

## Inter-American Court of Human Rights

### Case of the "White Van" (Paniagua-Morales *et al.*) v. Guatemala

#### Judgment of January 25, 1996 (Preliminary objections)

In the Paniagua Morales *et al.* Case,

the Inter-American Court of Human Rights, composed of the following judges \* :

Héctor Fix-Zamudio, President  
Hernán Salgado-Pesantes, Vice President  
Alejandro Montiel-Argüello, Judge  
Máximo Pacheco-Gómez, Judge  
Alirio Abreu-Burelli, Judge  
Antônio A. Cançado Trindade, Judge  
Edgar E. Larraondo-Salguero, Judge *ad hoc*

also present:

Manuel E. Ventura-Robles, Secretary, and  
Ana María Reina, Deputy Secretary

pursuant to Article 31(6) of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Rules of Procedure"), renders the following judgment on preliminary objections interposed by the Government of the Republic of Guatemala (hereinafter "the Government" or "Guatemala").

#### I

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(\*) Judge Oliver Jackman recused himself in this case because he had participated in several stages of the case during its consideration by the Inter-American Commission on Human Rights when he was a member of the Commission.

1. This case was submitted to the Inter-American Court of Human Rights (hereinafter "the Court") by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") by note of January 18, 1995, which was received the following day. The case originated with a petition (No. 10.154) against Guatemala lodged with the Secretariat of the Commission on February 10, 1988.

2. In referring the case to the Court, the Commission invoked Articles 50 and 51 of the American Convention on Human Rights (hereinafter "the Convention" or the "American Convention") and Article 26 *et seq.* of the Rules of Procedure. The Inter-American Commission submitted this case to the Court for a decision as to whether Guatemala was responsible for alleged "*acts of kidnapping, arbitrary detention, inhumane treatment, torture, and murder committed by agents of the State of Guatemala against eleven victims*" during 1987 and 1988 (the case is also known as the "White Van Case" owing to the use of a vehicle of this type as part of the *modus operandi*), and for a declaration that Guatemala had violated the following norms:

Article 4 of the American Convention (Right to Life) of the following victims: Ana Elizabeth Paniagua Morales, Julián Salomón Gómez-Ayala, William Otilio González-Rivera, Pablo Corado-Barrientos, Manuel de Jesús González-López, and Erik Leonardo Chinchilla.

Articles 5 (Right to Humane Treatment), and 7 (Right to Personal Liberty) of the American Convention, and the obligations set forth in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Ana Elizabeth Paniagua-Morales, Julián Salomón Gómez-Ayala, William Otilio González-Rivera, Pablo Corado-Barrientos, Manuel de Jesús González-López, Augusto Angárta-Ramírez, Doris Torres-Gil, José Antonio Montenegro, Oscar Vásquez, and Marco Antonio Montes-Letona.

Articles 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention, which have been violated and continue to be violated to the detriment of all of the victims in this case.

Article 1(1) (Obligation to Respect Rights) as a result of the failure to fulfill the rights set forth in the Convention, as described above.

Additionally, the Commission asked the Court to demand that the Government identify and punish those responsible for the violations described above, compensate the victims of those violations in accordance with Article 63(1) of the Convention, and pay the costs and expenses incurred by the victims and their families in processing this case before the Commission and the Court, as well as reasonable honoraria to their lawyers.

3. The Inter-American Commission named as its Delegate, Claudio Grossman, and as its Attorneys, Edith Márquez-Rodríguez, David J. Padilla, Elizabeth Abi-Mershed, and Osvaldo Kreimer. In addition, the Commission named as Assistants the following persons who are the legal representatives of the original petitioners: Mark Martel, Viviana Krsticevic, Ariel E. Dulitzky, Marcela Matamoros, Juan Méndez, and José Miguel Vivanco.

