

REPORT No. 49/11
DECISION TO ARCHIVE
PETITION 12.163
PERU
March 23, 2011

ALLEGED VICTIM: Leif Leonidas Avendaño Cama

PETITIONER: Alicia Bustamante Muñiz

VIOLATIONS ALLEGED: Articles 5, 7, 8 and 25 of the American Convention on Human Rights

PROCESSING STARTING DATE: June 7, 1999

I. THE PETITIONER'S POSITION

1. The petition alleges that on September 26, 1996, Leif Leonidas Avendaño Cama was arrested by the National Counter-Terrorism Directorate (DINCOTE), accused of belonging to the insurgent group that called itself the Peruvian Communist Party – Shining Path.

2. The petitioner asserted that while the alleged victim was in custody in the DINCOTE facilities, he was held incommunicado, tortured, and forced to confess to the crime of treason. The petitioner added that the alleged victim was prosecuted without the guarantees of due process and was ultimately convicted and sentenced to life imprisonment and other accessory penalties in a verdict delivered on November 20, 1996, which was upheld in a final judgment of July 31, 1997. The petitioner alleged that the evidence upon which the conviction was based relied on the defendant's own testimony and the testimony of persons who had claimed the benefit of the Repentance Law. The petitioner stated that under that law, persons already convicted could incriminate and implicate third persons in exchange for a reduction of their own sentences.

3. It is alleged that Mr. Leif Leonidas Avendaño filed an extraordinary appeal of the verdict, which was dismissed by the Military Supreme Court of Justice on February 25, 1998 and notified to the alleged victim on October 2 of the same year.

II. THE STATE'S POSITION

4. The State's contention was that the petition should be declared inadmissible because the petition was filed after the 6-month time period established in Article 46(1)(b) of the American Convention. According to the State, the remedies that the petitioner claims to have exhausted were not the appropriate appeals; it also argued that the time period for filing a petition must be counted from the date of notification of the conviction of July 31, 1997. It emphasized that the petition was filed on March 31, 1999, approximately two years late.

III. PROCESSING WITH THE IACHR

5. The original petition was received on March 31, 1999, and classified as number 12,163. On June 7, 1999, the Commission forwarded the pertinent parts of the petition to the State and, in keeping with the Rules of Procedure then in force, asked the State to submit its observations within 90 days.

6. The petitioner sent additional communications on April 27, September 1, October 20, 1999 and on January 27 and March 6, 2000. The State, for its part, filed its observations on September 3

and December 2, 1999, and on August 25 and 29, 2000.

7. On October 6, 2010, the IACHR asked the petitioner to provide updated information or any additional observation concerning this petition, and informed the petitioner that if it was not received within one month's time, the IACHR might consider closing the record in the petition, pursuant to Article 48(1)(b) of the American Convention.

IV. GROUNDS FOR THE DECISION TO CLOSE THE RECORD

8. Article 48(1)(b) of the American Convention on Human Rights and Article 42(1) of the Commission's Rules of Procedure both provide that in processing a petition, once information has been received or after the time period has elapsed and the information has not been received, the IACHR will ascertain whether the grounds for the petition still exist and, if not, will order the record closed.

9. Despite the Commission's October 6, 2010 request seeking updated information, the petitioner did not submit any further comments. Therefore, and inasmuch as the available information is not sufficient to adopt a decision on the petition's admissibility, the Commission decides to close the record pursuant to Article 48(1)(b) of the American Convention and Article 42(1) of its Rules of Procedure.

Done and signed in the city of Washington, D.C., on the 23rd day of March 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commission Members.