

INTER-AMERICAN COURT OF HUMAN RIGHTS

**ADVISORY OPINION OC-13/93
OF JULY 16, 1993**

**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)**

**REQUESTED BY THE GOVERNMENTS OF THE
REPUBLIC OF ARGENTINA AND THE
ORIENTAL REPUBLIC OF URUGUAY**

Present:

Rafael Nieto-Navia, President
Sonia Picado-Sotela, Vice-President
Héctor Fix-Zamudio, Judge
Alejandro Montiel-Argüello, Judge
Hernán Salgado-Pesantes, Judge
Asdrúbal Aguiar-Aranguren, Judge

Also present:

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

THE COURT,

composed as above,

renders the following Advisory Opinion:

1. By submission of December 17, 1991, received in the Secretariat (hereinafter "the Secretariat") of the Inter-American Court of Human Rights (hereinafter "the Court") on May 7, 1992, the governments of the Republic of Argentina (hereinafter "Argentina") and of the Oriental Republic of Uruguay (hereinafter "Uruguay"), requested an advisory opinion on the interpretation of Articles 41, 42, 44, 46, 47, 50 and 51 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") *as they relate to the concrete situation and circumstances* indicated.

2. Argentina and Uruguay requested the advisory opinion pursuant to Article 64(1) of the American Convention and Articles 49 and 51 of the former Rules of

Procedure of the Court which, with some amendments, correspond to Articles 51 and 53 of the present Rules of the Court (hereinafter "the Rules"), which are applicable because the request was made subsequent to August 1, 1991.

3. The request for an advisory opinion raises the following questions:

1) As regards Articles 41 and 42, the Court is hereby requested to render an opinion as to whether, in order to justify its dealing with a case involving communications alleging the violation of the rights protected by Articles 23, 24 and 25 of the Convention, the Commission is competent to assess and offer an opinion on the legality of domestic legislation adopted pursuant to the provisions of the Constitution, insofar as the "reasonableness," "advisability," or "authenticity" of such legislation is concerned.

2) With respect to Articles 46 and 47 of the Convention, the Court is asked to render an opinion as to whether, in the case of communications submitted pursuant to Article 44 of the Convention, which must be processed within the framework of the Pact of San Jose, it is proper, as a matter of law, for the Commission, after having declared the application inadmissible, to address the merits of the case in the same report.

3) As for Articles 50 and 51 of the Convention, the Court is here being asked to render an opinion as to whether it is proper to combine the two reports provided for under Articles 50 and 51 of the Convention in a single report, and whether the Commission may order the publication of the report to which Article 50 refers before the period specified in Article 51 has expired.

4. Among the considerations giving rise to the consultation, Argentina and Uruguay mention the following:

4) None of the standards of interpretation which the Court is being asked to apply in this advisory opinion relates to abstract issues or theoretical hypotheses that might eventually arise in the process of implementing the Convention. They concern concrete cases that have been dealt with by the Commission (e.g., cases 9.768, 9.780, 9.828, 9.850, 9.893).

5) The applicant governments consider that the instant advisory opinion request presents an issue of great interest and importance for the proper enforcement of the American Convention on Human Rights and to the effective operation of the Inter-American Regional System for the Protection of Human Rights, bearing in mind the noble and exalted aims and goals that should always guide the defense of the human person.

5. Argentina and Uruguay appointed as their Agents their Ambassadors in Costa Rica, Alicia Martínez-Ríos and Raquel Macedo de Shepard, respectively.

6. By note of May 26, 1992, in accordance with Article 54(1) of the Rules, the Secretariat requested written observations and relevant documents from the Member States of the Organization of American States (hereinafter "the OAS") and, through its Secretary General, from the organs mentioned in Chapter VIII of the OAS Charter.

7. The President of the Court (hereinafter "the President") ordered the written observations and relevant documents filed with the Secretariat before November 16, 1992.

8. The governments of Chile, Jamaica, Saint Lucia, Mexico, Panama and Costa Rica, and the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") replied to the Secretariat's communication.