4. On January 19, 1995, the Secretariat of the Court (hereinafter "the Secretariat") acknowledged receipt of the fax from the Commission on the same date on which the Commission submitted the case to the Court. On that date, the Commission acknowledged receipt of the Secretariat's letter and stated that, only for the purpose of registration, the transmission of the application was initiated in its offices before midnight on January 18, 1995 (Costa Rican time, location of the seat of the Court). In a note of January 20 of the same year, the Secretariat of the Commission ratified the terms of the earlier letter and stated that the first page of the application had been received at the Court at "*1:52 hours and the last at 3:17 hours (Costa Rican time) on the day of January 19, 1995.*" In a letter

of January 25, 1995, the Commission clarified that "*the time indicated on the cover page of the fax was that registered by the fax machine of the Commission and not that of the Court*" and that, moreover, this time was an hour ahead of the actual time because the Department of Material Resources of the Organization of American States (hereinafter the "OAS") generally does not adjust those machines during the winter schedule. For that reason "*as the hour of Costa Rica was one hour earlier than that of Washington, D.C. [the seat of the Commission], it meant that the Court began to receive the application at 11:52 (Costa Rican time).*" Submitted as an attachment to this letter was a memorandum from the Director of the Department of Human Resources of the O.A.S. certifying the change of hour of the fax of the Commission.

5. The President of the Court (hereinafter "the President"), after making a preliminary review of the application and once the Commission had corrected the deficiencies listed in the Secretariat's letter of February 9, 1995, authorized the processing of the case. By note of March 6, 1995, the Government was officially notified of the application and was granted a period of two weeks to appoint an Agent and Alternate Agent; a period of three months to answer the application; and a period of thirty days to present preliminary objections. In another communication of the same date the Government was invited to appoint a Judge *ad hoc*.

6. By note of March 20, 1995, the Government appointed Acisclo Valledares-Molina and Vicente Arranz-Sanz as Agent and Alternate Agent respectively. On April 19 of the same year it named Edgar Enrique Larraondo-Salguero as Judge *ad hoc*. On August 29, 1995, the Government named Alfonso Novales-Aguirre as Judge *ad hoc* in substitution of Larraondo-Salguero. The Court, by Order of September 11, 1995, decided "[n]ot to admit the attempted replacement of Judge **ad hoc** Edgar Enrique Larraondo-Salguero by Attorney Alfonso Novales-Aguirre."

7. On April 3, 1995, in accordance with Article 31 of the Rules of Procedure, the Government submitted a brief containing its preliminary objections. (see *infra* para. 23)

8. In that same writing the Government asked the Court to decide expressly, as it may at the stage of preliminary objections, on the suspension of the proceedings on the merits. The Court, by Order of May 17, 1995, declared this request to be inadmissible and continued processing the case in its distinct procedural stages, since the requested suspension was not in response to an "*exceptional situation,*" and no arguments were presented to justify it.

9. The Secretariat, in accordance with Article 31(3) of the Rules of Procedure, transmitted the preliminary objections to the Commission and granted it a period of thirty days to submit its arguments. The Commission submitted them on May 4, 1995, in a brief in which it refuted the objections "*as factually and legally completely groundless.*"

10. The President, by Order of May 20, 1995, and in accordance with Article 31(6) of the Rules of Procedure, summoned the parties to a public hearing to be held on September 14, 1995, for the presentation of oral arguments on the preliminary objections. The Commission requested a postponement of the hearing, and the President, by means of an Order of June 30, 1995 granted the request and set September 16, 1995, as the date for the hearing.

11. On June 2, 1995 the Government submitted its reply to the application.

12. The public hearing took place at the seat of the Court on September 16, 1995, at which there appeared,

for the Government of the Republic of Guatemala:

Acisclo Valladares-Molina, Agent  
Vicente Arranz-Sánchez, Alternate Agent  
Denis Alonzo-Mazariegos, Assistant  
Ramiro Ordóñez-Jonama, Assistant  
Alfonso Novales-Aguirre, Assistant  
Cruz Munguía-Sosa, Assistant

for the Inter-American Commission on Human Rights:

Claudio Grossman, Delegate  
David J. Padilla, Attorney  
Elizabeth Abi-Mershed, Attorney  
Mark Martel, Assistant  
Ariel Dulitzky, Assistant  
Marcela Matamoros, Assistant

## II

13. The following paragraphs summarize the events, circumstances and processing of this case before the Commission as they were set forth in the application and its attachments submitted to the Court.

14. According to the application, in every one of the crimes alleged therein the "*modus operandi*" was the following: heavily armed members of the Treasury Police of Guatemala forcibly detained persons and forced them into a white van. These kidnappings took place in Guatemala City at the end of December 1987 and February 1988, with the exception of one kidnapping and execution which occurred in June 1987. In all the alleged cases, agents of the Treasury Police detained the persons without any judicial order. Some of those detained were taken to the facilities of the Treasury Police and tortured. Others were killed after being tortured, and their bodies were left in the streets or outskirts of Guatemala City a few days after the detentions.

