

INTER-AMERICAN COURT OF HUMAN RIGHTS

CESTI HURTADO CASE PRELIMINARY OBJECTIONS

JUDGMENT OF JANUARY 26, 1999

In the Cesti Hurtado Case,

the Inter-American Court of Human Rights (hereinafter "the Court," "the Inter-American Court," or "the Tribunal"), composed of the following judges:

Hernán Salgado-Pesantes, President
Antônio A. Cançado Trindade, Vice President
Maximo Pacheco-Gómez, Judge
Oliver Jackman, Judge
Alirio Abreu Burelli, Judge
Sergio García-Ramírez, Judge
Carlos Vicente de Roux-Rengifo, Judge

also present:

Manuel E. Ventura-Robles, Secretary, and
Renzo Pomi, Interim Deputy Secretary

pursuant to Article 36(6) of the Rules of Procedure (hereinafter "the Rules of Procedure"), renders the following judgment on the preliminary objections interposed by the State of Peru (hereinafter "the State" or "Peru").

I

INTRODUCTION OF THE CASE

1. This case was submitted to the Inter-American Court of Human Rights by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") on January 9, 1998. It originated with petition No. 11.730, received by the Secretariat of the Commission on March 7, 1997.

II

FACTS AS SET FORTH IN THE APPLICATION

2. In the following paragraphs, the Court will summarize the facts relevant to the consideration of preliminary objections which were alleged by the Commission in its application:

a) Mr. Gustavo Adolfo Cesti Hurtado, Peruvian citizen, was a captain in the Peruvian Army and retired from service in 1984. At the time of the events in the present case, he was the General Manager of the business "Top Security Sociedad Anónima" [Top Security Inc], which had a contract for insurance assistance with the Logistic Command of the Peruvian Army;

b) in November 1996 a trial was instituted before a Peruvian military court against several members of the army and Mr. Cesti Hurtado;

c) on December 23, 1996 Mr. Cesti Hurtado was accused of the crimes of fraud, negligence, disobedience, and crimes against the duty and dignity of his position, and on January 17, 1997 the Investigation Director ordered his arrest;

d) on January 31, 1997 Mr. Cesti Hurtado filed a writ of habeas corpus on the grounds that the military courts did not have jurisdiction to try him, inasmuch as he was a civilian. On February 12,

1997, the writ of habeas corpus was declared admissible by the Special Public Law Chamber of the Superior Court of Lima, which ordered that Mr. Cesti Hurtado be dismissed from the proceedings before the military courts and that the order for his arrest and the ban from leaving the country be annulled. The military courts were notified on February 18, 1997 of the Order of the "Special Public Law Chamber";

e) on February 26, 1997 the Supreme Court of Military Justice overruled the February 12, 1997 Order of the Special Public Law Chamber and ordered the immediate execution of the arrest warrant against Mr. Cesti Hurtado;

f) on February 28, 1997 Mr. Cesti Hurtado was arrested;

g) on March 6, 1997 the Special Public Law Chamber of the Superior Court of Lima stated that its orders require obligatory compliance and declared itself competent to decide on motions for constitutional guarantees;

h) on March 8, 1997 the Examining Magistrate of the military courts ordered the definite arrest and the continuation of the proceeding opened in that court against Mr. Cesti Hurtado;

i) between March 13 and 19, 1997 the Executor Judge of habeas corpus notified the military court of the Order of the Special Public Law Chamber of the Superior Court of Lima, and went in person to the military barracks where Mr. Cesti Hurtado was detained to try, unsuccessfully, to free him;

j) on April 13, 1997 the War Chamber condemned Mr. Cesti Hurtado to seven years in prison; and

k) on May 2, 1997 the Review Chamber of the military court sentenced Mr. Cesti Hurtado to four years in prison and the payment of US\$390,000.00 (three hundred ninety thousand dollars of the United States of America).

III PROCEEDINGS BEFORE THE COMMISSION

3. On March 7, 1997, the Commission received at its Secretariat a complaint made by Mrs. Carmen Judith Cardó Guarderas on behalf of her husband, Mr. Cesti Hurtado. On the tenth of the same month and year, the Commission communicated the complaint to the State, of which it requested the submission of the appropriate information within a period of 90 days.