9. The following nongovernmental organizations presented their views on the advisory opinion as *amici curiae*: Federación latinoamericana de asociaciones de familiares de detenidos desaparecidos (FEDEFAM); Familiares, madres y abuelas de detenidos desaparecidos de Mar del Plata; Centro por la justicia y el derecho internacional (CEJIL); Americas Watch; International Human Rights Law Group; Centro de estudios legales y sociales (CELS); Centro por los derechos humanos y el derecho humanitario de American University; Programa venezolano de educación y acción en derechos humanos (PROVEA); Centro por la acción legal en derechos humanos; and the Washington Office on Latin America. Also presenting a brief as *amicus curiae* was María Elba Martínez, in her capacity as a lawyer with the Fundación Paz y Justicia—Argentina and the legal representative of some private parties before the Commission.

10. Pursuant to the instructions of the President and by notes of October 7, 1992, the Secretariat convoked the Member States and the organs of the OAS to a public hearing which was held on February 1, 1993 at 15:00 hours.

11. Having consulted with the Permanent Commission of the Court, the President authorized the following international nongovernmental organizations to attend the hearing: Americas Watch, Centro por la justicia y el derecho internacional (CEJIL), and the International Human Rights Law Group.

12. The following representatives appeared at the public hearing:

For the Government of Costa Rica:

Elizabeth Odio-Benito, Minister of Justice

For the Government of Mexico:

Miguel Ángel González-Félix, Coordinator for Human Rights and Drug Trafficking of the Secretary of Foreign Relations

Mario I. Álvarez-Ledesma, Director of Sociopolitical Studies and Human Rights of the Secretary of Government

For the Inter-American Commission of Human Rights:

Marco Tulio Bruni-Celli, President

David J. Padilla, Assistant Executive Secretary

For Americas Watch:

Juan E. Méndez

For the Centro por la Justicia y el Derecho Internacional (CEJIL):

José Miguel Vivanco

For the International Human Rights Law Group:

Reed Brody

Felipe González.

I

13. The governments of Argentina and Uruguay submitted this request for an advisory opinion to the Court pursuant to the authority granted them by Article 64(1) of the Convention. Both are Member States of the OAS and, therefore, have the right to request advisory opinions from the Court on the interpretation of the Convention.

14. The Court finds that the request meets the formal prerequisites of Article 51 of the Rules, which require that a request state the specific questions with precision, identify the provisions to be interpreted, indicate the considerations giving rise to the request, and furnish the name and address of the Agent.

15. Because a request meets the requirements of Article 51 does not necessarily mean the Court is obligated to hear it. The Court has reiterated that its advisory jurisdiction is "*permissive in character in the sense that it empowers the Court to decide whether the circumstances of a request for an advisory opinion justify a decision rejecting the request*" [*"Other Treaties" Subject to the Advisory Jurisdiction of the Court (Art. 64 American Convention on Human Rights)*, Advisory Opinion OC-1/82 of September 24, 1982. Series A No. 1, para. 28].

In the same opinion, the Court noted that

[t]he advisory jurisdiction of the Court is closely related to the purposes of the Convention. This jurisdiction is intended to assist the American States in fulfilling their international human rights obligations and to assist the different organs of the inter-American system to carry out the functions assigned to them in this field. It is obvious that any request for an advisory opinion which has another purpose would weaken the system established by the Convention and would distort the advisory jurisdiction of the Court. (*Ibid.*, para. 25.)

And any request would be inadmissible which

is likely to undermine the Court's contentious jurisdiction or, in general, to weaken or alter the system established by the Convention, in a manner that would impair the rights of potential victims of human rights violations. (*Ibid.*, para. 31.)

To determine whether there are reasons the Court should decline to render an advisory opinion, it is necessary to consider the circumstances of each individual case.

16. In the instant request for an advisory opinion the governments state that

[n]one of the standards of interpretation which the Court is being asked to apply in this advisory opinion relates to abstract issues or theoretical hypotheses that might eventually arise in the process of implementing the Convention. They concern concrete cases that have been dealt with by the Commission.

