

INTER-AMERICAN COURT OF HUMAN RIGHTS

GENIE LACAYO CASE

PRELIMINARY OBJECTIONS

JUDGMENT OF JANUARY 27, 1995

In the Genie Lacayo Case,

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

Héctor Fix-Zamudio, President
Hernán Salgado-Pesantes, Vice President
Rafael Nieto-Navia, Judge
Alejandro Montiel-Argüello, Judge
Máximo Pacheco-Gómez, Judge;

also present:

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

pursuant to article 31 of the Rules of Procedure (hereinafter "the Rules of Procedure") of the Inter-American Court of Human Rights (hereinafter "the Court"), delivers the following judgment on the preliminary objections interposed by the Government of Nicaragua (hereinafter the "Government" or "Nicaragua") in its submissions and oral arguments at the public hearing.

I

1. The instant case was submitted to the Court by the Inter-American Commission on Human Rights (hereinafter the "Commission" or the "Inter-American Commission") on January 6, 1994, against Nicaragua *"for the events that occurred as of July 23, 1991, the date on which the denial of justice --originating in the action of State agents-- first occurred with the death of Jean Paul Genie-Lacayo, in the city of Managua, Nicaragua, on October 28, 1990,"* which gave rise to Petition N° 10.792.
2. As the "**PURPOSE OF THE APPLICATION**" the Inter-American Commission asks the Court the following:

1. That it declare that the Government of the Republic of Nicaragua has violated Articles: 8, right to a fair trial; 25, right to judicial protection; and 24, right to equal protection, of the Convention, in relation to Article 1(1) thereof, which establishes the obligation to respect and ensure such rights. These rights were violated as a result of the Judicial Branch's reluctance to prosecute and punish those responsible, and to order the payment of reparations for the damages caused. In like manner, that it also declare that the Government of the Republic of Nicaragua has violated Article 2 of the Convention by not having adopted domestic laws intended to ensure such rights and prevent the occurrence of similar incidents in the future.

2. That, on the basis of the principle of pacta sunt servanda it declare that the Government of Nicaragua has violated Article 51(2) of the American Convention by not carrying out the recommendations made by the Commission.

3. That it require the Government of Nicaragua to identify and punish, on the basis of investigations made, those responsible, thereby preventing the consummation of acts of grave impunity that damage the foundations of the legal order.

4. That it declare that the enforceability of Decrees 591 and 600, known as "Law on the Organization of the Military Judge Advocate and Military Criminal Procedure," and "Provisional Military Criminal Law," which govern military criminal jurisdiction, are incompatible with the object and purpose of the American Convention on Human Rights and that they must be adjusted to the latter in conformity with the commitments acquired pursuant to Article 2 thereof.

5. That it declare that the Government of Nicaragua must provide, in accordance with Article 63(1) of the Convention, repara and compensate the next of kin of the victims for the acts committed by State agents as described in this complaint.

6. That the State of Nicaragua be sentenced to pay court costs and attorneys' fees in relationship to this action.

3. In submitting 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 26 and subsequent articles of the Rules of Procedure. It designated Michael Reisman, First Vice President, as delegate, and Edith Márquez-Rodríguez, Executive Secretary, and Milton Castillo, an attorney of the Secretariat, as attorneys. It also designated Robert K. Goldman as Adviser, and José Miguel Vivanco as assistant, accredited "*as the attorney representing the victim.*"

4. By note of January 21, 1994, the Court Secretariat (hereinafter the "Secretariat"), after the President of the Court (hereinafter the "President") concluded his preliminary study, notified the Government of Nicaragua of the case. The Court informed the Government that it had three months to file a written answer to the application (Art. 29(1) of the Rules of Procedure) and 30 days following notification of the application to file preliminary objections (Art. 31(1) of the Rules of Procedure). On February 3, 1994, the Government informed the Court of its designation of Ambassador José Antonio Tijerino-Medrano as agent. It also named Marco Gerardo Monroy-Cabra as Adviser and Carlos José Hernández-López and Víctor Manuel Ordóñez as Assistants.