4. On April 25, 1997, the Commission requested that Peru, as a precautionary measure, inform it as to whether it had complied "with all aspects of the decision in habeas corpus proceeding" rendered in favor of Mr. Cesti Hurtado and, if applicable, of what measures it had adopted in that respect. It also requested that the State submit information as to the medical attention that Mr. Cesti Hurtado would receive. On May 19 of that year, the State submitted its answer to the Commission, which was sent in relevant part to the petitioner on May 28 of that year.

5. On July 9, 1997, the State submitted "collective information" about this case, which, in the viewpoint of the Commission, contained "a synthesis of the positions that it had taken in earlier communications."

6. On September 12, 1997, the Commission placed itself at the disposal of the parties to reach a friendly settlement and requested that they give an answer to this offer within a period of fifteen days. The State did not respond to this offer.

7. On October 16, 1997, during its 97th Regular Session, the Commission approved Report No. 45/97, which was sent to the State on October 30, 1997. In that Report, the Commission made the following conclusions:

1. The Peruvian State is responsible for the violation of the right to personal liberty of Mr. Gustavo Adolfo Cesti Hurtado, who is detained in the military prison of the Simón Bolívar Barracks of Lima, a right which is protected by Article 7(1) of the American Convention.

2. The Peruvian State is responsible for the violation of the right to due process to the detriment of Mr. Gustavo Adolfo Cesti Hurtado, by having subjected him to a tribunal that lacked jurisdiction to make a decision as to his rights, and for the deprivation of his personal liberty, rights that are set forth in Articles 8(1) and 7(6) respectively of the Convention.

3. The Peruvian State is responsible for the violation of the right to the honor and the good reputation of Mr. Gustavo Adolfo Cesti Hurtado, a right that is set forth in Article 11 of the Convention, on having found him guilty of the commission of a crime, as a result of an illegal proceeding.

4. The Peruvian State is responsible for the failure to comply with the decision on habeas corpus that was rendered in favor of Mr. Gustavo Adolfo Cesti Hurtado in a final and unappealable decision by the Special Public Law Chamber of the Superior Court of Lima, violating in that way the right of the aforementioned Mr. Cesti to the execution of decisions rendered in his favor as a consequence of the simple and prompt recourse to which he has a right under Articles 25(1) and 25(a) and 25(2)(c) of the American Convention on Human Rights.

5. The Peruvian State is responsible for the violation of the right set forth in Article 21 of the Convention, to the detriment of Mr. Cesti Hurtado.

6. The Peruvian State has not permitted Mr. Gustavo Adolfo Cesti Hurtado to receive proper medical attention, which is incompatible with Article 5 of the Convention.

and the following recommendations to the State:

1. [That it immediately execute] the habeas corpus ruling rendering by the Special Public Law Chamber of Lima on February 12, 1997, in favor of Mr. Gustavo Adolfo Cesti Hurtado, and as a consequence, [order] his release, [annul] the proceeding that was initiated

ed against Mr. Cesti before the military court and the conclusions reached in that proceeding.

2. [That it compensate] Mr. Gustavo Adolfo Cesti Hurtado for the consequences resulting from the illegal detention, irregular proceedings, and the questioning of his honor to which he was subjected.

The Commission also decided to send the above-cited report to the Peruvian State, granting it a period of one month to comply with the recommendations made therein.

8. On November 25, 1997, the State rejected the Report of the Commission and requested that the case be conclusively closed.

9. On December 22, 1997, the Commission decided to submit the case to the Court.

IV PROCEEDINGS BEFORE THE COURT

10. On July 17, 1997, prior to the submission of the application, the Commission requested that the Court, as a provisional measure, order that the State comply with the judgment delivered in the habeas corpus proceeding by the Special Chamber of Public Law of the Superior Court of Justice of Lima, without prejudice to the continuation of the investigations by the competent judicial organ to determine any possible criminal responsibility on the part of Mr. Cesti Hurtado.

11. On July 29, 1997, the President requested that the State adopt, "forthwith, such measures as may be necessary to ensure the physical and moral integrity of Mr. Gustavo Cesti Hurtado." This order was ratified by the Court on September 11, 1997.