15. On February 11, 1988, the Commission transmitted to the Government the pertinent parts of the petition, which denounced the kidnapping of Ana Elizabeth Paniagua Morales, and the Commission requested information from the Government. On February 16 of the same year, the Government answered, confirming the disappearance of the victim and the discovery of her body, stating that the competent authorities were investigating the case, but that the family had refused to provide information to contribute to the apprehension of those responsible for the crime.

16. On February 13, 1989, the petitioners sent the Commission additional information concerning the circumstances of the kidnapping of Ana Elizabeth Paniagua-Morales. They

also denounced the assassination of a young student, Erik Leonardo Chinchilla, which occurred on February 17, 1988. Subsequently they requested that the Commission include that victim in the case.

17. On September 28, 1990, during its 78th regular session and on September 23, 1991, in its 80th regular session, the Commission held hearings on the case at which both parties were represented.

18. The petitioners, in a letter of December 30, 1991, forwarded an expanded list of victims in accordance with the position taken earlier, that the case involved an undetermined number of victims. The letter stated that another five persons had been kidnapped and killed, and five more had been kidnapped and illegally detained. All of them had previously been identified as victims in the political and judicial investigation in Guatemala.

19. Oscar Vásquez, who was a victim and witness in this case, and his son were murdered on September 11, 1994, five days before the final public hearing on the case was to be held before the Commission. On December 13, 1994, the petitioners sent a request for precautionary measures to protect seven members of the family of Oscar Vásquez. That same day, the Commission requested that the Government take all the necessary measures to protect the life, physical integrity, and liberty of the members of the family named in the request.

20. On September 16, 1994, during the 87th regular session of the Commission, another hearing was held on the case at the request of the petitioners. It was attended by representatives of both parties. On September 23, 1994, the Commission approved Report 23/94, in the dispositive part of which it decided the following:

1. To admit the present case.
2. To declare that the Government of Guatemala has not complied with its duties to respect the rights and freedoms recognized in the American Convention on Human Rights, and to ensure their exercise, according to Article 1 of the Convention.
3. To declare that the Government of Guatemala violated the human rights of the victims in the instant case as provided for in Articles 4(1), 5(1) and 5(2), 7, 24, and 25 of the American Convention.
4. To recommend to the Government of Guatemala that it adopt the following measures:
  - a. investigate the violations which took place in the present case, and judge and punish those responsible;
  - b. adopt the necessary measures to avoid the reoccurrence of these violations in the future.
  - c. pay just compensation to the victims' next of kin.
5. To transmit this report to the Government of Guatemala and grant the Government a period of 60 days to implement the recommendations contained herein. The 60 day period shall begin as of the date of remission of this report. During this period, in keeping with the mandate of Article 47(6) of the Regulations of the Commission, the Government is not authorized to publish this report.
6. To submit this case to the Inter-American Court of Human Rights should the Government of Guatemala not undertake to comply with all the recommendations contained in the present report.

21. This report was transmitted by the Commission to the Government on October 20, 1994. The Commission requested that the Government, within a period of sixty days, inform it of the measures adopted to resolve the denounced situation. The Government did not respond to this request or send its observations on Report 23/94, nor did it request reconsideration of the Report.

### III

22. The Court has jurisdiction to hear the instant case. Guatemala has been a State Party to the Convention since May 25, 1978, and accepted the contentious jurisdiction of the Court on March 9, 1987.

### IV

23. The Government presented the following preliminary objections:

1) Objection of the prescription of the right of the Commission to submit this case for a decision of the Court, as provided by Article 61(1) of the American Convention on Human Rights, because this right was not exercised within the period of three months set forth in Article 51(1) of the Convention.

2) Objection of the absolute legal invalidity of the application in the present case submitted to the Court by the Commission against the Republic of Guatemala on January 19, 1995, for obvious and material violations,

2(1) Of Article 51(1) of the American Convention on Human Rights, for filing the application when the period fixed by the Convention had expired, which is to say, that the application was filed out of time,

2(2) Of Article 26 of the Rules of Procedure of the Court, for not fulfilling the requirements listed therein for a case to be referred to the Court under Article 61(1) of the Convention.