5. On February 7, 1994, the President, at the request of the Government, granted the latter an extension of 90 days to answer the complaint and an additional term of 30 days to file preliminary objections.

6. On March 21, 1994, Nicaragua interposed the following preliminary objections:

First. Lack of jurisdiction of the Inter-American Court of Human Rights.

Second. Lack of the admissibility requirements as provided for in Article 46 of the American Convention on Human Rights.

Third. Procedural errors by the Inter-American Commission on Human Rights in the handling of the case and in the complaint submitted to the Inter-American Court of Human Rights.

Fourth. Undue accumulation of petitions in the complaint submitted by the Inter-American Commission on Human Rights.

The following requests were added:

First. Dismiss the complaint submitted by the Inter-American Commission on Human Rights concerning the Jean Paul Genie-Lacayo Case, on the basis of the objections proposed in this submission, and abstain from admitting these proceedings.

Second. Order, if the Court deems it appropriate, the holding of a public hearing to provide further verbal support to the proposed objections.

Third. Sentence the Inter-American Commission on Human Rights to the payment of court costs and attorneys' fees.

7. That same day the Secretariat transmitted the Government's submission to the Commission, indicating that the Commission had thirty days after receipt of the writings to reply. The Commission's observations were received at the Secretariat on April 24, 1994, and transmitted, together with the Government's submission, to the persons mentioned in Article 28(1) of the Rules of Procedure.

8. On May 23, 1994, the Government submitted its answer to the complaint. Both documents were also transmitted by the Secretariat to the persons referred to in Article 28(1) of the Rules of Procedure.

9. By Order of June 22, 1994, the President ordered that a public hearing be convoked on "*the preliminary objections submitted by the Government and the observations on those objections submitted by the Inter-American Commission.*" Additionally, the President, at the request of the Government, asked the Commission to submit a copy of the pertinent part "*of the minutes of those sessions where the case of the youth Jean Paul Genie-Lacayo had been discussed and resolved, as well as those of the sessions where the reconsideration requested by the Government of Nicaragua had been discussed and the decision was made to submit this case to the Inter-American Court of Human Rights.*" On July 20, the Commission sent copies of the requested documents.

10. The public hearing took place at the seat of the Court on November 18, 1994.

Appearing before the Court:

For the Government of Nicaragua:

José Antonio Tijerino-Medrano, Agent,

Marco Gerardo Monroy-Cabra, Adviser,

Carlos José Hernández-López, Attorney General,

Víctor Manuel Ordóñez, Assistant Attorney General.

For the Inter-American Commission on Human Rights:

Michael Reisman, Delegate,

Milton Castillo, Adviser,

Robert K. Goldman, Assistant,

José Miguel Vivanco, Assistant,

Oscar Herdocia, Assistant.

II

11. According to the complaint submitted to the Commission on February 15, 1991, at approximately 8:35 in the evening of October 28, 1990, the youth Jean Paul Genie-Lacayo, age 16, resident of the city of Managua, was traveling by car to his home in the Las Colinas subdivision. After having stopped at a restaurant, he took the road to Masaya and between kilometers 7 and 8 he came upon a convoy of vehicles transporting military personnel who, in response to his attempts to pass them, fired their weapons at him. The victim did not die immediately but was abandoned on the highway and died from hypovolemic shock as a consequence of his bleeding. According to investigations, this young man's automobile was machine-gunned with weapons from two or more vehicles and 51 cartridge shells of AK-47 ammunition were found at the site of the events. According to the ballistics report, the automobile had nineteen bullet impacts, all made while the vehicle was moving and only three shots taken at a short distance after it had already stopped.

12. According to the Commission, a deputy commandant of the Nicaraguan National Police, Mauricio Aguilar-Somarriba, who, according to his parents was in charge of the investigation of Genie-Lacayo's death, was killed. The Government denied that this officer had been in charge of the investigation and sent the Court a case file stating that the author of this deed had been sentenced to three years in prison.