To support that argument, they cite five cases heard by the Commission.

17. That the request for an advisory opinion cites concrete cases in which the Commission has applied the standards in question, may be an argument in favor of the Court's exercise of its advisory jurisdiction in that it is not a matter of "*purely*

academic speculation, without a foreseeable application to concrete situations justifying the need for an advisory opinion" [*Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8, American Convention on Human Rights)*], Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 16]. Of course, the Court is not empowered to examine those cases on the merits, because they have not been submitted by the Commission or the interested States.

18. On a previous occasion in which the Commission was examining several cases against the State requesting an advisory opinion, the Court recognized

that a reply to the questions [. . .] could produce, under the guise of an advisory opinion, a determination of contentious matters not yet referred to the Court, without providing the victims with the opportunity to participate in the proceedings. Such a result would distort the Convention system [*Compatibility of Draft Legislation with Article 8(2)(h) of the American Convention on Human Rights*, Advisory Opinion OC-12/91 of December 6, 1991. Series A No. 12, para. 28.]

and, therefore, it decided not to render an opinion.

19. The foregoing does not mean the Court cannot render an advisory opinion at the Commission's request on a matter pending before it, for

[i]f the Commission were to be barred from seeking an advisory opinion merely because one or more governments are involved in a controversy with the Commission over the interpretation of a disputed provision, the Commission would seldom, if ever, be able to avail itself of the Court's advisory jurisdiction. (*Restrictions to the Death Penalty [Arts. 4(2) and 4(4) American Convention on Human Rights]*, Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, para. 38.)

As stated above, what is important is that a request for an advisory opinion not be an attempt to distort the Convention system by seeking in disguise the resolution of a contentious case to the detriment of the victims.

20. The Court does not find in the instant request any reason to abstain from considering it and, therefore, admits it and responds as follows.

II

21. The first question posed by the governments "*as regards Articles 41 and 42*" of the Convention refers to whether "*the Commission is competent to assess and offer an opinion [. . .] [in] a case involving communications alleging the violation*" of certain rights protected by the Convention (those of Articles 23, 24 and 25), "*on the legality of domestic legislation adopted pursuant to the provisions of the Constitution [of a State], insofar as [its] 'reasonableness,' 'advisability' or 'authenticity'.*"

22. The Court finds no reason, nor does the request contain one, to distinguish the rights in question (Arts. 23 -political rights-, 24 -equality before the law- and 25 -judicial protection-) from the others set out in the Convention. The Convention does not establish a hierarchy of the rights protected. The distinctions among human rights in the inter-American system are, principally, those related to the rights the States Parties to the Convention or the Member States of the OAS who are not Parties to the Convention have obligated themselves to protect; being in the latter case only those contained in the American Declaration of the Rights and Duties of Man and, in particular, those mentioned in Article 20 of the Commission's Statute (See: *Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*,

Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 10, para. 45); and those distinctions made in Article 27 of the Convention regarding the rights that cannot be suspended in "*time of war, public danger, or other emergency that threatens the independence or security of a State.*" Paragraph 2 of that article mentions Article 23 as one that may not be suspended, but does not mention 24 or 25. Nevertheless, in its advisory opinion on "Judicial Guarantees..." (*supra* 17, paras. 22-24) the Court held that Article 25.1 contains some of those guarantees that cannot be suspended. Because, however, there is no reason for the Court to refer only to the three articles mentioned in the request, it shall omit the distinction in its reply.

23. Several of the articles of the Convention, in particular those which appear in Section 2, Chapter VII, under the title "Functions" and Article 44 which is part of Section 3, "Competence", refer to the attributes of the Commission. From the beginning, the provisions of the inter-American system have charged the Commission with the "*promotion of human rights*" (Resolution VIII, V Meeting of Consultation of Ministers of Foreign Relations, Santiago, 1959, Official Documents, OAS, Series C.II. 5, 4-6) or "*to promote the observance and protection of human rights*" (Art. 111 of the Charter of the OAS as Amended by the Protocol of Cartagena), as incorporated into Article 41 of the Convention. That is the principal function of the Commission, which defines and regulates all its other functions, in particular those granted it by Article 41, and any interpretation must be limited by those criteria.