### V

24. The Court will now begin examining the first of these preliminary objections. The Government maintains that, in accordance with Article 51 of the American Convention, the Commission had a period of three months from the date of the transmittal of the report referred to in Article 51(1) of the Convention to exercise its right to submit the present case for a decision of the Court. The Government adds that the period began to run on October 20, 1994, the date on which the Commission remitted the report to the Minister of Foreign Relations of Guatemala, and that the period of three months is the equivalent of ninety calendar days. Consequently, it concludes that the period within which the Commission could submit the application to the Court, expired on January 17, 1995, at midnight. The Government alleges that, as the Commission did not submit the case to the Court within this period, this right was extinguished.

25. The Commission submits, in relation to this preliminary objection, that the application was submitted within the three months, calculated from the date of transmission of Report 23/94 to Guatemala, which was October 20, 1994. The Commission maintains that the term

“month” refers to a calendar month, and that to interpret the expression three months from Article 51(1) of the Convention as ninety days would be inconsistent with the text and ordinary meaning of the terms of that provision.

According to the Commission, Article 51(1) should be interpreted in harmony with the spirit of the provision, which is to offer the State the opportunity to resolve the matter by complying with the recommendations of the Commission. The Commission concludes that the period of three months which began on October 20, 1994, expired on January 20, 1995. Consequently, the application which was transmitted to the Court on January 18, 1995, was submitted within that period.

26. The Court will not analyze whether the application was submitted within ninety days of October 20, 1994, since it is of the opinion that, in accordance with Article 51(1) of the American Convention, the period of three months should be based on the Gregorian calendar month, which is to say, from date to date.

27. Although the question argued in this case has not been raised previously, it has been the regular practice of the Court to compute the period of three months referred to in Article 51(1) of the Convention from date to date. (*Aloeboetoe et al. Case*, Judgment of December 4, 1991. Series C No. 11; *Gangaram Panday Case*, Judgment of January 21, 1994. Series C No. 16; *Genie Lacayo Case, Preliminary Objections*, Judgment of January 27, 1995. Series C No. 21; *Caballero Delgado and Santana Case*, Judgment of December 8, 1995. Series C No. 22; *Neira Alegría et al. Case*, Judgment of January 19, 1995. Series C No. 20; *Maqueda Case*, Resolution of January 17, 1995. Series C No. 18; *El Amparo Case*, Judgment of January 18, 1995. Series C No. 19).

28. In the *Caballero Delgado and Santana Case (Caballero Delgado and Santana Case Preliminary Objections*, Judgment of January 21, 1994. Series C No. 17), the Court inadvertently used the expression “90 days” as the equivalent of “three months” (paragraph 39) when referring to an argument of the Commission, and applied the two expressions synonymously (paragraph 43). Nevertheless, in that same case, the Court applied the criteria of three calendar months, as it is in paragraph 39 of that judgment, which applied a period of three months from October 17, 1991 to January 17, 1992. (if the period had been computed in days and not by the Gregorian calendar, ninety-three days would have transpired). Also in the *Neira Alegría et al. Case (Neira Alegría et al. Case, Preliminary Objections*, Judgment of December 11, 1991. Series C No. 13, paras. 32-34, the Court applied the period of three months from June 11, 1990 to September 11, 1990. (Three calendar months made up of ninety-three days)

29. The Court decides that, in accordance with Article 51(1) of the American Convention, the Inter-American Commission has a period of three months from the transmission of the Report referred to in Article 50(1) of the Convention, to submit the case to the Court. The expression “*period of three months*” should be understood in its ordinary meaning. According to the Dictionary of the Royal Academy of the Spanish Language, “period” “[is the] *term or time indicated for something*” and “month” “[is the] *number of consecutive days from the one indicated to another of the same date in the following month.*” Additionally, the Vienna Convention on the Law of Treaties [Article 31(1)] considers in its rules of interpretation, the ordinary meaning of the words, as well as the context, and the object and purpose of the treaty (see *infra* para. 40).

30. In the majority of the legislation of Latin American countries, it is established that the first and last day of a period of months or years should have the same numbering in the

respective months. The period of a month could, therefore, be of 28, 29, 30, or 31 days. The Law of the Judiciary of Guatemala, approved by Decree 289 of January 10, 1989, establishes in Chapter V, Article 45, letter c) that "*months and years are calculated by the number of days which correspond to them in the Gregorian calendar. Years and months end on the eve of the date on which they began to be counted.*"

In view of the foregoing, the Court rejects the first preliminary objection interposed by the Government.

