialized National Chamber for Terrorism sentenced him to 20 years in prison and on July 24, 2000, the Supreme Court of Justice confirmed the judgment. The petitioners alleged that the sentence was based on police statements, identification declarations by two co-accused obtained through torture and statements of a repentant person with withheld identity.

31. Mr. Campos Esparza presented a *habeas corpus* action against the July 24, 2000 judgment issued by the Supreme Court of Justice, which was declared unfounded at last instance by the Constitutional Court on January 30, 2003. It is alleged, nevertheless, that on August 3, 2005, the National Chamber for Terrorism annulled the proceedings between 1998 and 2000 and ordered the initiation of a new oral trial. From the information presented, the annulment was based on the argument that the criminal investigation had been initiated in relation to Articles 3, 4 and 5 of Decree Law 25475, whilst in oral trial, the Public Prosecution Services also made accusations on the offense set out in Article 2 of the said Decree Law. The petitioners pointed out that despite the annulment of the judgment, the alleged victim continued to be imprisoned for several months without a final conviction.

32. According to the petitioners, after the initiation of a second oral trial, on July 6, 2006, the National Criminal Chamber sentenced Mr. Campos Esparza to 17 years imprisonment. They indicated that on April 26, 2007, the Criminal Chamber of the Supreme Court of Justice confirmed the guilty judgment which brought an end to the criminal proceedings.

33. The petitioners emphasized that Mr. Campos Esparza was tried and sentenced under the terms of Decree Law 25475, issued on May 6, 1992, while the facts for which he was prosecuted had occurred between 1989 and April 1992, when more favorable laws set out in the Criminal Code were in force. They pointed out that due to Mr. Campos Esparza's imprisonment and the restrictions on the right to receive visits from his brothers, sisters and mother, they have suffered from severe states of depression, for which they have undergone specialist treatment. Lastly, applicants alleged that the State of Peru is responsible for the violation of the rights enshrined in Articles 5, 7, 8, 11, 13 and 24 of the American Convention.

*Roberto Antonio Olórtégui Trinidad (P 1378-04)*

34. The petitioners stated that on September 21, 1994, Mr. Roberto Antonio Olórtegui Trinidad was arrested by members of the Counter-Terrorism Section (SECOTE) attached to the National Police, while he was giving classes in the Miguel Graú State College in the city of Barranca, Huacho province, in the department of Lima. They submitted that on the same day the alleged victim was transferred to SECOTE cells in Barranca, where he remained in *incommunicado* detention for 31 days and underwent physical and psychological torture.

35. The petitioners stated that on September 22, 1994, a medical examiner visited the SECOTE cells and, without examining Mr. Olórtegui Trinidad, issued a certificate declaring him as being in a "preserved state". They pointed out that during the following days the alleged victim's lawyer requested from the Public Prosecutor the attendance of another medical examiner at the said police station in the interests of certifying alleged acts of torture. On October 17, 1994, the alleged victim was paraded in a striped suit in front of the media in Barranca city and labeled as a "terrorist" by SECOTE agents.

36. According to the allegations, on September 26, 1994, Mr. Olórtegui Trinidad made a statement to the police in the presence of a representative of the Public Prosecution Services, denying all accusations made by the agents of the police. The applicants stated that after being submitted to physical torture, the alleged victim was compelled to alter his statement and incriminate himself, and that this was registered in a sworn "addendum to the police statement".

37. The petitioners asserted that on October 18, 1994, the Special Criminal Judge of Barranca ordered the opening of the evidence phase for the crime of terrorism and ordered Mr. Olórtegui Trinidad's imprisonment in the Carquin Penitentiary, in Huacho city, Huara Province, Department of Lima. Nevertheless, they pointed out that the alleged victim was held at the SECOTE cells until October 22, 1994, where he was subjected to physical and psychological torture so that he corroborated his police statements before the judge in charge of the investigation.

38. The petitioners indicated that on April 1, 1996, the Special Criminal Chamber of the Superior Court of Justice of Lima sentenced Mr. Olórtegui Trinidad to 20 years imprisonment and other supplementary penalties. They stressed that on October 29, 1996, the Supreme Court of Justice refused to nullify the judgment, but nevertheless reduced the sentence to 15 years imprisonment. They maintained that the said decisions were based on self-incriminating statements and police evidence obtained under torture, testimony from individuals taking advantage of the Amnesty Law and of statements by persons who later withdrew them, pointing out at the trial stage, that their statements to the police had been made under duress and torture.