13. The Commission maintains in its complaint that agents of the Government, acting in their capacity as public officers, carried out actions that resulted in a denial of justice. It is appropriate to mention that these actions include the disappearance of evidence, the contempt of military witnesses in refusing to appear and depose before the Seventh Judge of the Criminal District of Managua, the failure to process internal proceedings within a reasonable deadline and the application of rules contrary to the purposes and objectives of the Convention (such as Decrees 591 and 600 relative to the Law on the Organization of the Military Judge Advocate and Military Criminal Procedure and the Provisional Military Criminal Law). These actions prevented an impartial investigation that would punish those responsible and compensate the next of kin of the victim. The Commission adds that the events on which the complaint is based began on July 23, 1991, the date on which the Office of the Attorney General of Justice, then the only public criminal action authority, submitted the complaint to the Judicial Branch.

14. By note of February 27, 1991, the Commission transmitted the complaint to the Government and requested that it send the information it considered appropriate and that would make it possible to assess whether the domestic legal measures had been exhausted.

15. On March 13, 1991, the Government informed the Inter-American Commission that with respect to Petition N° 10.792, a Special Investigative Committee of the National Assembly for the Genie Lacayo Case had applied for technical advice from the Government of Venezuela.

16. On May 29, 1991, the Government sent the Commission a document which included a copy of a note signed on the 23rd of the same month and year by the Vice Minister of the Interior, Dr. José Bernard Pallais-Arana. That note accompanied a report which "*contains fundamental aspects on the case under consideration, detailing the action taken by the police, the juridical framework, and the submission of the proceedings to the Office of the Attorney General of Justice.*" The note further states "*that it must be taken into consideration that the remedy of appearing before that Honorable jurisdiction [the Commission] can take place only after the legal measures within the country have been exhausted.*"

17. On March 10, 1993, the Commission issued Report N° 2/93, whose concluding section reads as follows:

VI. CONCLUSIONS

6.1 The Government of Nicaragua is responsible for the violation of the right to life, right to humane treatment, right to a fair trial, right to equal protection and right to judicial protection of Jean Paul Genie-Lacayo (Articles 4, 5, 8(1), 24 and 25 of the Convention) for events that occurred on October 28, 1990, in the city of Managua.

6.2 The Government of Nicaragua has not complied with the obligations to respect human rights and freedoms as guaranteed by Article 1 of the American Convention on Human Rights, to which Nicaragua is a State Party.

6.3 The Government of Nicaragua has not complied with the duty to adopt internal legal measures as established in Article 2 of the American Convention on Human Rights, to which Nicaragua is a State Party.

6.4 Because of the nature of events, this case is not susceptible to a friendly settlement as described in Article 48(1)(f) of the American Convention on Human Rights.

VII. RECOMMENDATIONS

7.1 It recommends that the Government of Nicaragua punish the material authors, as well as their accomplices and accessories, for the crime of homicide to the detriment of Jean Paul Genie-Lacayo.

7.2 It recommends that the Government of Nicaragua pay fair compensatory damages to the direct relatives of the victim.

7.3 It recommends that the Government of Nicaragua accept the jurisdiction of the Inter-American Court of Human Rights in the specific case on which this report is based.

7.4 It requests that the Government of Nicaragua inform the Inter-American Commission on Human Rights within three months of the measures it adopts, in accordance with the recommendations in paragraphs 7.1, 7.2, and 7.3 concerning the instant case.

7.5 If after three months the case has not been resolved by the Government of Nicaragua, the Commission shall state its opinion and conclusions on the matter submitted for its consideration and it shall make a decision regarding the publication of this report, pursuant to Article 51(1) of the American Convention on Human Rights. Also, the present report shall be transmitted to the Government of Nicaragua and to the petitioners, who are not authorized to make it public.