## VI

31. The Government maintains in its second preliminary objection, that the introduction of the application via fax and without the transmittal of the ten copies referred to in Article 26 of the Rules of Procedure, constitutes an omission "*of the legal requirements that must be fulfilled to refer a case to the Court.*"

32. In respect to the first of the arguments of this preliminary objection, the Court, having made a preliminary study of the files on this point, makes the following observations: in the cases involving Honduras, the applications were received on April 24, 1986 by telex; in the Aloeboetoe *et al.* Case and the Gangaram Panday Case both applications were received by fax on August 27, 1990, and on April 1, 1991, the memoranda together with the original documentation was received via courier; the Neira Alegria *et al.* Case was received on October 10, 1990, when the application was submitted together with Report 43/90 of May 14, 1990 and the memorial was submitted by fax on March 28, 1991; the Cayara Case was received on June 3, 1991, via fax and on June 7, 1991, the original documents were received by courier, and on February 14, 1992, the Court received via courier a second application together with the original documentation.

33. In the Caballero Delgado and Santana Case, the proceedings were initiated in accordance with the current Rules of Procedure. In that case, the application was received by fax on December 24, 1992, and on January 4, 1993, ten copies of the original application with their attachments were received; the Genie Lacayo Case was submitted on January 6, 1994, by fax, and on January 12, 1994, the ten copies of the original application and the attachments were delivered by courier; the El Amparo Case was received on January 16, 1994, by fax, and on January 21, 1994, the ten copies of the original application and the attachments were received; the Maqueda Case was submitted by fax on May 25, 1994, and on June 2, 1994, ten copies of the original application and its attachments were received; the Castillo Páez Case came in by fax on January 13, 1995, and on January 17, 1995, ten copies of the original application with attachments were received by courier; the Loayza Tamayo Case was submitted by fax on January 12, 1995, and on January 17, 1995, ten copies of the original application and the attachments were delivered by courier; the Garrido and Baigorria Case was filed on May 29, 1995, by fax and on June 5, 1995, the original application and its attachments were received by courier; the Blake Case was received on August 3, 1995, via fax, and on August 11, 1995, the original application and its attachments were received by courier; and the Suárez Rosero Case was filed by fax on December 22, 1995, and on January 5, 1996, the original documents together with the attachments were received.



34. From the foregoing, it can be determined that it has been a constant practice, not objected to by the Governments, to file the application with the Court initially by telex or fax, followed by the submission, a few days later, of the original documents and the ten copies referred to in Article 26 of the Rules of Procedure. In none of the cases listed did the lapse of time between the filing of the application by fax and the reception of the original documents together with ten copies, exceed fourteen calendar days.

35. The Court does not find sufficient cause to modify this practice, inasmuch as every court should keep pace with contemporary life and make use of technological advances and modern electronic means to facilitate their communications with the parties to the proceedings, so that these communications may be made with due ease and speed. This is applicable, *a fortiori*, to an international human rights tribunal, as it allows the Court to act with security and with normal precautions in the context of the difficulties created by the distance between the tribunal and the parties. Taken together with the fact that the document originally sent by fax is forwarded within a few days of the fax, no valid grounds exist for a claim that the procedural rights of the parties are harmed in such a way as to rule out the fax as a means of communication.

36. For these reasons, the Court considers that the filing of the application by fax is valid, and, therefore, the objection of untimeliness cannot be grounded on that fact.

37. With respect to the second argument of this preliminary objection, that the failure to file the application in ten copies represents non-fulfillment of a "basic requirement," in violation of Article 26 of the Rules of Procedure, which should lead to the rejection of the application, this Court considers that, although the Commission did not literally fulfill this regulatory requirement, this fact should be analyzed in the light of Article 26, in conjunction with Article 27 of the Rules of Procedure. According to Article 27, the President shall, during the preliminary review of the application, request the applicant to correct any deficiencies derived from the omission of "basic requirements." If the President is granted the authority to order the correction of "basic requirements" which have been omitted, as has actually happened in this case, then there are better grounds, within certain limits of reasonableness and timeliness, for subsequent acceptance of the ten copies of the application. Moreover, this is a formal requirement, breach of which does not necessarily leave a party defenseless or lead to procedural unbalance or inequality as between the parties.

