

Inter-American Court of Human Rights

Case of the 19 Merchants v. Colombia

Judgment of June 12, 2002 (Preliminary Objection)

In the 19 Merchants case,

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

Antônio A. Cançado Trindade, President;
Alirio Abreu Burelli, Vice-President;
Hernán Salgado Pesantes, Judge;
Oliver Jackman, Judge;
Sergio García Ramírez, Judge; and
Rafael Nieto Navia, *ad hoc* Judge;

also present,

Manuel E. Ventura Robles, Secretary; and
Pablo Saavedra Alessandri, Deputy Secretary,

pursuant to Article 36 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure"),** delivers the following Judgment on the preliminary objections raised by the State of Colombia (hereinafter "the State" or "Colombia").

I INTRODUCTION OF THE CASE

1. The instant case was filed before the Court by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") on January 24, 2001. The application by the Commission originated from petition No. 11,603, received by the Secretariat of the Commission on March 6, 1996.

II

* Judge Carlos Vicente de Roux Rengifo, a Colombian citizen, abstained from hearing this case. Judge Máximo Pacheco Gómez also informed the Court that, due to reasons of *force majeure*, he could not attend the LV Regular Session of the Court, and therefore he did not participate in the deliberation and signing of the instant Judgment.

** Pursuant to the March 13, 2001 Court Order regarding Transitory Provisions to the Rules of Procedure of the Court, in force as of June 1, 2001, the instant Judgment on preliminary objections is rendered under the terms of the Rules of Procedure adopted by the September 16, 1996 Court Order.

FACTS SET FORTH IN THE APPLICATION

2. The Inter-American Commission stated in its application that at approximately eleven o'clock on October 6, 1987, merchants Alvaro Lobo Pacheco, Gerson Rodríguez, Israel Pundor, Angel Barrera, Antonio Flores Ochoa, Carlos Arturo Riatiga, Victor Ayala, Alirio Chaparro, Huber Pérez, Alvaro Camargo, Rubén Pineda, Gilberto Ortiz, Reinaldo Corso Vargas, Hernán Jáuregui, Juan Bautista, Alberto Gómez and Luis Sauza were inspected by the Army when they passed through the hamlet of Puerto Araujo. This inspection is the last official indication of their whereabouts, before they entered the Municipality of Boyacá and El Diamante farm, an area that was at the time allegedly under total control of a paramilitary group. Toward nightfall, that same day, the merchants were retained by a paramilitary group operating in the Municipality of Boyacá (*sic*), and they were executed that same night or the following day. The detainment, disappearance, and subsequent execution of the merchants were jointly planned by the paramilitary group operating in the area and members of the V Brigade of the Army. Subsequently, on October 18, 1987, Juan Montero and Ferney Fernández, who were traveling through the area searching for the 17 missing merchants, were detained and murdered by the paramilitary group operating in the area. After the alleged victims were executed, their bodies were brutally destroyed so as to avoid their being identified.

The Commission also stated that "judicial activity undertaken by the State authorities, specifically the regular and military courts, over more than a decade[,] does not satisfy the standards set forth in the American Convention regarding the right to fair trial." In light of the above, the Commission noted that "trial of the Army officers who were the alleged intellectual authors of the massacre, in military courts [...] ended in cessation of the proceedings," and that "trial of the civilians responsible for directly perpetrating the facts is still pending."

In view of the above, the Commission filed this case for the Court to decide whether the State violated Articles 4 (Right to Life) and 7 (Right to Personal Liberty) of the American Convention due to the detainment, disappearance, and execution of merchants Alvaro Lobo Pacheco, Gerson Rodríguez, Israel Pundor, Angel Barrera, Antonio Flores Ochoa, Carlos Arturo Riatiga, Victor Ayala, Alirio Chaparro, Huber Pérez, Alvaro Camargo, Rubén Pineda, Gilberto Ortiz, Reinaldo Corso Vargas, Hernán Jáuregui, Juan Bautista, Alberto Gómez and Luis Sauza, on October 6, 1987, and of Juan Montero and Ferney Fernández, on October 18, 1987, in the municipality of Puerto Boyacá, department of Boyacá, region of the Middle Magdalena. The Commission also requested that the Court decide whether the State is responsible for violation of Articles 5 (Right to Humane Treatment), 8(1) (Right to Fair Trial), and 25 (Right to Judicial Protection) of the American Convention, to the detriment of the aforementioned alleged victims and their next of kin, as well as for non-compliance with the provisions of Article 1(1) (Obligation to Respect Rights) of that Treaty.