39. The petitioners indicated that on July 30, 2003, the National Chamber for Terrorism, pursuant to Article 2 of Legislative Decree No. 926,<sup>24</sup> voided all proceedings against Mr. Olórtegui Trinidad from the involvement of secret identity judges in the trial conducted between 1994 and 1996. In this context, they pointed out that the alleged victim was tried again for the crime of membership of a terrorist organization set out in Article 5 of Decree Law 25475. On February 23, 2004, the National Criminal Chamber sentenced him to 15 years imprisonment and other supplementary penalties. In accordance with the available information, this sentence was upheld by an execution judgment handed down on October 3, 2004, by the Supreme Court of Justice. The decisions of the National Criminal Chamber and the Supreme Court of Justice are said to have been based on the same evidence illegally gathered by SECOTE agents in the months following Mr. Olórtegui Trinidad's detention in September 1994.

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<sup>24</sup> Article 2 of Legislative Decree 926 of February 20, 2003 establishes the following:

The National Terrorism Chamber, following a time limit of not more than sixty working days from the coming into force of this Legislative Decree, will annul *sua sponte*, without the express revocation of the defendant, the judgment and oral trial and shall declare, if need be, the groundlessness of the prosecutor's indictment within the criminal proceedings for crimes of terrorism undertaken before the ordinary criminal jurisdiction with secret identity judges or prosecutors.

40. The petitioners mentioned that on December 17, 2004, Mr. Olórtegui Trinidad was transferred to the Piedras Gordas Maximum Security Penitentiary in Ancón, department of Lima, without prior notification and without disciplinary proceedings justifying his relocation. Whilst in this penitentiary, the alleged victim was isolated from his immediate family and friends and enjoyed limited access to rehabilitation activities and medical assistance. Lastly, the petitioners alleged that the State of Peru is responsible for the violation of the rights enshrined in Articles 5, 7, 8, and 25 of the American Convention.

## **B. State**

### **1. Common claims**

41. With regard to the petitions addressed by this report, the State claimed that in January 2003, it unilaterally began to amend its legislation for the prosecution and punishment of the crime of terrorism, which led to the voiding of all the trials conducted in the 1990s by faceless civilian and military judges. It reported that the new trials were organized under the terms of Legislative Decrees Nos. 921 to 927, which, it claims, are in line with the standards the inter-American human rights system.

42. The State reported that on August 9, 2006, the Constitutional Court dismissed an unconstitutionality suit filed by more than 5,000 citizens questioning the validity of those legislative decrees. Based on its own interpretation of judgments handed down by the Inter-American Court of Human Rights, the State maintained that the San José court has not questioned the validity of the antiterrorist legislation currently in force.

43. It held that the creation of a National Chamber and Specialized Criminal Courts for terrorism cases was intended merely to facilitate and streamline the prosecution of those charged with those crimes. Peru stated that the judges who serve on those panels were already employed as career judges, and so there was no basis for the alleged victims' claims that they were tried by special courts or in breach of the natural judge guarantee.

44. The State maintained that in their new trials before the National Criminal Chamber, the alleged victims had the services of privately contracted or court-appointed defense attorneys, and that at all stages in the proceedings, they were able to present the evidence and file the remedies they deemed appropriate. The State emphasized that the sentences already served by the alleged victims following their initial arrests were taken into consideration in calculating the new penalties imposed in the trials held under Legislative Decrees 921 to 927. Regarding the denial of parole for the alleged victims following the voiding of their military trials, Peru stated that in its judgment of August 9, 2006, the Constitutional Court of Peru ruled that:

This restriction is intended to protect constitutional assets and principles that might be affected by the resurgence of subversive practices and/or to prevent the hindrance of the legitimate exercise of the State's power to punish individuals who have been found guilty of the crime of terrorism, including those whose prosecution was conducted before an incompetent judge and without the guarantees that inform the right of due process.