12. On January 9, 1998, the Commission requested that the Court order the unconditional release of the victim and the release of his property. On January 21, 1998, the Court required that the State maintain the provisional measures to assure the physical safety of Mr. Cesti Hurtado.

13. On January 9, 1998, the Commission also submitted the application in which it invoked Articles 51 of the American Convention on Human Rights (hereinafter "the Convention" or "the Inter-American Convention") and Article 26 of its Rules of Procedure. The Commission submitted this case to the Court for a decision as to whether there has been a violation of the following Articles of the Convention: 5(1), 5(2), and 5(3) (Right to Humane Treatment); 7(1), 7(2), 7(3), and 7(6) (Right to Personal Liberty); 8(1) and 8(2) (Right to a Fair Trial); 11 (Right to Privacy); 17 (Rights of the Family); 21 (Right to Property); 25 (1), 25(2)(a), and 25(2)(c) (Right to Judicial Protection); and 51(2) of the American Convention, in relation to Articles 1 and 2 of the same. The Commission also requested that the Court order Peru to punish those responsible for the alleged violations committed to the detriment of the victim, free the victim, and annul the proceedings instituted against him in the military court. The Commission also requested that the State,

make reparation and pay compensation to the victim for the period that he has been unduly detained and for the injury to his personal reputation that has been inflicted by treating him as a criminal, for freezing his property, for the wages he lost when he could not exercise his right to work while he was unjustly imprisoned, and for the general anguish of being obligated to receive medical treatment from a doctor whom he did not choose.

Finally, the Commission requested that the Peruvian State be ordered to pay the costs of this proceeding.

14. The Commission named Oscar Luján Fappiano as its delegate; Jorge E. Taiana and Christina M. Cerna as its attorneys; and Alberto Borea Odría as its assistant.

15. On January 22, 1998, the Secretariat of the Court (hereinafter "the Secretariat"), after a preliminary review of the application by the President of the Court (hereinafter "the President"), notified the State of the receipt of the application and informed it of the time periods to answer the application, raise preliminary objections, and name its representatives. The State was also invited to designate an *ad hoc* judge.

16. On February 20, 1998, Peru designated David Pezúa Vivanco as Judge *ad hoc*.

17. On March 20, 1998, Peru designated Jorge Hawie Soret as its agent.

18. On the same day, the State interposed the following preliminary objections (capitalized in the original):

- (1) failure to exhaust domestic remedies when the [Commission], admitted the petition of the alleged victim for processing; and inappropriate legal action [;]
- (2) incompetence and jurisdiction [;]
- (3) *res judicata* [;]
- (4) lack of a prior demand by the Commission [;]

and requested that the Court order the case closed.

19. On April 20, 1998, the Commission submitted its brief, in which it requested that the Court reject "all" the preliminary objections raised.

20. On May 22, 1998, the State submitted its answer to the application.

21. On September 14, 1998, the President summoned the State and the Commission to a public hearing, to be held on November 24, 1998 at the seat of the Court, to hear their oral arguments on the preliminary objections raised by Peru. The President also summoned expert witnesses named by the Commission, Valentín Paniagua Corazao, Julio B. Maier, and Néstor Sagües, to deliver their reports in the aforementioned hearing.

22. On October 21, 1998, the Commission requested that the Court accept Samuel Abad Yupanqui in substitution of expert Julio B. Maier, as Maier had been named magistrate of the Court of Appeals of the self-governing city of Buenos Aires. On October 23, 1998, the President designated Abad Yupanqui as expert and summoned him to the public hearing on preliminary objections.

23. On November 20, 1998, Pezúa Vivanco informed the Court that it was "physically impossible" for him to travel to the seat of the Court during its XLII Regular Session to be sworn in before the President and to be present at the Tribunal during the public hearing on preliminary objections.

24. The public hearing on preliminary objections took place at the seat of the Court on November 24, 1998.

There appeared

for the Republic of Peru:

Jorge Hawie Soret, agent;
Sergio Tapia Tapia, counsel;
Alberto Cortez, counsel;
Walter Palomino Cabezas, counsel; and
Mario Cavagnaro Basile, counsel;

for the Inter-American Commission on Human Rights:

Oscar Luján Fappiano, delegate
Verónica Gómez, assistant; and
Alberto Borea, assistant.;

experts named by the Inter-American Commission

Samuel Abad Yupanqui; and
Valetín Paniagua Corazao.