III PROCEDURE BEFORE THE COMMISSION

3. On March 6, 1996 the Colombian Commission of Jurists filed a petition before the Inter-American Commission, based on the alleged forced disappearance of the nineteen merchants (*supra* para. 2) carried out by members of the National Army and members of a paramilitary group in the municipality of Puerto Boyacá, department of Boyacá, region of the Middle Magdalena.

4. On March 29, 1996 the Commission opened the case as No. 11.603. On September 27, 1999 the Commission declared the case to be admissible. In the Report on Admissibility, the Commission placed itself at the disposal of the parties to seek a friendly settlement.

5. On December 16, 1999 the petitioners filed with the Commission a proposal for a friendly settlement, which was forwarded to the State for it to make its observations. On January 21, 2000 the State sent a brief in which it referred to the Admissibility Report, and this brief was forwarded to the petitioners.

6. On March 2, 2000 the Commission held a hearing to analyze the possibility of reaching a friendly settlement. According to the Commission, the State expressed that it could not recognize its responsibility because the definitive judgments of the domestic courts did not demonstrate responsibility of State agents for the facts alleged. Furthermore, the State pointed out that the next of kin of the alleged victims would receive reparations if the administrative law courts so decided. The petitioners, in turn, decided to consider the attempt to attain a friendly settlement ended.

7. In their March 31, 2000 brief, the petitioners submitted a "written exposition of the arguments" made during the aforementioned hearing. This brief was forwarded to the State, whose observations were submitted on June 30, 2000.

8. On October 4, 2000 the Commission adopted Report No. 76/00, in which it recommended that the State:

1. Conduct a complete, impartial, and effective investigation under regular court jurisdiction so as to try and punish those responsible for the extrajudicial execution of Alvaro Lobo Pacheco, Gerson Rodríguez, Israel Pundor, Angel Barrera, Antonio Flores Ochoa, Carlos Arturo Riatiga, Victor Ayala, Alirio Chaparro, Huber Pérez, Alvaro Camargo, Rubén Pineda, Gilberto Ortiz, Reinaldo Corso Vargas, Hernán Jáuregui, Juan Bautista, Alberto Gómez, Luis Sauza, Juan Montero and Ferney Fernández.

2. Adopt all necessary measures for the next of kin of the victims to receive [an] adequate and timely reparation for the violations [...] established.

3. Take all necessary measures to comply with the doctrine developed by the Colombian Constitutional Court and by this Commission regarding investigation and trial of similar cases by regular criminal justice.

9. On October 24, 2000 the Commission transmitted the aforementioned report to the State and gave it a two-month period, commencing on the date of transmittal of that report, to provide information on steps taken to comply with the recommendations made. On December 22, 2000 the State requested an extension of the period to reply to Report No. 76/00, and an extension of the deadline to January 19, 2001 was granted. On that day, the State transmitted its reply to the Commission, and the Commission decided that same day to submit the instant case to the jurisdiction of the Court.

IV PROCEEDINGS BEFORE THE COURT

10. On January 24, the Inter-American Commission filed its application as follows:

[...]he Commission requests that the Honorable Court find and declare that

1. The State is responsible for violation of the rights to life, humane treatment, and personal liberty, to the detriment of Alvaro Lobo Pacheco, Gerson Rodríguez, Israel Pundor, Angel Barrera, Antonio Flores Ochoa, Carlos Arturo Riatiga, Victor Ayala, Alirio Chaparro, Huber Pérez, Alvaro Camargo, Rubén Pineda, Gilberto Ortiz, Reinaldo Corso Vargas, Hernán Jáuregui, Juan Bautista, Alberto Gómez, Juan Montero[, Luis Sausa,]¹ and Ferney Fernández, protected by Articles 4 and 7 of the American Convention.

2. The State is responsible for violation of the right to mental and moral well-being of the next of kin of the victims, set forth in Article 5 of the American Convention.

3. The State is responsible for violation of the right to fair trial and to judicial protection of the victims and their next of kin, protected by Articles 8(1) and 25 of the American Convention, as well as for not fulfilling its obligation to ensure respect for the rights set forth in the Convention, pursuant [to] its Article 1(1).

