

**REPORT No. 48/11**  
DECISION TO ARCHIVE  
PETITION 12.098  
PERU  
March 23, 2011

**ALLEGED VICTIM:** Alberto Melecio Gutiérrez Tudela

**PETITIONERS:** Máximo Gutiérrez Fajardo and Alberto Melecio Gutiérrez Tudela

**ALLEGED VIOLATIONS:** Not specified

**BEGINNING OF PROCESSING:** January 27, 1999

**I. POSITION OF THE PETITIONERS**

1. The petitioners stated that Alberto Melecio Gutiérrez Tudela was arrested by members of the National Counter-Terrorism Directorate (DINCOTE) on October 17, 1992, while he was out looking for an apartment to rent for him and his family. They said that when he was taken to the DINCOTE installations, he was tortured physically and psychologically in an attempt to make him admit to being a member of the insurgent group Shining Path (*Sendero Luminoso*). As a result of those investigations, he was accused of treason before a military court. According to the petitioners, the alleged victim was acquitted of that crime by the Military Supreme Court, which referred his case to the ordinary law courts for trial on the charge of terrorism.

2. The petitioners stated that a person surnamed Ccori Bustamante had made a statement accusing Gutiérrez Tudela to benefit from the Repentance Law, but had subsequently retracted his statement before the National Court for Terrorism. They added that the alleged victim had admitted guilt in a statement to the police, but that the statement should be considered invalid given the coercion to which the accused had been subjected.

**II. THE STATE'S POSITION:**

3. The State asserted that the Military Supreme Court had not resolved that Alberto Melecio Gutiérrez Tudela had not committed the acts he was accused of, but rather that those acts did not fit the legal definition of treason. Accordingly, the State indicated that the military court had declared itself incompetent to hear the case and referred it to the ordinary courts.

4. The State denied that the alleged victim had been tortured into admitting guilt and affirmed that during his statement to the police, both the Provincial Prosecutor (*Fiscal Provincial Penal*) and his defense attorney (and brother), Mr. Gutiérrez Tudela, were present. It stated that the alleged victim had had every opportunity to make his statement spontaneously and without any kind of pressure on him. In addition, the State asserted that the petition was inadmissible, since it had been filed with the IACHR after the deadline established in Article 46(1)(b) of the Convention.

5. Finally, the State reported that Alberto Melecio Gutiérrez Tudela had been released from prison on October 21, 2002, having qualified for parole.

### **III. PROCESSING BEFORE THE IACHR**

6. The initial petition was received on November 11, 1998. It was registered as petition No. 12.098 and forwarded to the State on January 27, 1999. The State was given 90 days to reply to it, under the Rules of Procedure of the IACHR in force at the time. The State submitted its reply on April 30, 1999, and on April 26 and June 28, 2000, and on November 26, 2003, it remitted further written statements. The petitioners presented additional information on December 16, 1999, on February 23, 2001, and on March 31 and May 23, 2005.

7. On May 21, 2010, the IACHR requested an update from the petitioners and warned that if it did not receive it within one month it could consider archiving the petition pursuant to Article 48.1.b) of the American Convention.

### **IV. REASON FOR THE DECISION TO ARCHIVE**

8. Both Article 48(1)(b) of the American Convention and Article 42(1) of the Rules of Procedure of the Commission establish that, at any stage in the proceedings, once information has been received from the parties, or once the deadline established for receiving them has expired, the IACHR shall verify whether or not the grounds for the petition exist or subsist and in either case shall order the file to be archived.

9. In the instant case, the petitioners did not reply to the request for updated information made by the IACHR on May 21, 2010. Under those circumstances, and in view of the fact that the available information is insufficient to decide on the admissibility or inadmissibility of the petition, the IACHR hereby decides to close the record in accordance with Articles 48(1)(b) of the Convention and 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, Commissioners.