45. As to the alleged acts of torture to the prejudice of the alleged victims, inhumane conditions of detention and other supposed violations of personal integrity, the State made no specific claims regarding the admissibility requirements set out in Article 46(1) of the American Convention.

46. The State stressed that the IACHR is not entitled to review the merits decisions held by the domestic judicial entities within their jurisdiction and respectful of a fair trial. Finally, it concluded that the petitions describe facts that do not tend to establish violations of the American Convention and asked the IACHR to rule them inadmissible in accordance with Articles 47(b) and 47(c) thereof.

### **2. Specific allegations**



*Ramón Campos Esparza (P 621-03)*

47. The State made similar statements to the petitioners' regarding the detention and sentencing of the alleged victim in the trial taking place between 1998 and 2000, as well as the result of the *habeas corpus* proceedings lodged by Mr. Campos Esparza on July 24, 2000, and supplied the copy of the respective trial proceedings. It confirmed that after the annulment issued on August 3, 2005 by the National Criminal Chamber, Mr. Campos Esparza was sentenced by the same chamber to 17 years imprisonment for the crime of terrorism. It indicated that this sentence was upheld by Supreme Court of Justice's execution decision of April 26, 2007. It stressed that the alleged victim was tried before competent courts, whose justices were duly identified; he was able to exercise his right to a defense and rely on a lawyer of his own choosing. It pointed out that the criminal trial was conducted within a reasonable time, duly sentencing him to imprisonment in accordance with domestic law.

48. In regard to the allegation that Decree Law 25475 was applied retroactively, the State pointed out that the domestic courts maintained that the alleged victim's membership of the organization Shining Path had been proved from the moment of his first arrest in August 1992, a date on which the said legislative decree was already in force. It added that both the National Criminal Chamber and the Transitory Chamber of the Supreme Court of Justice decided the appeals filed by the alleged victim's lawyers on reasonable grounds pre-established by domestic law.

49. As to the allegations that Mr. Campos Esparza had been transferred in an arbitrary manner to the Challapalca Penitentiary in April 2002, the State argued that the relocation was based on a decision issued by the National Penitentiary Institute pursuant to its own powers and the rules of domestic criminal execution. Lastly, the State did not submit information or specific allegations with regard to the detention conditions and the alleged violations of personal integrity referred to in the complaint and the petitioners' additional briefs.

*Roberto Antonio Olórtegui Trinidad (P 1378-04)*

50. The State made similar statements to the petitioners' regarding the criminal proceedings followed against Roberto Antonio Olórtegui Trinidad between 1994 and 1996 and as from 2003, and provided copies of the relevant judicial decisions. It stated that after the voiding of the proceedings before secret identity judges, on February 23, 2004, the National Criminal Chamber sentenced Mr. Olórtegui Trinidad to 15 years imprisonment and other accessory penalties. It added that on October 3, 2004, the Supreme Court of Justice ratified the validity of that judgment, thus bringing the proceedings to an end. It emphasized that the proceedings against Mr. Olórtegui Trinidad were conducted by competent, impartial and independent judges in full respect of due process guarantees.

51. The State alleged that based upon Legislative Decree No. 927, then in force, on August 25, 2006, the National Criminal Chamber found in favor of Mr. Olórtegui Trinidad's parole request. It asserted that the alleged victim was released on that date and the sentence for the offense of affiliation to a terrorist organization was considered fully served in September, 2009. The State did not submit specific information or allegations regarding conditions of detention or alleged violations of the right to physical integrity as referred to in the initial petition and additional briefs of the petitioners.

**IV. ANALYSIS ON JURISDICTION AND ADMISSIBILITY**

**A. Jurisdiction *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae* of the Commission**

52. The petitioners are entitled, under Article 44 of the Convention, to file complaints. The alleged victims are individuals who were under the jurisdiction of the Peruvian State on the date of the alleged incidents. In addition, Peru ratified the American Convention on July 28, 1978. Consequently, the Commission has competence *ratione personae* to examine the petitions.

53. The Commission has competence *ratione loci* to hear the petitions, in that they describe violations of rights protected by the American Convention that allegedly took place within the territory of a state party thereto.