Based on these conclusions, the Commission requests that the Honorable Court order the State to:

1. Conduct a complete, impartial, and effective investigation under regular court jurisdiction to try and punish those responsible for the extrajudicial execution of Alvaro Lobo Pacheco, Gerson Rodríguez, Israel Pundor, Angel Barrera, Antonio Flores Ochoa, Carlos Arturo Riatiga, Victor Ayala, Alirio Chaparro, Huber Pérez, Alvaro Camargo, Rubén Pineda, Gilberto Ortiz, Reinaldo Corso Vargas, Hernán Jáuregui, Juan Bautista, Alberto Gómez, Luis Sauza, Juan Montero, and Ferney Fernández.

2. Take all necessary steps for the next-of-kin of the victims to receive fair and timely reparation and compensation for the violations [...] established.

3. Pay legal costs and expenses incurred by the next-of-kin of the victims in litigating the instant case under domestic jurisdiction as well as before the Commission and the Court, and reasonable fees for their attorneys.

11. Pursuant to Article 22 of the Rules of Procedure, in its application the Commission named Mr. Robert K. Goldman and Mr. Juan E. Méndez as its delegates, and Mrs. Verónica Gómez as advisor. The Commission also appointed Mrs. Viviana Krsticevic and Mrs. Roxanna Althoz, of the Center for Justice and International Law (Centro por la Justicia y el Derecho Internacional, CEJIL), as assistants, and Mr. Gustavo Gallón Giraldo, Mr. Carlos Rodríguez Mejía and Mrs. Luz Marina Monzón, members of the Colombian Commission of Jurists, as representatives of the alleged victims and their next of kin.

12. On March 20, 2001, the Secretariat of the Court (hereinafter "the Secretariat"), after a preliminary examination of the application carried out by the President, gave notice of it and its appendices to the State, and informed the State of the period granted to respond to it and to appoint its representatives for the proceedings.

13. On April 11, 2001 the State named Mrs. Luz Marina Gil García as its agent.

14. On May 16, 2001 the State filed a brief in which it raised a preliminary objection due to "violation of due process by omitting steps taken in good faith to best comply with the aims of the American Convention on Human Rights."

¹ In its March 8, 2001 brief the Commission reported that "Mr. Luis Sauza, who is mentioned in [the] main text of the application [, ...] was left out of the petition due to an involuntary administrative error, [for which reason] he is to be included among the 19 victims in the instant case."

15. On May 16, 2001 the Secretariat gave notice to the Commission and to the representatives of the alleged victims and their next of kin of the brief on preliminary objections, pursuant to Article 36(3) of the Rules of Procedure. On June 12, 2001 the Commission requested a 15-day extension to file its observations on the aforementioned brief. On June 13, the Secretariat, instructed by the President, informed the Commission that the extension had been granted until July 2, 2001, on which date the Commission filed its observations to the brief on preliminary objections.

16. On May 25, 2001 the Secretariat, instructed by the President, informed the State of its right to appoint an *ad hoc* Judge, in view of the fact that the President accepted the request made by Judge Carlos Vicente de Roux Rengifo, a Colombian citizen, to excuse himself from hearing the instant case, based on Articles 19 of the Statute of the Court and 19 of its Rules of Procedure. On June 27, 2001 the State appointed Mr. Rafael Nieto Navia as *ad hoc* Judge.

17. On July 6, 2001 the State requested an extension to file the brief replying to the application. On July 9, 2001 the President granted the extension requested until August 6, 2001.

18. On August 6, 2001, the State requested an extension until August 10, 2001 to file the brief replying to the application. That same day, the President granted the extension requested.

19. On August 10, 2001 the State filed its reply to the application.

20. In his April 12, 2002 Order, the President summoned the parties to a public hearing to be held at the seat of the Court on June 11, 2002, to hear the arguments of the State and of the Commission regarding the preliminary objections raised by the former.

21. The public hearing was held at the seat of the Court on the date foreseen.

There appeared before the Court:

for the State of Colombia:

Luz Marina Gil García, Agent; and
Mónica Jiménez González.

for the Inter-American Commission:

Robert K. Goldman, Delegate;
Verónica Gómez, Advisor;
Gustavo Gallón Giraldo, Assistant;
Luz Marina Monzón, Assistant; and
Roxanna Althoz, Assistant.