38. It is appropriate in this case to recall the criteria laid down by the Court to the effect that:

the procedural system is a means of attaining justice and that the latter cannot be sacrificed for the sake of mere formalities. Keeping within certain timely and reasonable limits, some omissions or delays in complying with procedure may be excused, provided that a suitable balance between justice and legal certainty is preserved. (*Cayara Case, Preliminary Objections*, Judgment of February 3, 1993. Series C No. 14, para. 42)

39. This Court determines that there is no reason to alter the practice by which the party bringing the case submits the ten copies of the application subsequent to its filing by fax, but always within the above-mentioned limits of timeliness and reasonableness. The submission of the copies a few days after the filing of the application allows a reasonable minimum of time for the President to undertake a preliminary review of the application and even to take procedural measures to correct any defects which may come to light.

40. As was stated earlier (see *supra* para. 29), the ordinary meaning of the terms, the context, and the object and purpose, in the interpretation of treaties, are the elements to be

taken into account. These elements are inter-connected in Article 31(1) of the Vienna Convention of the Law of Treaties, indicating that the process of interpretation should be taken as a whole. It would be contrary to the object and purpose of the Convention, and would fail to take into account its context, to apply the regulatory norms without the criterion of reasonableness, resulting in an imbalance between the parties and compromising the realization of justice.

41. As the Court has stated:

“Reasonableness” implies a value judgment and, when applied to a law, conformity to the principles of common sense. It is also used in reference to the parameters of interpretation of treaties and, therefore, of the Convention. Reasonable means just, proportionate and equitable, in opposition to unjust, absurd and arbitrary. It is a qualifier with an axiological content which implies opinion but, in another sense, may be employed juridically as, in fact, the courts frequently do, in that any state activity should be not only valid but reasonable. (*Certain Attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 44, 46, 47, 50 and 51 of the American Convention on Human Rights)*, Advisory Opinion OC-13/93 of July 16, 1993. Series A No. 13, para. 33).

42. It is not possible to apply the procedural rules of the American Convention without giving their proper weight to its context, object, and purpose, as a basis for the interpretation of all the applicable provisions in a given case. “*What is essential,*” as the Court has pointed out, “*is that the conditions necessary for the preservation of the procedural rights of the parties not be diminished or unbalanced, and that the objectives of the different procedures be met.*” (*Velásquez Rodríguez Case, Preliminary Objections*, Judgment of June 26, 1987. Series C No. 1, para. 33; *Fairén Garbi and Solís Corrales Case, Preliminary Objections*, Judgment of June 26, 1987. Series C No. 2, para. 38 and the *Godínez Cruz Case, Preliminary Objections*, Judgment of June 26, 1987. Series C No. 3, para. 36). The formal defects raised by the Government do not constitute a procedural injury to the State, in this case, of a kind that would justify according to the purely literal meaning of a regulatory norm preference over the superior interest of the realization of justice in the application of the American Convention.

For the reasons stated, the Court rejects, as groundless, the second preliminary objection.

## VII

Now, therefore,

**THE COURT,**

**DECIDES:**

by six votes to one,

1. To reject the preliminary objections presented by the Government of the Republic of Guatemala.

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

Dissenting Vote of Judge *ad hoc* Edgar E. Larraondo-Salguero.

Done in Spanish and English, the Spanish text being authentic in San José, Costa Rica, January 25, 1996.

Héctor Fix-Zamudio  
President

Hernán Salgado-Pesantes

Alejandro Montiel-Argüello

Máximo Pacheco-Gómez  
Burelli

Alirio Abreu-

Antônio A. Cançado Trindade

Edgar E. Larraondo-Salguero

Judge *ad hoc*

Manuel E. Ventura-Robles  
Secretary

Read at a public session at the seat of the Court in San José, Costa Rica on January 26, 1996.

So ordered,

Héctor Fix-Zamudio  
President

Manuel E. Ventura-Robles  
Secretary

**Dissenting Opinion of Judge *ad hoc***

**Dr. Edgar Enrique Larraondo-Salguero**

**Case: The White Van  
(Ana Elizabeth Paniagua Morales *et al.*)  
File: 10.154**

I DISSENT from the respectable judgment of the majority of Judges for reasons which I will explain below:

In procedural law the legality of forms is based on the manner and way in which the acts that make up the proceedings must be set forth, which is, in the time, place and order prescribed by law.

