

DISSENTING OPINION OF JUDGE VIDAL RAMIREZ

1. I dissent from the decision adopted in the Judgment that dismissed the preliminary objections interposed by the agent of the Government of Peru, for the following reasons:

1.1 Article 27 of the American Convention authorizes the States Parties, in cases when necessary and in cases that include those which constitute public danger or emergencies that threaten the independence or security of the State, to adopt measures that as much as possible are compatible with the obligations imposed by International Law and with the rights and guarantees that that norm necessitates.

The Peruvian State has found it necessary to adopt measures of defense before the armed and violent aggression inflicted on its population by terrorist organizations that violated basic human rights.

In this emergency situation Peru classified the crime of aggravated terrorism by the *nomen iuris* of treason against the fatherland and provided that it be tried in the military jurisdiction.

1.2 In the present case, as the illegal acts were characterized as aggravated terrorism, their perpetrators were subjected to the military jurisdiction and tried in a previously and legally established proceeding, which began on November 20, 1993, and ended with the final judgment rendered on May 3, 1994.

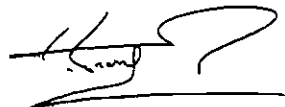
1.3 The Political Constitution of Peru establishes that the filing of writs of habeas corpus and amparo are not suspended during the time of a state of emergency (article 200), and if exceptional laws issued have established some restriction, the constitutional norm prevails over all other legal norms, in application of the principle of the normative hierarchy (article 51), for which reason writs of guarantee could and can be filed by those accused of terrorism.

2. By having submitted the complaint on the date of January 28, 1994, it is therefore evident that, pursuant to Article 46(1)(a) of the American Convention, they had not exhausted domestic remedies.

3. I dissent from the rationale that supports the dismissal of the fourth objection interposed by the agent of the Government of Peru, since the annulment of one proceeding implies the opening of a new one, in which case the new trial does not constitute a violation of the principle of *non bis in idem*.

4. I dissent from the rationale that underlies the dismissal of the fifth and sixth objections interposed by the agent of the Government of Peru inasmuch as Article 44 of the American Convention, in specifying the persons that can petition, distinguishes non-governmental entities, from "a group of persons." Nongovernmental entity is understood to mean a legal entity duly established with representatives that must act with the power of representation, since they act in *contemplatio domini*, for which reason they should be accredited.

5. The decision as to the tenth preliminary objection interposed by the agent of the Government of Peru should be joined to the merits.



Fernando Vidal-Ramírez
Judge



Manuel E. Ventura-Robles
Secretary