24. The Court understands that the request does not seek a complete interpretation of Articles 41 and 42, but rather an opinion whether, on the authority of those articles, the Commission could, in the case of communications before it (probably those referred to in Articles 41.f, 44 and 45) or with reference to the copies of the reports and studies the States send it in application of Article 42, rule on the "*legality of domestic legislation adopted pursuant to the provisions of the Constitution, insofar as [its] 'reasonableness,' 'advisability' or 'authenticity.'*"

25. In one advisory opinion, the Court had the opportunity to examine in extenso the meaning of the word "laws" in Article 30 of the Convention, that is, those laws which establish restrictions on the rights and freedoms recognized therein. On that occasion, it defined laws as

a general legal norm tied to the general welfare, passed by democratically elected legislative bodies established by the Constitution, and formulated according to the procedures set forth by the constitutions of the States Parties for that purpose (*The Word "Laws" in Article 30 of the American Convention on Human Rights*, Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 38).

This definition is based upon an analysis of the principles of "legality" and "legitimacy" and of the democratic system of government within the framework of which the inter-American system of human rights must be understood (paras. 23 and 32). These interpretations by the Court referred exclusively to the meaning of the word "laws" in Article 30, and there is no authority to extend them to other situations in which the Convention refers to the "law" or, in any other context, speaks of "law." It must be understood, then, that the expression employed in the request, "*domestic legislation adopted pursuant to the provisions of the Constitution*" refers to any provision of a general nature and not exclusively to law in a strict sense.

The Court understands the expression "*legality of domestic legislation adopted pursuant to the provisions of the Constitution*" as referring, in general terms, to their conformity with the internal and international juridical order.

26. A State may violate an international treaty and, specifically, the Convention, in many ways. It may do so in the latter case, for example, by failing to establish the norms required by Article 2. Likewise, it may adopt provisions which do not conform to its obligations under the Convention. Whether those norms have been adopted in conformity with the internal juridical order makes no difference for these purposes.

27. In these circumstances, there should be no doubt that the Commission has in that regard the same powers it would have if confronted with any other type of violation and could express itself in the same way as in other cases. Said in another way, that it is a question of "*domestic legislation*" which has been "*adopted pursuant to the provisions of the Constitution,*" is meaningless if, by means of that legislation, any of the rights or freedoms protected have been violated. The powers of the Commission in this sense are not restricted in any way by the means by which the Convention is violated.

28. There are historical situations in which States have promulgated laws which conformed with their juridical order, but which did not offer adequate guarantees for the exercise of human rights, imposed unacceptable restrictions or, simply, ignored them. As the Court has said, the fulfillment of a constitutional requirement "*does not always prevent a law passed by the Legislature from being in violation of human rights*" (*The Word "Laws" in Article 30 of the American Convention on Human Rights, supra 25, para. 22*).

29. This does not mean the Commission has the authority to rule as to how a legal norm is adopted in the internal order. That is the function of the competent organs of the State. What the Commission should verify, in a concrete case, is whether what the norm provides contradicts the Convention and not whether it contradicts the internal legal order of the State. The authority granted the Commission to "*make recommendations to the governments of the member states [. . .] for the adoption of progressive measures in favor of human rights within the framework of their domestic laws and constitutional provisions*" (Art. 41(b)) (emphasis added) or the obligation of the States to adopt such legislative or other measures as may be necessary to give effect to the rights or freedoms guaranteed by the Convention "*in accordance with their constitutional processes*" (Art. 2) (emphasis added), does not authorize the Commission to determine the State's adherence to constitutional precepts in establishing internal norms.

30. At the international level, what is important to determine is whether a law violates the international obligations assumed by the State by virtue of a treaty. This the Commission can and should do upon examining the communications and petitions submitted to it concerning violations of human rights and freedoms protected by the Convention.