18. On May 21, 1993, the Government requested that the Commission reconsider Report N° 2/93. In its request, among other things, the Government pointed out that "*in the case under consideration, the internal measures have not been exhausted.*" In the same document it reiterated this concept by expressing "*that precisely because of the fact that the internal measures have not been exhausted and a decision on an appeal is pending . . . we also do not know . . . to which judicial procedure this matter has to be referred.*" This petition was dismissed by the Commission during its 84th Session where the Report of March 10, 1993 was confirmed and a decision was made, in conformity with Articles 50 and 51 of the Convention, to submit the case to the consideration of the Court. In the pertinent section of the Commission's N° 5 Minutes of October 7, 1993, it is stated that "*the Inter-American Commission decided to confirm Report N° 2/93 relative to the Case of Jean Paul Genie-Lacayo and to submit it to the Inter-American Court of Human Rights.*"

III

19. The competency of the Court to hear the instant case shall be dealt with when the first preliminary objection interposed by the Government, the "*lack of jurisdiction of the Inter-American Court of Human Rights,*" is examined.

IV

20. The Court will now consider the preliminary objections submitted by the Government (*supra* para. 6).

21. The first objection is the "*lack of jurisdiction of the Inter-American Court of Human Rights,*" which the Government bases on the Nicaraguan acceptance of the Court's jurisdiction on February 12, 1991 "[s]ubject to the reservation that this recognition of competence applies only to cases arising solely out of events subsequent to, and out of acts which began to be committed after, the date of deposit of this declaration with the Secretary General of the Organization of American States [hereinafter the "OAS"]." This objection states that the events referred to in the application occurred on October 28, 1990, a date that precedes the acceptance of jurisdiction, thus, in accordance with the provisions of Articles 61(1) and 61(2) of the Convention, the Court would not have jurisdiction. The Government accepted "*for this case the jurisdiction of the Inter-American Court of Human Rights only and exclusively under the precise terms of the application submitted by the Inter-American Commission on Human Rights in its subtitle 'Purpose of the Application,'*" but maintained "*the objection of lack of jurisdiction as to events having occurred before February 12, 1991, other than those to which this specific acceptance statement refers.*"

22. The Inter-American Commission requested that this preliminary objection be rejected since

the death of Jean Paul Genie occurred on October 28, 1990; however, the purpose of the application is not limited to the violation of the right to life, which took place before the date of acceptance of the mandatory jurisdiction of the Court by Nicaragua, but rather to the subsequent events which have generated the international responsibility of the State for the violation of the rights to judicial protection and guarantees, equal protection and the duty to adopt domestic legal measures in relationship to the obligation to respect and ensure (Art. 1(1)) the full enjoyment of the rights recognized in Articles 2, 8, 24, and 25 of the American Convention on Human Rights.

The Commission feels that the unjustified delay in the administration of justice, the obstruction of the judicial proceedings by agents who acted under the cover of a public function and the application of

norms incompatible with the object and purpose of the American Convention occurred after February 12, 1991: they originated on the day in which the judicial proceedings started, that is, July 23, 1991. Consequently, the Commission feels that the Court is competent to examine the matter of lack of diligence in the judicial investigation and the punishment of those responsible.

In this same respect, according to the Commission, Nicaragua's reservation to its acceptance of the Court's jurisdiction does not affect the Court's capacity to hear the instant case.

23. The Court understands that Nicaragua's acceptance of jurisdiction as formulated expressly for this case is independent of the declaration of a general nature that it submitted on February 12, 1991, the date of deposit of its declaration before the Secretary General of the OAS. Under the terms of Article 62, States may declare that they accept the jurisdiction of the Court "*on all matters . . . or for specific cases . . . concerning the interpretation and application of the provisions of this Convention.*"

24. Nicaragua has made both declarations subject to conditions, in one case excluding occurrences prior to, or occurrences brought under consideration prior to February 12, 1991, and in the other case with the limitation that jurisdiction applies "*only and exclusively under the precise terms*" that appear in "*the subtitle 'Purpose of the Application'*," of the Commission (*supra* para. 2).