The above named experts submitted their reports, which will be included in the evidentiary file in the present case. However, despite having been duly summoned, Néstor Sagües, an expert named by the Commission, did not appear before the Court.

25. On December 10, 1998, Pezúa Vivanco submitted to the Court his renunciation of the appointment of *ad hoc* judge in the present case, due

to incompatibility with his position as Executive Secretary of the Executive Commission of the Judicial Authority of Peru.

26. On January 19, 1999, the Court issued an order in which it decided

1. To acknowledge David Pezúa Vivanco's renunciation of the appointment of *ad hoc* judge in the present case.
2. To continue consideration of the case with its current composition.

V JURISDICTION

27. Peru has been a State Party to the American Convention since July 28, 1978, and accepted the jurisdiction of the Court on January 21, 1981. Therefore, the Court has jurisdiction under Article 62(3) of the Convention, to hear the preliminary objections raised by Peru in the instant case.

VI PRELIMINARY CONSIDERATIONS

28. It is necessary to clarify at this time a matter generally related to the observations of the Commission regarding the brief on preliminary objections submitted by the State. The Commission stated in the aforementioned observations that

this is not the first time that the Illustrious Government of Peru raises [the] objections [that have been interposed in this case] because, in fact, questions of a similar nature to those to which I respond have been raised already in the Castillo Petruzzi *et al.* Case. For that reason, in the interest of brevity, I refer, where relevant, to the Commission's statements in its answering brief in that case as well as to the applicable observations made by the Commission in the application submitted in this Cesti Hurtado Case, which I request be considered as included in this answer.

29. The Commission's request that the Court consider "where relevant" arguments that were raised in another case, does not contribute to the progress of the proceedings. When the Commission presents its observations to the preliminary objections raised by the State, it should relate them to the particular circumstances of the respective case. Therefore, for the purposes of this judgment, the Court has considered the observations made by the Commission to the objections raised by the State within the framework of this proceeding and in the present stage, without considering those raised in the context of other cases.

VII FIRST OBJECTION

Exhaustion of Domestic Remedies

30. The first objection raised by the State concerns the alleged lack of the exhaustion of domestic remedies when the Commission admitted for processing the complaint on behalf of the alleged victim, and inappropriate legal action.

31. As grounds for this objection, the State submitted a summary of its interpretation of the facts of the case, and also its arguments, which the Court will hereafter summarize:

a) that when the Commission received and admitted the complaint filed by Carmen Judith Cardó Guarderas de Cesti on March 4, 1997, domestic resources had not yet been exhausted, because the main issue of discussion, which is that of the jurisdiction of the military court, cannot be negated by a writ of habeas corpus, not even by the Superior Court of Lima, but rather by means of the procedures set forth in the Code of Military Justice and the Law of the Judicial Authority and by the Supreme Court of Justice.

b) that there was no arbitrary imprisonment of Mr. Cesti Hurtado, that the order of detention incorporated the requirements of a judicial order resulting from a customary proceeding, a

consistent decision and a written, reasoned warrant rendered by a jurisdictional, constitutionally autonomous and exclusive institution; and

c) that on May 2, 1997, two months after the filing of the original petition before the Commission, the military court condemned Mr. Cesti Hurtado to four years of imprisonment, which, in the opinion of the State, demonstrates that the domestic resources had not been exhausted when the complaint was lodged with the Commission.

32. The Court summarizes as follows the arguments of the Commission as to the first objection raised by the Government:

a) that the Commission had made reference to this issue in the brief supporting its application, for which reason it referred the Court "*inter alia*" to paragraphs 56, 57, 65 to 70, 75, and 78 of that brief;

b) that the writ of habeas corpus operates as a legal requirement when "lack or absence of [...] due process" is alleged; that this view requires the competence of the court, and that, therefore, the writ of habeas corpus was the appropriate remedy in the case of Mr. Cesti;

c) that the American Convention "is violated by even the institution of a proceeding before an incompetent judge or court";

d) that the issuance of an arrest order by an incompetent authority or official is a circumstance that threatens liberty, a circumstance that, in accordance with the Constitution of Peru, can be attacked by means of a writ of habeas corpus;

e) that "the Convention is violated by a threat to the freedom of a person, from which can then be deduced the rest of the related rights, according to that set forth in Article 200 of the Peruvian Constitution."

