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REPORT No. 22/14
PETITION 735-03
REPORT ON ARCHIVE

EDUARDO FRANCISCO YANNO
ARGENTINA

Approved by the Commission at its session No. 1980 held on April 4, 2014
150 Regular Period of Sessions

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Argentina. April 4, 2014.



REPORT No. 22/14

PETITION 735-03

ARCHIVE

EDUARDO FRANCISCO YANNO

ARGENTINA

APRIL 4, 2014

ALLEGED VICTIM: Eduardo Francisco Yanno

PETITIONER: Luis Emilio Osler

ALLEGED VIOLATIONS: Article 8.2.h of the American Convention on Human Rights

INITIAL PROCESSING DATE: November 15, 2007

I. POSITION OF PETITIONER

1. On September 12, 2003, the Inter-American Commission on Human Rights (hereinafter “the Commission”) received a petition lodged by Luis Emilio Osler alleging responsibility of the Argentine State for violation of Eduardo Francisco Yanno’s right to appeal a judgment to a higher court.

2. The alleged victim was charged with facilitation of the crime of smuggling (providing non-essential assistance to smuggle goods). On October 3, 2000, National Court No. 6 of Buenos Aires for Criminal Economic Matters acquitted the alleged victim. The judgment was appealed by the Prosecutor to the National Appeals Chamber for Criminal Economic Matters; the acquittal was overturned; and the alleged victim was sentenced to a prison term of one year and four months.

3. The petitioner asserts that he filed a direct appeal for the conviction to be reviewed by a higher court. A motion for leave to appeal to the federal courts was also filed, so that if the direct appeal were denied, the proceeding would be found unconstitutional on the grounds of preclusion from review by a higher court, as well as certain flaws, which rendered the conviction arbitrary. The National Appeals Chamber ordered the appeals to be joined and sent the case up to the Supreme Court of Justice of the Nation (hereinafter “CSJN,” its Spanish initials) to be examined.

4. On March 11, 2003, the CSJN found the appeal to be inadmissible. The petitioner claims that because the first conviction was issued by an appeals court, he was unable to exercise his right to a defense before a higher court.

B. Position of the State

5. The State suggested the possibility of consolidating the petition and a friendly settlement process, which joins 21 petitions pending before the IACHR dealing with similar issues to those of the instant case.

II. PROCEEDINGS BEFORE THE IACHR

6. On November 15, 2007, the IACHR forwarded the petition to the Argentine State for its observations. The State presented its response on December 18, 2008. On January 26, 2009 the IACHR requested again information from the State. The State’s response was forwarded to the petitioner for his reply on February 10, 2009. On November 17, 2011 and July 25, 2012, the IACHR reiterated its request for information from the petitioner indicating that in the event that this information is not received within a period of three months, it could archive the petition.

III. BASIS FOR THE DECISION TO ARCHIVE

7. Both Article 48.b of the American Convention on Human Rights and Article 42 of the Rules of Procedure of the Inter-American Commission on Human Rights provide that, as part of the procedure for processing a petition, after the information requested has been received, or after the established period of time has elapsed and the information has not been received, the IACHR shall ascertain whether the grounds for the petition or the communication still exist and, if they do not, it shall order the record to be closed.

8. As of the date of approval of the instant report, the petitioner has not responded to the IACHR's requests for information conveyed to him on February 10, 2009, November 17, 2011 and July 25, 2012. After conducting the respective analysis, the Commission finds it does not have the information it needs to reach a decision on the petition, despite the efforts it made to secure said information and that the unjustified procedural inactivity of the petitioner constitutes a serious indication of lack of interest in the processing of petition. Therefore, pursuant to Article 48.b of the Convention, as well as Article 42 of the Rules of Procedure of the IACHR, it decides to archive the instant petition.