V COMPETENCE

22. The Court is competent, under the terms of Article 62(3) of the Convention, to hear the preliminary objection raised by the State in the instant case, because

Colombia has been a State Party to the American Convention since July 31, 1973 and it recognized the contentious jurisdiction of the Court on June 21, 1985.

VI PRELIMINARY OBJECTION

23. The State filed a preliminary objection for "violation of due process by omitting steps taken in good faith to best comply with the aims of the American Convention on Human Rights." Colombia argued that the Court should reject the application *in limine* in the instant case because:

The Honorable Inter-American Commission on Human Rights [...] omitted, before filing the application to the Honorable Inter-American Court of Human Rights [...], preclusion of the procedure set forth in Article 50 of the Convention.

Said omission disrupts procedural balance and affects the situation of the Colombian State *vis-à-vis* the Honorable Court, insofar as the instruments granted by the Commission to the State to best comply with the aims of [the] American Convention on Human Rights [...], were set aside, with no evaluation to determine the scope of the intention of the Colombian State to comply with the recommendations of Report 76/00.

Arguments of the State

24. In its brief on preliminary objections, the State requested that the Court reject the application filed by the Commission *in limine* and return the file to the Commission for it to reinstate the proceedings, "until all procedural actions by both parties are exhausted." With respect to the filing of this preliminary objection, Colombia stated that:

a) in its Report No. 76/00 the Commission granted the State two-months time to comply with the recommendations made. The report was notified to the State on October 24, 2000 and, upon a request made by Colombia, the Commission granted it an extension until January 19, 2001;

b) on January 19, 2001 the State filed before the Commission "a project with which it planned to address the requirements of Confidential Report 76/00." However, that same day the Commission decided to file the case before the Court;

c) the extension having been granted by the Commission, and the State having complied with the new term, the Commission was under the obligation of carrying out in good faith the aims of the Convention and of assessing the proposal submitted by the State. Colombia also deemed that the Commission should "examine the validity and seriousness of the proposal as a mechanism to safeguard human rights;"

d) the proposal submitted to the Commission contains "an explicit commitment, in good faith, to address the recommendations" of Confidential Report 76/00. Regarding preparation of the aforementioned proposal, the State explained that, in light of the juridical obstacles posed by domestic law and with the aim of complying with the Commission's reports, the Ombudsman's Office was asked to prepare a Special Report to seek compliance with the recommendations of the Commission, within the legal framework in force in Colombia;

- e) the proposal submitted by the State to the Commission aimed to "enhance the role of the Ombudsman's Office," to exhaust a constitutional instrument for democratic consolidation and respect for human rights, and to resolve the juridical difficulties for implementation of some of the recommendations included in the Commission's report, such as the principles of *res judicata* and *non bis in idem*, applicable to cases decided under domestic jurisdiction. In this regard, it stated that it did not understand why the Commission did not assess the proposal made by the State, when at other times it "has highlighted the conduct and credibility of the Ombudsman's Office" in Colombia, as it did in the "Third report on the situation of human rights in Colombia;"
- f) the first time the Commission referred to the project submitted by Colombia to carry out the recommendations made by the Commission was in the application filed before the court, only in "two lines"², when it stated: "On January 19, 2001 the State filed its reply to the Commission. On that same date, the Commission decided to file the instant case at the Honorable Court";
- g) the Commission has violated due process because it did not assess the proposal made by the State "to implement the recommendations made in Confidential Report 76/00 and therefore it impedes the Court from deciding on this matter due to omission of the procedure set forth in the Convention." The State also argued that the Commission "did not take into account the good faith of the Colombian Government in waiving the terms set forth in Article 50 of the Convention to transmit the case to the Honorable Court;"
- h) the exercise of rights contained in the Convention has been restricted and procedural balance has been disrupted; and
- i) the Court, pursuant to Articles 61(2) and 62(3) of the Convention, is competent to hear any case pertaining to interpretation and application of the provisions of the Convention "and therefore to analyze the procedural prerequisites of the matters subject to its consideration." Therefore, the issues raised as preliminary objections fall under the competence of and required study by the Court, so as to guarantee due process set forth in the Convention.