25. The Court does not feel it necessary to state its position at this time concerning the effect of the existence of two acts of acceptance of jurisdiction. In principle, in the Commission's "*Purpose of the Application*" there appear no demands relative to the violation of the victim's right to life or to humane treatment, events which occurred prior to Nicaragua's acceptance of jurisdiction. Consequently, the Court shall limit itself to decide, in due time, on these matters --and in any event it could not exceed the scope of this matter without the risk of adopting an *ultra petita* decision--. In adopting this position, the Court shall not be found to lack jurisdiction, since Nicaragua has expressly accepted that the Court has jurisdiction over such a matter.

26. Therefore, the Court holds that this preliminary objection is inadmissible and declares itself competent to hear the present case.

27. The second objection interposed by the Government is the failure of the Commission to comply with the requirements of admissibility as provided for in Article 46 of the Convention. According to the Government, the Commission should not have admitted the application when it was submitted on February 15, 1991, for lack of compliance with the requirement of prior exhaustion of domestic remedies to which Article 46(1) of the Convention refers, since at that time the criminal proceedings brought in response to the death of the youth Genie-Lacayo were in progress. In support of its objection, Nicaragua refers to the judicial proceedings before the State's military criminal authorities and their multiple procedures. It affirms that the objections are not interposed with respect to the exhaustion of remedies referred to in Article 46(2)(a); that the injured person has not been prevented from exhausting the remedies and that there has not been an unjustified delay in the administration of justice.

28. The Commission asks that this objection be dismissed since the party that invokes non-exhaustion of domestic remedies has the obligation to specifically identify these remedies before the Commission and Nicaragua has not done so. It adds that the internal remedies are fully exhausted since the regular criminal prosecution concluded on December 20, 1993 with the Supreme Court's judgment. The Commission also alleges that Nicaragua's military criminal jurisdiction is not independent, that the enforceability and application of Decrees 591 and 600 is incompatible with the object and purpose of the Convention, and

that the delay in the criminal investigation of the death of Jean Paul Genie-Lacayo cannot be justified by excessive workloads of the Judicial Branch, as has been done in this case.

29. In the instant case, the Commission's petition refers to Nicaragua's violation of Articles 8 (Right to a Fair Trial), 25 (Right to Judicial Protection), and 24 (Right to Equal Treatment) of the Convention, "*as a result of the Judicial Branch's reluctance to prosecute and punish those responsible and to order the payment of reparations for the damages caused*" by the death of Genie-Lacayo. The Court feels that the articles invoked by the Commission refer to the administration of justice and are closely related, as is logical, to the "*internal remedies*" whose non-exhaustion Nicaragua alleges.

30. The file naturally contains arguments by both parties on this matter and copies of the judicial proceedings have been added. All these documents show that the subject of non-exhaustion of internal remedies is related to the merits since it has to do with the judicial remedies available in Nicaragua as well as their applicability and effectiveness. On another occasion, this Court stated as follows:

In such cases, given the interplay between the problem of domestic remedies and the very violation of human rights, the question of their prior exhaustion must be taken up with the merits of the case. (*Velásquez Rodríguez Case, Preliminary Objections*, Judgment of June 26, 1987. Series C No. 1, para. 94; *Fairén Garbi and Solís Corrales Case, Preliminary Objections*, Judgment of June 26, 1987. Series C No. 2, para. 93, and *Godínez Cruz Case, Preliminary Objections*, Judgment of June 26, 1987. Series C No. 3, para. 96.)

31. Under such circumstances and because of the stated reasons, the Court shall join this objection to the merits.

32. The third objection has been stated by Nicaragua in generic terms as "*procedural errors by the Commission in the handling of the case and in the complaint.*" The Government mentions four "errors" in its objection, which the Court shall analyze separately below.