54. In addition, the Commission has competence *ratione temporis*, since the general obligation of respecting and ensuring the rights protected by the American Convention was already in force for the State on the date on which the incidents described in the petitions allegedly occurred.

55. Finally, the Commission has competence *ratione materiae*, because the petitions allege violations of rights protected by the American Convention and by the Inter-American Convention to Prevent and Punish Torture, ratified by the Peruvian State on February 27, 1990.

## **B. Exhaustion of domestic remedies**

56. Article 46(1)(a) of the American Convention states that for a complaint lodged with the Inter-American Commission in compliance with Article 44 of the Convention to be admissible, the remedies available under domestic law must have first been pursued and exhausted in accordance with generally recognized principles of international law. That requirement is intended to facilitate the domestic authorities' examination of the alleged violation of a protected right and, if appropriate, to enable them to resolve it before it is brought before an international venue.

57. The petitions under consideration in the present report raise, on the one hand, acts of aggression, torture and mistreatment allegedly committed by State agents. From the available information, it is apparent that these alleged acts were reported to or known by entities in the domestic system at different times throughout the period of the nineties. Also, the judicial authorities of the ordinary courts that intervened in the new trials starting from 2003 were aware of the allegations about evidence obtained under duress and torture.

58. In previous decisions the Commission has established that every time that a crime subject to public prosecution is committed, the State has the obligation to promote and give impetus to the criminal proceeding, and that, in those cases, this is the suitable channel for clarifying the facts, prosecuting the persons responsible, and establishing the corresponding criminal sanctions, in addition to making possible other forms of reparation. The petitioners' allegations on the commission of torture and the other infringements on personal integrity translate in the domestic legislation into criminal conduct subject to ex officio investigation by prosecutorial authorities, and thus constitute the adequate remedy regarding the claims under consideration in the present report.<sup>25</sup>

59. The State of Peru has not submitted information on any investigations launched with respect to the alleged acts of torture and inhuman conditions of detention to the detriment of the alleged victims, who therefore have not had available to them effective means to redress the alleged violations to their personal integrity. On the other hand, the State has not raised the exception of a failure to exhaust domestic remedies in this regard, since it has implicitly declined to present this defense.

60. In addition to the alleged breaches of personal integrity, the petitions under consideration in the present case raise the violation of other provisions of the American Convention derived from the detention and criminal proceedings undertaken against the alleged victims. The State maintained that the alleged violations of Convention rights in the context of the proceedings undertaken in the framework of the legislative decrees adopted throughout the nineties were corrected in the trials started at the beginning of 2003. The submissions indicate that Messrs. Roberto Antonio Olórtegui Trinidad and Ramón Campos Esparza last instance convictions were confirmed by Supreme Court of Justice execution decisions issued on October 3, 2004, and April 26, 2007, respectively. Based on the foregoing

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<sup>25</sup> IACHR, Report No. 99/09, Petition 12.335, Colombia, *Gustavo Giraldo Villamizar Durán*, October 29, 2009, para. 33.

considerations, the IACHR concludes that the petitions satisfy the requirement laid down in Article 46(1)(a) of the American Convention.

### **C. Filing period**

61. Article 46(1)(b) of the Convention establishes that for the petition to be declared admissible, it is necessary for it to be lodged within a period of six months from the date on which the party alleging the violation of his rights was notified of the final judgment which brought domestic proceedings to an end.

62. In accordance with that established in paragraph 60, above, the criminal trials undertaken against the two alleged victims ended between October 2004 and April 2007. Therefore, the IACHR considers that the requirement laid down in Article 46(1)(b) of the American Convention is satisfied.

63. In regard to the claims about the detention conditions, acts of torture and other alleged violations of personal integrity set out in paragraph 57, above, these facts had been reported to the domestic authorities on different occasions. In the absence of allegations on the State's part and of information in the case file about the initiation of criminal investigations up until the date of the adoption of the present report, the IACHR considers that the petitions were presented within a reasonable time.

### **D. Duplication of international proceedings and *res judicata***

64. Article 46(1)(c) of the Convention provides that the admissibility of the petitions is subject to the requirement that the matter "is not pending in another international proceeding" and Article 47(d) of the Convention provides that the Commission shall not admit the petition if it is substantially the same as one previously studied by the Commission or by another international organization. In the petitions under consideration in the present report, the parties have not put forward the existence of either of these two situations, and they are not apparent from the case file.