Arguments of the Commission

25. In connection with the preliminary objection raised by Colombia, the Inter-American Commission requested that the Court "immediately reaffirm its jurisdiction over the instant case, without opening the oral proceedings or, in accordance with the spirit of its new Rules of Procedure, that it decide in this specific case to address the objection raised by the State together with the merits," and that it reject the objection to competence raised by the State because it is groundless, "without opening the oral proceedings, and that it continue with the proceedings on the merits or that, given the characteristics of the instant case, it address the issue together with the oral phase on the merits of the case and set it aside when the time comes." The Commission also stated that:

² According to the arguments of the State at the public hearing on preliminary objections, held at the seat of the Court on June 11, 2002.

a) in connection with the proceedings before the Commission, the State had almost three months to submit information on compliance with the recommendations made by the Commission, and the latter decided to postpone its decision to file the case with the Court –“and therefore the preparation of its application, which had to be drafted in four days”- until it was able to assess that information and reach that decision, pursuant to Article 50 of the American Convention. The Commission also stated that the file before it demonstrates that in the instant case the procedural stages set forth in Articles 44 to 50 of the Convention and in the Rules of Procedure of the Commission were strictly respected;

b) the proposal filed by the State when it replied to Report No. 76/00 stated that the Ombudsman’s Office would prepare a report taking into account the opinion of the Commission, of the judicial and administrative authorities who heard the respective proceedings, and of those persons and institutions that it deemed relevant. The proposal also stated that the Ombudsman’s Office would set the periods and modes of compliance with the recommendations in its final report. Said proposal by the State expresses its intention to comply with the recommendations that the Ombudsman’s Office might make, rather than complying with the recommendations of the Commission. Furthermore, according to the Commission, the recommendations of the Ombudsman’s Office might not coincide with the recommendations made by the Commission;

c) since the proposal made by the State does not reflect concrete steps having been taken nor an explicit commitment regarding compliance with the recommendations issued in Report No. 76/00, the Commission deemed that the procedure set forth in Articles 48 to 50 of the Convention had been exhausted, and decided to file the case with the Court;

d) expressions by the State regarding the possibility of complying with the recommendations of one of its internal control bodies, issued in accordance with domestic legislation, “do not relate in an evident manner” to the due process guarantees set forth in the American Convention, and it seeks to delay consideration of the grave facts that are the subject matter of the instant case as well as determination by the Court of their reparation;

e) the objection raised by the State regarding competence of the Court does not refer in any way to specific steps taken to comply with the recommendations made in Report No. 76/00; and

f) the object of the complaint raised by the State does not affect the norms that govern competence of the Court to hear the instant case, for which reason it should not be considered a preliminary objection proper.

Considerations by the Court

26. This Court will examine the procedural issues that have been brought before it, so as to determine whether there are flaws in the procedure sufficient for *in limine* rejection of consideration of the merits of the case.

27. The Court reiterates the criterion followed in its case law,³ that in exercising its obligatory jurisdiction it is empowered to hear “all cases concerning the interpretation and application of the provisions of [the] Convention” (Art. 62(3)). The broad wording of the Convention indicates that the Court has full jurisdiction over all matters pertaining to a case. It is therefore competent to decide whether any of the rights and liberties recognized by the Convention have been violated, and to adopt the appropriate provisions derived from such a situation; but it is also competent to decide on the procedural prerequisites that are the basis for its possibility of hearing the case and to verify compliance with all procedural norms involving “interpretation or application of the provisions of [the] Convention.” In exercising this authority, the Court is not bound by what the Commission may have previously decided, but rather is empowered to freely adjudicate, in accordance with its own appraisal.

28. In accordance with the context of application of the Convention and its object and purpose, norms pertaining to procedures must be applied on the basis of a criterion of reasonability, because otherwise it would cause an imbalance among the parties and would jeopardize the realization of justice.⁴ As the Court has stated, under international jurisdiction it is essential to maintain the conditions required for the procedural rights of the parties to not be diminished or unbalanced, and to attain the aims for which the various procedures were designed.⁵

29. The Court must analyze the procedure before the Commission, in light of the provisions of Articles 50 and 51(1) of the American Convention. Article 50 of the Convention states that:

1. If a settlement is not reached, the Commission shall, within the time limit established by its Statute, draw up a report setting forth the facts and stating its conclusions. If the report, in whole or in part, does not represent the unanimous agreement of the members of the Commission, any member may attach to it a separate opinion. The written and oral statements made by the parties in accordance with paragraph 1.e of Article 48 shall also be attached to the report.