33. In the first point of this objection the Government alleges that the Commission "*did not refuse to admit the application or communication in spite of the fact that there was full proof that the criminal investigation and prosecution were proceeding normally in accordance with the legislation in force in Nicaragua.*"

34. The Commission affirms that its practice has been to consider the admissibility of an application together with the merits of the complaint and that, in the instant case, its decision with respect to admissibility falls within the legal boundaries allowed it by the Convention and its Rules of Procedures. The Commission felt that the information it received from the petitioner was sufficient at the time to establish its competency.

35. In pointing out this "error," the Government does not refer to any article applicable to the circumstance that it mentions; nor does it support its objection in any other way. If the allegation of the Government refers to the exhaustion of remedies, the Court has already previously decided to join that objection to the merits. If instead, it refers to the admissibility, whether because an express declaration was not made or because a declaration was made implicitly together with the merits, the Court reiterates what it has already expressed on another occasion by stating that

the Commission's failure to make an express declaration on the question of admissibility of the instant case is not a valid basis for concluding that such failure barred proper consideration by the Commission, and subsequently, by the Court (Arts. 46-51 and 61(2) of the Convention). (*Velásquez Rodríguez Case, Preliminary*

Objections, supra 30, para. 41; *Fairén Garbi and Solís Corrales Case, Preliminary Objections, supra* 30, para. 46, and *Godínez Cruz Case, Preliminary Objections, supra* 30, para. 44.)

36. It is true that if "*the admission of a petition does not require an express and formal act, such an act is necessary if it is found to be inadmissible.*" (*Velásquez Rodríguez Case, Preliminary Objections, supra* 30, para. 40; *Fairén Garbi and Solís Corrales Case, Preliminary Objections, supra* 30, para. 45, and *Godínez Cruz Case, Preliminary Objections, supra* 30, para. 43.) The Convention not only determines what requirements a petition or communication must meet in order to be admitted by the Commission (Art. 46) but also determines cases of inadmissibility (Art. 47). The Government's arguments seem to indicate that it understands this principle, since it states "*there was full proof that the criminal investigation and prosecution were proceeding normally,*" and the petition before the Commission was "manifestly groundless" or totally inapplicable under the terms of Article 47(c) ("*The Commission shall consider inadmissible any petition or communication submitted under Articles 44 or 45 if: . . . c) the statements of the petitioner or of the state indicate that the petition or communication is manifestly groundless or obviously out of order*"). Nevertheless, the subjects of the investigation and the criminal proceedings are part of the merits, whereby it becomes evident that, for the Commission, it was neither "obvious" nor "manifest" that there were arguments to declare the case inadmissible. The terms of Article 47(c) exclude any conclusion based on appearance and demand a "*clear, manifest certainty so perceptible that nobody may rationally place it in doubt*" (Royal Spanish Academy, Dictionary of the Spanish Language), which is not the case here.

37. On the second point of the third preliminary objection, the Government maintains that the Commission, in determining that "[b]ecause of the very nature of the events, this case [was] not susceptible to a friendly settlement," restricted the scope of this rule of the Convention (Art. 48(1)(f)) which does not distinguish between matters which are susceptible to a friendly settlement and those which are not. Based on the Court's decision in the judgment on the preliminary objections in the Caballero Delgado and Santana Case (*Caballero Delgado and Santana Case, Preliminary Objections, Judgment of January 21, 1994. Series C No. 17*), the Government alleges that the Commission did not duly support its denial of a friendly settlement.

38. The Commission answered, among other arguments, that the reconciliation mechanism is not mandatory and is applied by it discretionarily, not arbitrarily, on the basis of the needs and characteristics of the case. The Commission added that Nicaragua did not intend to request a friendly settlement procedure since it always denied being responsible for the events that occurred in the instant case. Furthermore, "*simply by reading Article 45 of the Rules of Procedure of the Commission it is understandable that both the Government and the petitioner may at all times ask the Commission to initiate a reconciliation procedure.*"