### **E. Characterization of the alleged facts**

65. For the purposes of admissibility, the Commission must decide whether or not the petition states facts that tend to establish a violation of rights as stipulated in Article 47(b) of the American Convention and whether or not the petition is "manifestly groundless" or "obviously out of order," according to subparagraph (c) of the same article. The standard governing evaluation of these particulars is different from the one required to decide on the merits of a complaint. The Commission must conduct a *prima facie* evaluation to examine whether the complaint substantiates the apparent or potential violation of a right guaranteed by the Convention and not to establish the existence of a violation. This review is a summary analysis that does not involve any prejudgment or advanced opinion on the merits of the case.

66. In view of the elements submitted by the parties, the IACHR considers that the circumstances of the alleged victims' detention; the alleged acts of torture and conditions of detention in police stations and penitentiaries; the alleged parading in striped suits and search and seizures at their homes without a warrant could constitute a colorable claim of Articles 5, 7 and 11 of the American Convention and Articles 1.1 and 2 of the same instrument; and by virtue of the principle *iura novit curia*, of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, all to the prejudice of Ramón Campos Esparza and Roberto Antonio Olórtegui Trinidad. The IACHR also considers that that the effects of the acts referred to in this paragraph as well as the alleged *incommunicado* detention of the alleged victims for long periods, isolation and restrictions to visitation could constitute colorable claims on the violation of Article 5.1 of the American Convention, to the prejudice of their family members.

67. Regarding the allegations on the criminal trials carried out before members of the judiciary with secret identity, as well as the alleged incompatibility of the domestic legal framework within which the facts occurred with the American Convention, the IACHR considers that they could constitute a colorable claim on the violation of the rights enshrined in Articles 9, 8 and 25 in connection with Articles 1.1 and 2 of the same instrument to the prejudice of Ramón Campos Esparza and Roberto Antonio

Olórtegui Trinidad. During the merits phase, the Commission will analyze the submission of the State of Peru alleging that the terrorism legislation adopted as from January 2003 and the criminal trials derived from them have already redressed any supposed infringement of the aforementioned conventional protections.

68. The IACHR shall evaluate in the merits phase whether the alleged prohibition to Mr. Ramón Campos Esparza to have access to pedagogic materials during his detention at the Challapalca Penitentiary could possibly constitute a colorable claim on the violation of Article 13 of the American Convention. On the other hand, regarding the alleged violation of the right enshrined in Article 24 of the Convention to the prejudice of Mr. Ramón Campos Esparza, the IACHR considers that the petitioners have failed to submit elements sufficient to establish a colorable claim on the potential violation of that provision.

69. Finally, since it is not evident that these elements of the complaint are manifestly groundless or out of order, the Commission concludes that the petition satisfies the requirements established in Articles 47(b) and c of the American Convention.

## **V. CONCLUSIONS**

70. Based on the above considerations of fact and law, and without prejudice to the merits, the Inter-American Commission concludes that the petitions 621-03 and 1378-04 satisfy the requirements for admissibility laid down in Articles 46 and 47 of the American Convention and in consequence

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,**

#### **DECIDES TO:**

1. Declare admissible petitions 621-03 and 1378-04 in relation to Articles 5, 7, 9, 11, 8 and 25 of the American Convention in connection with the obligations established in Articles 1.1 and 2 of the same instrument; and by virtue of the principle *iura novit curia*, Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

2. Declare admissible the alleged violation of the right enshrined in Article 13 of the Convention and inadmissible the alleged violation of the right enshrined in Article 24 of the same instrument, all this in relation to petition 621-03.

3. Notify this decision to the State and the petitioners.

4. Consolidate the petitions declared admissible in this Report, under case number 12.766 and initiate the processing of the merits.

5. To publish this decision and include it in its Annual Report to be presented to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 12<sup>th</sup> day of the month of July, 2010. (Signed: Felipe González, President; Paulo Sergio Pinheiro, First Vice-President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, Rodrigo Escobar Gil, and Luz Patricia Mejía Guerrero, members of the Commission).