2. The report shall be transmitted to the States concerned, which shall not be at liberty to publish it.

3. In transmitting the Report, the Commission may make such proposals and recommendations as it sees fit.

³ See *Constantine et al. Case. Preliminary Objections*. September 1, 2001 Judgment. Series C No. 82, para. 71; *Benjamín et al. Case. Preliminary Objections*. September 1, 2001 Judgment. Series C No. 81, para. 71; *Hilaire Case. Preliminary Objections*. September 1, 2001 Judgment. Series C No. 80, para. 80; *Las Palmeras Case. Preliminary Objections*. February 4, 2000 Judgment. Series C No. 67, para. 32; *Cesti Hurtado Case. Preliminary Objections*. January 26, 1999 Judgment. Series C No. 49, para. 44 and 52; *Cantoral Benavides Case. Preliminary Objections*. September 3, 1998 Judgment. Series C No. 40, para. 46; *Godínez Cruz Case. Preliminary Objections*. June 26, 1987 Judgment. Series C No. 3, para. 32; *Fairén Garbí and Solís Corrales Case. Preliminary Objections*. June 26, 1987 Judgment. Series C No. 2, para. 34; and *Velásquez Rodríguez Case. Preliminary Objections*. June 26, 1987 Judgment. Series C No. 1, para. 29.

⁴ *Case of the “White Van” (Paniagua Morales et al.). Preliminary Objections*. January 25, 1996 Judgment. Series C No. 23, para. 40.

⁵ See *the Baena Ricardo et al. Case. Preliminary Objections*. November 18, 1999 Judgment. Series C No. 61, para. 41; *Case of the “White Van” (Paniagua Morales et al.). Preliminary Objections*, *supra* nota 4, para. 42; and *Gangaram Panday Case. Preliminary Objections*. December 4, 1991 Judgment. Series C No. 12, para. 18.

Article 51(1) of the American Convention establishes that:

1. If, within a period of three months from the date of the transmittal of the report of the Commission to the states concerned, the matter has not either been settled or submitted by the Commission or by the state concerned to the Court and its jurisdiction accepted, the Commission may, by the vote of an absolute majority of its members, set forth its opinion and conclusions concerning the question submitted for its consideration.

30. In this regard, the Court has previously stated⁶, with respect to the procedure set forth in Article 51 of the Convention, that:

[...] if within a period of three months the matter has not been solved by the State to which the preliminary report was addressed, taking into account the proposals made in that report, the Commission is empowered, within that period, to decide whether it will submit the case to the Court by filing the respective application or whether it will continue to hear the matter. This decision is not discretionary, but rather must be based on whatever alternative is most favorable to protect the rights set forth in the Convention.

31. The Court deems that the assessment by the Commission regarding whether or not it is convenient to file a case before the Court must be the result of a collective and autonomous exercise carried out by the Commission as the oversight body of the American Convention and, therefore, the motives for its filing of a case cannot be the object of a preliminary objection. However, what can be the object of a preliminary objection is the omission or violation of all or any of the procedural steps set forth in Articles 50 and 51 of the Convention, in such a manner as to cause procedural imbalance or defenselessness of one of the parties in the case before the Court.

32. In this regard, it is important to note that there is no provision in the Convention nor in the Rules of Procedure of the Court and of the Commission that explicitly regulates aspects pertaining to the analysis or the assessment that the Commission must make of the reply by the State to the recommendations set forth in the report under Article 50 of the Convention, nor has it been established that a minimum period should elapse after the State submits the aforementioned proposal, for the Commission to decide to file the case with the Court.

33. Furthermore, the Court reiterates that the Commission has discretionary, but in no way arbitrary powers, to decide, in each case, whether the State's reply to the report issued in accordance with Article 50 of the Convention is convenient or adequate. In adopting the decision to file or not to file the case with the Court, the Commission must choose the alternative that is most favorable to protect the rights set forth in the Convention.⁷

⁶ See *Baena Ricardo et al. Case. Preliminary Objections*, supra note 5, para. 37; *Caballero Delgado and Santana Case. Preliminary Objections*, January 21, 1994 Judgment. Series C No. 17, para. 49 and *Certain powers of the Inter-American Commission on Human Rights (Arts. 41, 42, 44, 46, 47, 50 and 51 of the American Convention on Human Rights)*, July 16, 1993 Advisory Opinion OC-13/93. Series A No. 13, para. 50.