This is valid for all types of proceedings, whatever their nature and jurisdiction, so as to avoid falling into procedural anarchy; for law lacking certainty ceases to be law. In the present case the applicable laws: the American Convention of Human Rights, the Rules of Procedure of the Inter-American Commission on Human Rights, and the Rules of Procedure and the Statute of the Inter-American Court of Human Rights contain provisions that invest the proceedings before the Court with solemn formalities. These formalities tend to assure respect for the principles of procedural equality and legal certainty. In this respect the Court *in the Judgment of January 21, 1994, in the Caballero Delgado and Santana Case, paragraph 52, page 24 stated:*

Nevertheless, the Court must point out that there is no reason why the Commission should not **faithfully** follow the procedural rules. As it has said before and repeats today, although it is true that the object and purpose of the Convention can never be sacrificed to procedure, the latter is, in the interests of legal certainty binding on the Commission. (Emphasis by the Judge *ad hoc*)

In the instant case, the State of Guatemala submitted as preliminary objections, extinguishment of the right to file. Both objections arise from the same causes: the passage of time, and the Commission's failure to comply with the three month period starting from the date of transmission of its report to the State of Guatemala, which it is granted by Article 51(1) of the American Convention on Human Rights, in order to submit the case for a decision of the Court. As a result, the Commission's right to file was extinguished, due to its delay in taking that procedural action.

In view of the fact that the rule establishing limitations is applicable to substantive law, this objection applies equally when the right that the Commission attempts to assert has terminated in accordance with the Convention, due to the Commission's negligence in submitting a matter of merit for a decision of the Court during the period prescribed, a period of three months, according to the article cited above.

On October 20, 1994, the report referred to in Article 51(1) was remitted to the Government. The application was filed with the Court by the Commission out of time and in an anomalous manner, inasmuch as it was sent in the early hours of January 19, 1995, when the period, which ended on January 17, 1995, had already expired.

It seems extreme to think that in international justice two days delay in the filing of an application is irrelevant when it is for the purpose of the protection of human rights. Nevertheless this does not correspond to reality. The Commission itself in the public hearing which took place on September 16, 1995, presented a photocopy of the Judgment of September 22, 1993, rendered by the European Court of Human Rights, in the *Instituto Di Vigilanza Case*, in which it decided that the request to send the case to the (European) Court was inadmissible because it was made out of time, given that the Commission exceeded **by only one day** the period permitted. The Inter-American Court of Human Rights *in the Cayara Case, Preliminary Objections, Judgment of February 3, 1993, stated in paragraph 38:*

Nevertheless, legal certainty requires that states know what norms they are to follow. The Commission cannot be permitted to apply the time limits in arbitrary fashion, particularly when these are spelled out in the Convention.

There is, thus, jurisprudence in support of the thesis maintained, without implying excessive formalism.

The Commission argues that the period of three months referred to in Article 51(1) of the Convention should be computed in conformity with the number of days that correspond to the calendar month. This is not the case, since, for the sake of legal certainty, the legally accepted meaning of the expression MONTH is the equivalent of 30 days. Therefore, the period of three months is equal to 90 days. The Inter-American Commission on Human Rights itself recognized it as such in approving *Resolution 43/90 (contained in the Judgment of December 11, 1991), Neira Alegría et al. Case, which reads verbatim:*

6. To transmit the present report to the Government of Peru so that the latter may make any observations it deems appropriate **within ninety days** from the date it is sent. Pursuant to Art. 47(6) of the Commission's Regulations, the parties are not authorized to publish the present report.

7. To submit the present case to the Inter-American Court of Human Rights unless the Government of Peru solves the matter **within the three months allotted in the previous paragraph**. (Emphasis by the Judge *ad hoc*)

For its part, the Court has also recognized that the period of three months as mentioned in Article 51(1) of the Convention, is composed of 90 days, as is demonstrated repeatedly *in paragraphs 35-39-43-47(a), and 54, among others, in the Judgment of January 21, 1994. (Caballero Delgado and Santana Case)*. Notwithstanding the above, the Court on this occasion departs from its own case law.

Consequently, both the objection of extinguishment and that of the bar of the rule of limitations should be admitted pursuant to Article 31(6) of the Rules of Procedure of the Court.