33. Article 46(1)(a) of the Convention establishes that for a petition or communication lodged with the Inter-American Commission in accordance with Articles 44 or 45 of the Convention to be inadmissible, it is necessary that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. The issue of exhaustion was raised before the Commission, which determined, in its Report No. 45/97 dated October 16, 1997 that the domestic remedies had been exhausted with the decision on the writ of habeas corpus in the last instance. What the Court now must decide is whether the imprisonment and the fine imposed on Cesti Hurtado resulted from legal due process. This is essentially a substantive question, whereas the objection of non exhaustion of domestic resources is procedural in character and of pure admissibility. As the State's arguments go to the merits, the Court will consider them in its examination of the merits of the case. Therefore, the Court rejects the first preliminary objection as inadmissible.

VIII SECOND AND THIRD OBJECTIONS

Lack of Competence and Jurisdiction, and Res Judicata

34. The second objection interposed by the State concerns jurisdiction and competence.

35. On this point, the State argues that:

a) that, by means of its application, the Commission "attempts to undermine the principle of res judicata" by requesting that the trial before the Exclusive Military Court in which Cesti Hurtado was convicted for the crime of fraud against the State be declared null and void;

b) that, in accordance with the provisions of articles 138 and 139(1) of the Political Constitution of Peru, the power to administer justice is an exclusive function of the State which emanates from the people;

- c) that if the Court were to accept that which the application puts forth, it would undermine the legal order of the Peruvian State and "destabilize current constitutional institutions such as the Exclusive Military Courts and the Civilian Courts, whose differences are resolved in accordance with proceedings established by Peruvian Law"; and it would transgress the Charter of the Organization of American States to indirectly involve other Member States in Peruvian affairs;
- d) that an institution composed of non Peruvians cannot question Peru's legal order, which was restructured as of 1992; and
- e) that in the redaction of the report in this case, the Commission violated elementary legal concepts that guarantee the sovereignty of States, and particularly the power to punish.

Finally, the State made certain reflections about the political affiliation of the defenders of Mr. Cesti Hurtado and stated that their radical opposition to "the Government of the Constitutional President of the Republic is definitely known."

36. The Commission, for its part, argued:

- a) that this objection is a "restatement" of the sixth and tenth preliminary objections in the Castillo Petruzzi *et al.* Case, for which reason it refers to the observations made by the Commission in that case "when relevant." (*supra* 29);
- b) that the objection of *res judicata* contradicts the objection of non exhaustion of domestic remedies;
- c) that the only judgment which has the character of *res judicata* in this case is that which was rendered in the habeas corpus proceeding initiated by Mr. Cesti Hurtado; and
- d) that the requirement of the prerequisite of exhaustion of domestic remedies in the American Convention, demonstrates that

the objection of *res judicata* cannot be raised in a proceeding before the Court. Moreover, in accordance with the principles of international law, "judicial judgments can be grounds for the international responsibility of the State and, therefore, the 'object' of an international judicial proceeding."

With regard to the State's allegations concerning the political affiliation of Mr. Cesti Hurtado's defenders, the Commission argued that those statements "constitute a clear impairment of the principles of equality, non discrimination, and freedom of expression" and "cast light on the real reason for the imprisonment of Mr. Cesti Hurtado."

37. As to the allegations of the State concerning the alleged incompetence of "an organization composed of non Peruvians" to question the legal order of that State (*supra* 35(d)), the Court will limit itself to state for the record that these statements are not compatible with the obligations undertaken by the State under the Convention.

38. The Court will not examine the arguments concerning the political affiliation of the representation of Mr. Cesti Hurtado. The presentation to this Court of arguments such as those described is irrelevant.

39. The other aspects of the second preliminary objection interposed by the State are closely related to the preliminary objection of *res judicata*. Therefore, it is appropriate for the Court to consider them when it addresses the third preliminary objection (*infra* 46).

40. The third objection filed by the State concerns the authority of *res judicata* which, in the State's opinion, is held by the judgment that condemns Mr. Cesti Hurtado to imprisonment.