⁷ See *Baena Ricardo et al. Case. Preliminary Objections*, supra note 5, para. 37; *Caballero Delgado and Santana Case. Preliminary Objections*, supra note 6, para. 26 and 49; and *Certain powers of the Inter-American Commission on Human Rights (Arts. 41, 42, 44, 46, 47, 50 and 51 of the American Convention on Human Rights)*, July 16, 1993 Advisory Opinion OC-13/93, supra note 6, para. 50.

34. The Inter-American Commission decided to file the instant case with the Court the same day that Colombia submitted its reply to the recommendations adopted by the Commission in Report No. 76/00, and it filed the application with the Court five days later. In other words, the Commission waited for the State to report whether or not it had adopted specific measures to comply with the recommendations, before deciding whether it was convenient to file the case with the Court; in fact, it was filed with the Court on January 24, 2001, the day when the three-month period set forth in the Convention for filing of the case before the Court would expire.

35. It is a commonly accepted principle that the procedural system is a means for realization of justice, and that justice must not be sacrificed for the sake of mere formalities.⁸ Nevertheless, legal certainty requires that the States know what to expect.⁹ Therefore, if the Commission grants a State a period to comply with the recommendations set forth in the report, it must wait until the State has replied within the period granted and assess the reply so as to decide whether filing the case with the Court is the most favorable alternative to protect rights set forth in the Convention, or whether, instead, steps taken by the State to comply with the Commission's recommendations are a positive contribution to development of the process and to compliance with the obligations established in the American Convention, to ensure that alleged violations of human rights by the State are investigated, that those responsible for said violations are punished, and that reparations be made for their consequences.

36. While the Convention does not state that the Commission must analyze the State's reply for a given period before deciding to file the case with the Court (*supra* para. 32), the Commission stated that it reached this decision because, upon analyzing that reply, it deemed that it "did not reflect that concrete measures had been adopted or that true and explicit commitments had been undertaken regarding compliance with the recommendations made in Report 76/00." This, in the opinion of the Court, is not the object of a preliminary objection.¹⁰

37. The State referred several times to good faith, but the Court deems that it has not shown that the Commission did not act in good faith in the instant case.

38. Based on the aforementioned considerations, this Court deems that the behavior of the Commission did not affect Colombia's right to due process, pursuant to Articles 50 and 51 of the Convention, nor did it deny the State the exercise of any other right recognized by that treaty.

39. The preliminary objection examined above is the only one mentioned, as such, in the brief on preliminary objections filed by the State, in the brief with observations by the Commission, and at the public hearing held for this purpose.

40. Due to all of the above, the Court dismisses the preliminary objection raised by the State.

⁸ See *Baena Ricardo et al. Case. Preliminary Objections*, *supra* note 5, para. 43; *Loayza Tamayo Case. Preliminary Objections*. January 31, 1996 Judgment. Series C No. 25, para. 33; and *Castillo Páez Case. Preliminary Objections*. January 30, 1996 Judgment. Series C No. 24, para. 34.

⁹ See *Cayara Case. Preliminary Objections*. February 3, 1993 Judgment. Series C No. 14, para. 38.

¹⁰ See *Genie Lacayo Case. Preliminary Objections*. January 27, 1995 Judgment. Series C No. 21, para. 46.

VII

41. Therefore,

THE COURT,

DECIDES:

unanimously,

To dismiss the preliminary objection raised by the State of Colombia, and to continue hearing the instant case.

Done in Spanish and English, the Spanish text being authentic, in San Jose, Costa Rica, on June 12, 2002.

Antônio A. Cançado Trindade
President

Alirio Abreu-Burelli

Hernán Salgado-Pesantes

Oliver Jackman

Sergio García-Ramírez

Rafael Nieto-Navia
Judge *ad hoc*

Manuel E. Ventura-Robles
Secretary

So ordered,

Antônio A. Cançado Trindade
President

Manuel E. Ventura-Robles
Secretary