39. In the jurisprudential development of this subject matter (*Caballero Delgado and Santana Case, Preliminary Objections, supra* para. 37), which is subsequent to the date of the Commission's Report to which the Government refers, this Court has said that the Commission does not have arbitrary powers in this respect, but that it may, exceptionally and on the basis of essential arguments, circumvent the reconciliation procedure. In this case the Commission invoked only the "nature" of the matter. However, the avoidance of the friendly settlement procedure does not harm the Government, since the latter may apply for it at any time. It is evident that, in order to reach a friendly settlement, the resolute intervention of the parties involved, namely the Government and the victims, whose disposition to reach a friendly settlement is of the essence, is indispensable. While it is true that the Commission should have played an active role, it was within the Government's possibilities to apply for a friendly settlement and it did not do so. It then may not rightfully object to the Commission's decision. The Court deems such reasoning by the Government groundless.

40. The third point made by the Government as part of this objection is that the Commission did not correctly apply Article 51 of the Convention in the way this norm has been interpreted by this Court. (*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.) The Government feels that the Commission was wrong in considering, in the purpose of the application, that the Court should declare, on the basis of the principle of *pacta sunt servanda*, that the Government had violated Article 51(2) of the Convention for failure to comply with the recommendations formulated by the Commission. In the Government's opinion, "*this request is not applicable and causes the complaint to be inappropriate*" since Article 51 of the Convention is not applicable if the case is submitted to the Court.

41. The Commission affirms that it did not incorrectly apply the provisions of Articles 50 and 51 of the Convention since, while it does mention such precepts in the complaint, it never prepared the second report, which is prepared only when the case is not submitted to the Court.

42. According to the pertinent section of the N° 5 Minutes of the Commission of October 7, 1993, "*the Inter-American Commission decided to confirm Report N° 2/93 relative to the Jean Paul Genie-Lacayo Case and submit it to the Inter-American Court of Human Rights*" (underlining by the Court). The Court finds, therefore, that the report to which Article 51 of the Convention refers does not exist.

43. The complaint does, nonetheless, contain a request to the Court "[t]hat, on the basis of the principle of *pacta sunt servanda* it declare that the Government of Nicaragua has violated article 51(2) of the American Convention by failing to comply with the Commission's recommendations." The Court finds it inappropriate to state its position at this time, since whether or not governments violate either the *pacta sunt servanda* principle or the Convention by failing to comply with the "recommendations" of the Commission is not a preliminary issue. The Court shall have to resolve this request on the merits. To establish whether or not this request is founded is not appropriate at this stage.

44. The fourth point alleged by the Government in this preliminary objection is that there is an inconsistency between the conclusion foreseen in section 6(1) of Report 2/93 of March 10, 1993, which refers to the violation of Jean Paul Genie-Lacayo's right to life as provided for in Article 4 of the Convention and the actual complaint which fails to request that the Court state its position on the alleged violation of Article 4 of the Convention.

45. In its reply, the Commission states that "*the complaint of the Commission refers strictly to the violation of rights relative to judicial guarantees and protection as provided for in Articles 8 and 25 of the Convention and Article 2 of the same, all related to Article 1(1)*" and that "*consequently, there exists . . . no 'inconsistency'!*"

46. The Court observes that in Conclusion 6(1) of Report N° 2/93 of March 10, 1993, it is indeed stated that the Government is responsible for violating Article 4 (Right to Life) of the Convention, together with Articles 8 (Right to a Fair Trial), 24 (Right to Equal Protection) and 25 (Right to Judicial Protection). In the application, reference is made only to the latter three Articles, and Article 4 is omitted. Report N° 2/93 of the Commission is the report to which Article 50 of the Convention refers. Such Reports fall under the attributes of the Commission in its function "*to promote the observance and protection of human rights*" pursuant to Article 41 of the Convention (cfr. *Certain Attributes of the Commission on Human Rights, supra* 40, para. 23) which obviously includes all recognized rights and must be protected, even if the States have not accepted the jurisdiction of the Court. The purpose of the Report is to urge the State involved to adopt the recommendations that it suggests. When the Commission made the decision to

submit the case to the Court, it did so precisely because, in its opinion, such recommendations had not been adopted. The Commission omitted the violation of Article 4 because it was aware that the events related to this precept, by virtue of the date on which they occurred, lied beyond the jurisdiction of the Court. In the opinion of the Court, this can neither be regarded as an inconsistency nor be accepted as a preliminary objection.