The State of Guatemala also submitted the preliminary objection that the application filed against the State by the Commission is null and void for obvious and material violations. One violation is that the period fixed by Article 51(1) of the Convention had expired; and the other that the Commission did not fulfill the requirements of Article 26 of the Rules of Procedure of the Court, for the referral of a case to the Court under Article

61(1) of the Convention, which mandates that the application be filed with the Secretariat of the Court accompanied by ten (10) copies of the application.

The Commission, on filing the application against the State of Guatemala, in the early hours of January 19, 1995, acted irregularly for the following reasons:

a) The Commission transmitted the application by fax, and subsequently, (seven days later) it sent the ten (10) copies of the application via "courier." Article 26 of the Rules of Procedure of the Court states that to refer a case, the application shall be filed with the Secretariat of the Court **in** ten (10) copies in the working languages of the Court. The filing of the application in one of the working languages does not suspend the prescribed proceedings, but the translation from one language to the others should be submitted within the following 45 days. That legal norm requires the material and physical filing of the application accompanied at that time by ten (10) copies. In the present case the law does not consider the possibility of filing the application by fax and much less the *a posteriori* transmittal of the copies, since these are filed with the application **in or rather by means of** the submission of the copies and without which the filing is not perfected. The previous legal requisite only governs the extension of the period to which the filing of the application in the case is subjected if the filing has been made in only one of the working languages. The translation to the other languages can be made within the following forty-five days.

I also disagree with the legal reasoning of this judgment in drawing an analogy to Article 27 of the Rules of Procedure of the Court. Article 27 establishes that if during a preliminary review of the application the President finds that the basic requirements have not been met, he shall request that the applicant correct them within a period of twenty (20) days. The defects referred to, however, are the failure to observe the requirements contained in sub-sections 1 to 5 of Article 26 of the Rules of Procedure. If the intent of the law were to grant a longer period to send the copies it would have expressly stated as much and granted forty-five (45) days (Article 26) and not twenty (20) as is provided in Article 27 in question. An analogous interpretation is, therefore, not possible in that respect; and

b) The Commission also filed the application after the Court's office hours, as is recorded on the fax, since the transmission began at 1:52 and terminated at 3:17 a.m. (Court time) on January 19 of last year, which is in an untimely manner, particularly as there is no legal provision within the rules governing the activity of the Court which establishes every day and all hours as working times of the Court, or a provision that the dispositions contained in the rules should be interpreted broadly, to bring about the adequate protection of Human Rights (principle of broad interpretation).

Article 31(2) of the Rules of Procedure of the Court requires that preliminary objections, be filed with the Secretariat of the Court by means of a brief in ten (10) copies, etc. I cite this legal norm to demonstrate the congruence in the Rules of Procedure regarding the treatment that should be given both to the filing of an application and to the submission of objections, or to what is equivalent, the rights of the applicant and the rights of the respondent, thereby ensuring respect for the equality of the parties.

The Court in the Cayara Case, paragraph 63, page 29, stated:

The Court must preserve a fair balance between the protection of human rights, which is the ultimate purpose of the system, and the legal certainty and procedural equity that will ensure the stability and

reliability of the international protection mechanism. In the instant case, to continue with a proceeding aimed at ensuring the protection of the interests of the alleged victims in the face of manifest violations of the procedural norms established by the Convention itself would result in a loss of the authority and credibility that are indispensable to organs charged with administering the system for the protection of human rights.

In this respect the fact that non-compliance with basic requirements of time, place and form in the initial filing of applications has been, to date *"a constant practice, not objected to by the Governments"* does not indicate, from any point of view, that the actions have been legal, since error is not a source of law.

For that reason it is not possible to proceed in a manner different from that required by the Convention and the Rules of Procedure of the Court, given that would be the equivalent of *"gravely altering the balance and procedural equality of the parties."* This is precisely the *"procedural injury"* which provokes the respondent state, in this case, Guatemala.

For the reasons expressed, I dissent from the judgment approved by the majority of the Honorable Judges, and I decide, consequently, that the preliminary objections raised by the State of Guatemala should be admitted, and the Court should declare that the application of January 19, 1995, was submitted by the Commission in an anomalous manner and after the period set forth in Article 51(1) of the Convention.

San José, Costa Rica, January 25, 1996.

Edgar Enrique Larraondo-Salguero  
Judge *ad hoc*

Manuel E. Ventura-Robles  
Secretary