31. This definition of the attributes of the Commission does not affect the relationship between the rule of law and the Convention. As the Court has already said, "[t]he concept of rights and freedoms as well as that of their guarantees [according to the Pact of San Jose] cannot be divorced from the system of values and principles that inspire it" (*Habeas Corpus in Emergency Situations (Arts. 27(2),*

25(1) and 7(6) American Convention on Human Rights), Advisory Opinion OC-8/87 of January 30, 1987. Series A No. 8, para. 26). Within such values and principles, it is apparent that "[r]epresentative democracy is the determining factor throughout the system of which the Convention is a part " (The Word "Laws" in Article 30 of the Convention on Human Rights, *supra* 25, para. 34). The Court has also pointed out that

there exists an inseparable bond between the principles of legality, democratic institutions and the rule of law [and] [i]n a democratic society, the rights and freedoms inherent in the human person, the guarantees applicable to them and the rule of law form a triad, [and] [e]ach component thereof defines itself, complements and depends on the others for its meaning. (*Habeas Corpus in Emergency Situations* [Arts. 27(2), 25(1) and 7(6), American Convention on Human Rights], paras. 24 and 26.)

32. It is now appropriate to consider the terms "reasonableness," "advisability" and "authenticity," mentioned by the applicant governments in the first question. This Court is asked to give its opinion whether the Commission may use that terminology "to assess and offer an opinion" on domestic legislation considered within the framework of Articles 41 and 42 of the Convention.

33. "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. Insofar as the "advisability" of a law, the question may lend itself to subjective opinions, unless the expression is used in the uncommon sense of "correlation" or "conformity" between internal norms and those based upon the Convention. The expression "authenticity" of a law, which could have the juridical meaning of true, certain or certified in the sense of authority to attest to documents, does not appear to have that meaning in the context of the request.

34. Individual communications must allege a violation of the Convention by a State Party. This is a requirement of admissibility [Article 47(b)] and the Commission is given the authority to decide whether that violation has occurred. In that sense, it must decide whether legal norms violate the Convention. In fact, the international organs which apply the Convention cannot treat an internal norm differently from an act. There is no difference between State responsibility arising from violations of the Convention by virtue of an internal norm and the treatment that general international law gives to internal provisions violative of other international obligations.

35. An internal norm may violate the Convention because it is unreasonable or because it does not "conform" with it and, of course, a law which is contrary to a State's obligations under the Convention cannot be termed "reasonable" or "advisable." The Commission would be empowered to use those terms in this context. Clearly it may do so in the global consideration of cases. Nevertheless, because the functions of the Commission must conform to the law, the terminology it uses must be carefully chosen and should avoid concepts that might be ambiguous, subjective or confusing.

36. The above assertions are equally valid for the procedure relating to copies of reports and studies referred to in Article 42.

37. The Court's reply, then, must be based upon the Commission's principal function of promoting the observance and protection of human rights, from which it derives its power to rule, as in the case of any other act, that a norm of internal law violates the Convention, but not that it violates the internal juridical order of a State.

III

38. The second point of the request for an advisory opinion, which is related to the petitions presented under Article 44 of the Convention, asks whether the Commission, having declared the petition inadmissible pursuant to the provisions of Articles 46 and 47, may address "*the merits of the case in the same report.*"

39. In that regard, it should be clarified that although the Convention does not use the word "address," it may be considered the generic equivalent of other expressions: to formulate opinions, conclusions, recommendations, which the Commission may issue in exercise of its powers pursuant to Article 41. Likewise, it is inexact to speak of a "report" which is not based upon a finding of admissibility, for if the Commission declares a matter inadmissible, it may not draw up a report (*infra*, para. 48) within the meaning of Articles 50 and 51. The Court understands that the instant question refers to a case where the Commission issues opinions, conclusions or recommendations on the merits in individual petitions, after it has declared them inadmissible.