41. As grounds for this objection, the State submitted a summary of its interpretation of the facts of the present case and also its arguments, which are summarized by the Court as follows:

- a) that the writ of habeas corpus was brought against a provisional detention order issued in a criminal proceeding, and that that

order was only in existence until the time that the conviction was handed down; and

b) that the sanction of imprisonment to which Mr. Cesti Hurtado has been subjected derives from a final judgment issued in a final instance by a military court, which it has the authority of *res judicata* and, therefore, is "set [and] irreversible." Therefore, the State requests that "that judgment be respected."

42. On its behalf, the Commission argued:

a) that although it is true that the writ of habeas corpus was interposed to question the legality of a detention order that had a provisional character, preventive detention is a precautionary measure that should be ordered by a competent judge; that the judgment issued in the habeas corpus proceeding "[was] based on the fact that the military tribunal was not competent [to restrict the freedom of Mr. Cesti] and, consequently, it could not validly order preventive detention, nor, much less, a final judgment";

b) that, therefore, the conviction rendered by the military tribunal would be the legal result of the lack of jurisdiction, as held by the judge that decided the motion for habeas corpus; and

c) that the filing of a writ of habeas corpus cannot be required for each procedural act taken in the course of a trial, "on pain of those who have not been the object of [such writ] remaining purged or imprisoned "; and that that thesis cannot be considered valid since "the nullity of one procedural act results in the nullity of all subsequent procedural acts.

43. The second objection is based on a fundamental error as to the role of the organs - the Commission and the Court - created by the Convention of which the State is a Party. Article 33 of the Convention establishes that

[t]he following organs shall have competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to this Convention:

- a. the Inter-American Commission on Human Rights

{...and}

- b. the Inter-American Court of Human Rights [...].

44. Article 62(3) of the Convention provides, in this regard, that

[t]he jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration [...] or by a special agreement.

45. The State, in its second preliminary objection, presented arguments concerning the "weakening" or the "de stabilization" of national institutions (*supra* 35(c)). As to observations of this nature, the Court has already stated that

[...] Peru signed and ratified the American Convention on Human Rights. Consequently, it accepted the treaty obligations set forth in the Convention with respect to all persons subject to its jurisdiction without any discrimination. It is not necessary to state that Peru, like the other States Parties to the Convention, accepted the obligations precisely in the exercise of its sovereignty.

On becoming a State Party to the Convention, Peru accepted the competence of the organs of the Inter-American system for the protection of human rights, and therefore obligated itself, also in the exercise of its sovereignty to participate in proceedings before the Commission and the Court and to assume the obligations that derive from them and from the general application of the Convention. (*Castillo Petruzzi et al. Case, Preliminary Objections*, Judgment of September 4, 1998, Series C, No. 41, para's 101 and 102.)

46. In the two preliminary objections that the Court is considering at this time, the State has made reference to the principle of *res judicata*. The

State argues that the sanction of imprisonment imposed on Mr. Cesti Hurtado "is a result of a judgment that enjoys the authority of *res judicata* inasmuch as it has been reviewed by a military court of final instance. That judgment is set, irreversible." (*supra* 41(b)) This argument would lead to the necessary conclusion that it is not possible for the Court to admit and process the application which the Commission has submitted in favor of the alleged victim.

47. The Court recalls that the purpose of International Law of Human Rights is to provide individuals with the means of protection of internationally recognized human rights against the State (its organs, its agents, and all those who act in its name). In international jurisdiction the parties and the matter in controversy are, by definition, different from those in the domestic jurisdiction. In the present case, the fundamental aspect of the controversy before the Court is not whether the alleged victim violated Peruvian law (whether it be civilian or military law), but rather if Peru has violated the international obligations to which it contracted on becoming a State Party to the American Convention.

48. For these reasons, the Court rejects, *in toto*, as inadmissible, the second and third preliminary objections (*supra* 34 and 40) raised by the State.

IX

FOURTH OBJECTION:

Lack of a Prior Demand

49. The fourth objection made by the State concerns the Commission's failure to raise in the conclusions of Report 45/97, certain claims made in the application, and that those claims were not subjects of the recommendations made to the Peruvian State by the Commission in the cited Report.