47. The Government bases its fourth objection on the allegation that the Commission's request to declare the legal effect of Decrees 591 and 600 incompatible with the object and purpose of the Convention, constitutes a request for an advisory opinion pursuant to Article 64(2). It adds that this request could only be made by the Government and fails to comply with the requirements established by the Rules of Procedure and cannot be joined to a contentious case.

48. The Commission has alleged that it is competent and has the obligation to ensure respect for the Convention; that Nicaragua is obliged to adjust its legislation to the Convention and that Article 64(2) of the Convention is not the only means to examine the compatibility of the legislation with the Convention.

49. On a prior occasion this Court has stated that "[a] *State may violate . . . the Convention, in many ways . . . Likewise, it may adopt provisions which do not conform to its obligations under the Convention,*" and that, in respect of its function to promote the observance and protection of human rights, the Commission has the "*power to rule, as in the case of any other act, that a norm or internal law violates the Convention . . .*" (*Certain Attributes of the Inter-American Commission, supra* 40, paras. 26 and 37.) However, in the instant case, the abstract compatibility, such as the Commission has formulated it in the "*Purpose of the Application,*" between the decrees mentioned and the Convention, is something that pertains to the Court's advisory (Art. 64(2)), and not its contentious (Art. 62(3)) jurisdiction.

50. The purpose of the Court's contentious jurisdiction is not to review national legislations in their abstract conception. Contentious jurisdiction is intended to resolve specific cases where it may be alleged that an act of a State carried out against certain individuals is contrary to the Convention. In considering the merits of the case, the Court shall have to examine whether or not the conduct of the Government conformed to the Convention, since, as it has already stated:

the Court would have to weigh and decide whether the action attributed to the state constitutes a violation of the rights and freedoms protected under the Convention, regardless of whether or not such action is consistent with the state's domestic law . . . (*International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2, American Convention on Human Rights)*, Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, para. 48.)

51. In accordance with the preceding, this objection presented by the Government is admissible only with respect to the Commission's request on the abstract compatibility of Decrees 591 and 600 and the Convention. As far as the other aspects of the application are concerned, the jurisdiction of the Court remains unalterable due to the fact that this matter is independent of the Commission's remaining requests. However, this Court reserves the power to examine in the merits of the case the effects of the application of the cited decrees in relationship to the human rights recognized by the Convention and involved in this case.

52. In regards to the court costs and attorney's fees which the Government requests the Commission to be liable, the Court does not find it appropriate to order such costs.

VI

53. Therefore,

THE COURT,

unanimously

1. Declares that it is competent to hear the instant case, except regarding the abstract compatibility of Decrees 591 and 600 of Nicaragua with the Inter-American Convention on Human Rights.
2. Rejects the preliminary objections interposed by the Government of Nicaragua, except for the objection relative to the non-exhaustion of internal jurisdictional remedies, which shall be resolved together with the merits of the case.
3. Considers that the objections of the Government of Nicaragua posed in opposition to the statements in the Inter-American Commission on Human Rights' complaint concerning the mandatory nature of its recommendations, are not preliminary objections but rather essential questions on the merits that shall be resolved in due time.
4. Does not consider it appropriate to award court costs and attorneys' fees.
5. Resolves to continue hearing the present case.

Done in Spanish and English, the Spanish text being authentic. Read in a public hearing at the seat of the Court in San José, Costa Rica, on January 27, 1995.

Héctor Fix-Zamudio
President

Hernán Salgado-Pesantes

Rafael Nieto-Navia

Alejandro Montiel-Argüello

Máximo Pacheco-Gómez

Manuel E. Ventura-Robles
Secretary

So ordered,

Héctor Fix-Zamudio
President

Manuel E. Ventura-Robles
Secretary