40. The Convention sets out the prerequisites a petition or communication must meet in order to be found admissible by the Commission (Article 46); it also sets out the cases of inadmissibility (Article 47) which may be determined once the proceeding has been initiated [Article 48(1)(c)]. Regarding the form in which the Commission should declare inadmissibility, the Court has already pointed out that this requires an express act, which is not required in a finding of admissibility (*Velásquez Rodríguez Case, Preliminary Objections*, Judgment of June 26, 1987. Series C No. 1, para. 40; *Fairén Garbi and Solís Corrales Case, Preliminary Objections*, Judgment of June 26, 1987. Series C No. 2, para. 45; and, *Godínez Cruz Case, Preliminary Objections*, Judgment of June 26, 1987. Series C No. 3, para. 43).

41. The requirements of admissibility are related, obviously, to juridical certainty in the internal order as well as in the international. Without falling into a rigid formalism which distorts the purpose and object of the Convention, the States and the organs of the Convention must comply with the provisions which regulate the procedure, for the juridical security of the parties depend upon it (*Cayara Case, Preliminary Objections*, Judgment of February 3, 1993. Series C No. 14, paras. 42 and 63). Before the Commission, a State accused of violating the Convention may, in the exercise of its right of defense, argue any of the provisions of Articles 46 and 47 and, if the argument is successful, the proceeding is interrupted and the file is closed.

42. The admissibility of a petition or communication is an indispensable prerequisite to hearing the merits of a matter. The finding of inadmissibility of a petition or communication shall, thus, preclude a decision on the merits. In the individual petition system provided by the Convention, from the moment the

Commission declares a matter inadmissible, it lacks the competence to rule on the merits.

43. This Court has said that "[i]t is generally accepted that the procedural system is a means of attaining justice and that the latter cannot be sacrificed for the sake of mere formalities" (*Cayara Case, Preliminary Objections, supra* 41, para. 42). But here it is a matter of a case which has been closed and to rule on the merits afterwards would be the equivalent of the Commission ruling on a communication without having received it.

44. In the foregoing circumstances, the procedural impossibility of addressing the merits of the petitions received in the exercise of its authority pursuant to Article 41(f) of the Convention or making the pertinent recommendations to the State concerned, does not in any way detract from the Commission's exercise of other attributes which Article 41 confers upon it in extenso. In any case, the use of the latter attributes, for example, those contemplated in paragraphs (b), (c), and (g) of that norm, must be by means of acts and procedures other than the procedure governing the examination of individual petitions or denunciations based upon Articles 44 through 51 of the Convention, and may in no way be used in a devious fashion to refer to the merits of one or several individual cases declared inadmissible.

IV

45. The third question refers to Articles 50 and 51 of the Convention, precepts which, as this Court has already recognized, raise certain problems of interpretation (*Velásquez Rodríguez Case, Preliminary Objections, supra* 40, para. 63; *Fairén Garbi and Solís Corrales Case, Preliminary Objections, supra* 40, para. 63; and, *Godínez Cruz Case, Preliminary Objections, supra* 40, para. 66).

46. These norms were based upon Articles 31 and 32 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, according to which, when the European Commission considers there are violations of the rights protected in that Convention, it may send the report, which is only one, to the Committee of Ministers which will dictate the measures the State concerned should adopt or submit it in the form of a case to the European Court of Human Rights for the Court to rule, in an imperative manner, on the alleged violations.

47. Because an organ similar to the Committee of Ministers was not established in the inter-American system, the American Convention empowered the Commission to decide whether to submit the case to the Court or to continue to examine the case and prepare a final report, which it may publish.

48. Given admissibility, and without prejudice to the procedure established in Articles 48 and 49, Articles 50 and 51 of the Convention establish successive stages. In the first, regulated by Article 50, when a friendly settlement has not been reached, the Commission may state the facts and its conclusions in a preliminary document addressed to the State concerned. This "report" is transmitted in a confidential manner to the State so it may adopt the proposals and recommendations of the Commission and resolve the problem. The State is not authorized to publish it.