50. The Court summarizes the State's arguments to support this objection in the following manner:

- a) that the Commission's claim that those who are responsible for the acts that have been perpetrated against the victim cannot be

considered by the Court, since they were not raised in the recommendations proposed by the Commission to the State in its Report; and

b) that in the body of the application, the Commission argued that the State would have violated the Convention in the Fight Against Torture and Cruel Treatment (*sic*), which had not been the subject of a proposal in the conclusions of its Report.

51. The Court synthesizes the arguments of the Commission as to this objection in the following manner:

a) that the objection raised by the State is a "reiteration of the third, fourth, and eighth objections interposed in the Castillo Petrucci *et al.* Case," for which reason it refers the Court, where relevant, to the answer given in that case (*supra* 29); and

b) that "the duty to investigate and punish those who are responsible for violations of the human rights set forth in the Convention, emanates from the general obligation to ensure their free and full exercise which Article 1(1) imposes on the States Parties, for which reason a particular request is not necessary, and that the inclusion of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, comes about as a logical consequence of the State's non compliance with the recommendations made by the Commission in its report."

*
* *

52. In its consistent jurisprudence, the Court has affirmed the duty of the State to prevent, investigate, and punish those who are responsible for violations of the human rights set forth in the Convention. For that reason, it is not essential that the Commission include in its report a reference to the investigation and punishment of the corresponding violations of human rights in order to raise them in the application to the Court. Moreover, the Court can inquire into those questions and decide

on them in its judgment independently of whether they have or have not been raised in the application of the Commission.

53. The State also argues that the Convention in the Fight Against Torture and Cruel Treatment (*sic*) was not included in the Report of the Commission. As to that, the Commission stated that "the inclusion of the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, arises as a logical consequence of the State's non compliance with the recommendations made by the Commission in its report."

54. The Court has studied the application filed by the Commission and has recorded that in one of its sections there is a reference, without further identification, to "the Vienna Convention (*sic*) that prohibits torture and other cruel, inhuman, or degrading treatment" (*cf. application brief, page 24*). In the respective text, the Commission argued that the Peruvian State would be violating that instrument "on maintaining the victim in a situation of arbitrary detention." However, the Commission did not request that the Court declare such violation, as can be found by a reading of the conclusions of the respective section (*cf. application brief, page 24 in fine*), the object of the application (*cf. application brief, page 1*), and the petition (*cf. application brief, page 36*).

55. For the reasons stated, the Court holds that it is not necessary to analyze the fourth preliminary objection raised by the State, as to the alleged "failure to make a prior claim before the Commission" as to the violation of the "Convention in the Fight Against Torture and Cruel Treatment (*sic*).

56. For the reasons cited, the Court rejects the fourth objection interposed by the State as inadmissible.

X

OPERATIVE PARAGRAPHS

57. Now therefore,

THE COURT**DECIDES:**

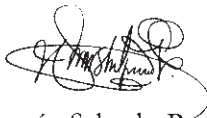
unanimously

1. To reject, as inadmissible, the preliminary objections interposed by the State of Peru.

unanimously

2. To proceed with the consideration of the present case.

Done in Spanish and English, the Spanish being authentic, in San José, Costa Rica, this twenty-sixth day of January 1999.



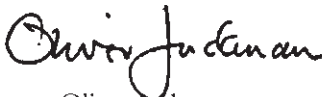
Hernán Salgado-Pesantes
President



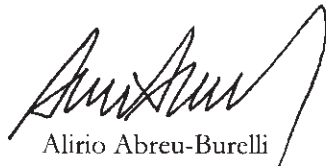
Antônio A. Cançado Trindade



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Oliver Jackman



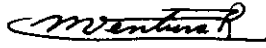
Alirio Abreu-Burelli



Sergio García-Ramírez

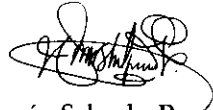


Carlos Vicente de Roux-Rengifo

A handwritten signature in cursive script, appearing to read "Manuel E. Ventura-Robles".

Manuel E. Ventura-Robles
Secretary

So ordered,

A handwritten signature in cursive script, appearing to read "Hernán Salgado-Pesantes".

Hernán Salgado-Pesantes
President

A handwritten signature in cursive script, appearing to read "Manuel E. Ventura-Robles".

Manuel E. Ventura-Robles
Secretary