Based upon the presumption of the equality of the parties, a proper interpretation of Article 50 implies that neither may the Commission publish this preliminary report, which is sent, in the terminology of the Convention, only "*to the states concerned.*"

49. Article 47(6) of the Commission's Regulations states "[t]he report shall be transmitted to the parties concerned, who shall not be authorized to publish it." Given that petitioners and victims are recognized as parties in the proceeding before the Commission (for example, Article 45 of the Commission's Regulations), Article 47(6) does not conform to Article 50 of the Convention, and its application has altered the confidential nature of the report and the obligation not to publish it.

50. A second stage is regulated by Article 51. If within the period of three months, the State to which the preliminary report was sent has not resolved the matter by responding to the proposal formulated therein, the Commission is empowered, within that period, to decide whether to submit the case to the Court by means of the respective application or to continue to examine the matter. This decision is not discretionary, but rather must be based upon the alternative that would be most favorable for the protection of the rights established in the Convention.

51. The three months are counted from the date of transmittal of the Article 50 report to the State concerned, and the Court has clarified that the time limit, though not fatal, has a preclusive character, except in special circumstances, with regard to the submission of the case to this Court, independent of that which the Commission gives the State to fulfill its first **recommendations (Cayara Case, Preliminary Objections, supra 41, paras. 38 and 39).**

52. Article 51 authorizes the Commission to draw up a second report, whose preparation

is conditional upon the matter not having been submitted to the Court within the three-month period set by Article 51(1). Thus, if the application has been filed with the Court, the Commission has no authority to draw up [that] report. (*Velásquez Rodríguez Case, Preliminary Objections, supra 40, para. 63; Fairén Garbí and Solís Corrales Case, Preliminary Objections, supra 40, para. 63; and, Godínez Cruz Case, Preliminary Objections, supra 40, para. 66.*)

Otherwise, the Commission has the authority to prepare a final report containing the opinions and conclusions it considers advisable. It must also make the pertinent recommendations, giving the State an additional period to take appropriate measures to fulfill its obligations under the Convention.

53. There are, then, two documents which, depending upon the interim conduct of the State to which they are addressed, may or not coincide in their conclusions and recommendations and to which the Convention has given the name of "report" and which have the character of preliminary and final, respectively.

54. There may be a third stage after the final report. In fact, with the lapse of the time period the Commission has given the State to comply with the recommendations contained in the final report, and if they have not been accepted, the Commission shall decide whether to publish it, and this decision must also be based upon the alternative most favorable for the protection of human rights.

55. This being the case, the question should be answered in the sense that the two reports governed separately by Articles 50 and 51 of the Convention may not be subsumed in one because those norms establish two separate stages, even though

the contents of those documents, depending upon the conduct of the State concerned, may be similar.

56. The preliminary, confidential document of Article 50 may not be published. Only the final report contemplated by Article 51 of the Convention may be published, by decision of the Commission adopted after the lapse of the period given the State to carry out the recommendations contained in the final report.

57. For the reasons stated,

THE COURT,

unanimously

DECIDES

it is competent to render the present advisory opinion.

IT IS OF THE OPINION

unanimously

1. Within the terms of the attributes granted it by Articles 41 and 42 of the Convention, the Commission is competent to find any norm of the internal law of a State Party to be in violation of the obligations the latter has assumed upon ratifying or adhering to it, but it is not competent to decide whether the norm contradicts the internal juridical order of that State. Regarding the terminology the Commission may employ to qualify internal norms, the Court refers to paragraph 35 of this opinion.

unanimously

2. Without detriment to other attributes granted the Commission by Article 41 of the Convention, once a petition or individual communication is declared inadmissible (Article 41(f) read with Articles 44 and 45(1) of the Convention), findings on the merits are inappropriate.

unanimously

3. Articles 50 and 51 of the Convention provide for two separate reports, whose content may be similar, and the first report may not be published. The second report may be published if the Commission so decides by an absolute majority vote upon the expiration of the time period granted the State to adopt adequate measures.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, this sixteenth day of July, 1993.

Rafael Nieto-Navia
President

Sonia Picado-Sotela

Héctor Fix-Zamudio

Alejandro Montiel-Argüello

Hernán Salgado-Pesantes

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Manuel E. Ventura-Robles
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