

Inter-American Court of Human Rights

Case of Castillo-Páez v. Peru

Judgment of November 3, 1997 (Merits)

In the Castillo Páez Case,

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

Hernán Salgado-Pesantes, President;
Antônio A. Cançado Trindade, Vice President;
Héctor Fix-Zamudio, Judge;
Alejandro Montiel-Argüello, Judge;
Máximo Pacheco-Gómez, Judge; and
Alirio Abreu-Burelli, Judge;

also present:

Manuel E. Ventura-Robles, Secretary, and
Víctor M. Rodríguez-Rescia, Interim Deputy Secretary,

pursuant to Articles 29 and 55 of the Rules of Procedure of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), delivers the following judgment in the instant case.

I

1. On January 13, 1995, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted to this Court a Case against the Republic of Peru (hereinafter "the State" or "Peru") which originated in petition No. 10.733, received at the Secretariat of the Commission on November 16, 1990. In its petition, the Commission invoked Articles 50 and 51 of the American Convention on Human

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

Rights (hereinafter "the Convention" or "the American Convention") and Articles 26 *et seq.* of the Rules of Procedure of the Court that were then in force. (1) The Commission submitted this case for a ruling by the Court as to whether, with the alleged "*abduction and subsequent disappearance of Ernest Rafael Castillo-Páez by the Peruvian Police in violation of the Convention*", the Government had violated the following articles of the Convention: 7 (Right to Personal Liberty), 5 (Right to Humane Treatment), 4 (Right to Life), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), all these in relation to Article 1(1) of the Convention. Additionally, the Commission asked the Court to order the State to conduct "*the investigations needed to identify, prosecute and punish those responsible*" for that disappearance, to report on the Mr. Castillo-Páez's whereabouts, and to locate his remains and deliver them up to his next-of-kin. It further requested the Court to declare that the State must "*pay full material and moral damages to Ernesto Rafael Castillo-Páez' next-of-kin for the grievous suffering they have endured as a result*" of the events and that it must "*compensate Dr. Augusto Zúñiga-Paz for the material and moral damages he has sustained [in the attempt on his life] for his defense of young Castillo-Páez.*" Lastly, it requested the Court to order the State to pay the costs of these proceedings.

II

2. The Court is competent to hear the instant Case. Peru ratified the Convention on July 28, 1978, and recognized the jurisdiction of the Court on January 21, 1981.

III

3. On November 16, 1990, the Commission received a complaint concerning the abduction and subsequent disappearance of Ernest Rafael Castillo-Páez and three days later it sought information from the State as to the victim's whereabouts. Through communications of November 25 and 28, 1990, and March 19, 1991, the Commission reiterated its request. On May 28 and 29, 1991, the petitioners provided the Commission with additional information which was transmitted to the State on June 26, 1991. That information included a request for the adoption of measures designed to guarantee the safety of eye-witnesses to the events and of Mr. Castillo-Páez's father, Mr. Cronwell Pierre Castillo-Castillo.

4. On October 3, 1991, the State replied to the Commission's requests and declared that "*there [was] no evidence to indicate that on October 21, 1990, members of the PNP-PG detained Rafael Castillo-Páez, as stated in the conclusion of Report No. 159-90-IGPNP-01, dated November 21, 1990.*" As regards the measures for the protection of a number of witnesses, in a note of January 6, 1992, the State informed the Commission that "*the Villa El Salvador District Precinct Station [was] providing the necessary guarantees to protect the life and physical integrity*" of the aforesaid persons.

5. On August 10, 1992, the petitioners supplied the Commission with additional information, and on September 11 of that year they submitted their comments on the State's reply, which were transmitted to the State on September 24.

6. On December 18, 1992, Peru dispatched official communiqué No. 033-92-P-CS from the Supreme Court of the Republic, containing the judgment handed down by that Tribunal's Second Criminal Chamber on February 7, 1991, which, according to the

(1) Rules of Procedure approved by the Court at its XXIII Regular Session held from January 9 to 18, 1991, amended on January 25, 1993, and July 16, 1993.

Commission,"*closed the judicial proceedings into the detention and subsequent disappearance of Mr. Castillo-Páez.*"

7. On January 22, 1993, the petitioners submitted their comments on Peru's observations to the Commission.

8. On September 16, 1994, the Commission held a hearing which was attended by the parties.

9. On September 26, 1994, at its 87th regular session, the Commission approved Report 19/94, which decided in its final paragraphs:

1. To declare that the Peruvian State is responsible for the violation of Ernesto Castillo-Páez rights to personal liberty, to humane treatment, to life and to judicial protection, as well as the judicial guarantees of due process of law embodied, respectively, in Articles 7, 5, 4, 25 and 8 of the American Convention.

2. To declare, further, that in the instant case the Peruvian State has not fulfilled the obligation to respect the rights and guarantees established in Article 1(1) of the American Convention.

3. To recommend to the Peruvian State that, in consideration of the review made by the Commission in the instant case, within forty-five days it conduct a new investigation of the events denounced, determine the whereabouts of the victim and identify and punish those responsible for the disappearance of Ernesto Castillo-Páez.

4. Likewise, to recommend that the Peruvian State pay fair compensation to the victim's next-of-kin.

5. To inform the Government of Peru that it is not authorized to publish this Report.

6. To request the Government of Peru that it inform the Inter-American Commission on Human Rights, within a period of sixty days, of the results of the recommendations contained in paragraphs 3 and 4 above.

10. On October 13, 1994, the Commission transmitted Report 19/94 to the State. By communication of November 17, 1994, Peru informed the Commission that it had not received the report. On November 22 of that year a copy of the aforesaid Report was dispatched to the Minister of Foreign Affairs of Peru.

11. On January 3, 1995, the State submitted, in its conclusions on the case, a report prepared by a Task Force consisting of representatives of various Government ministries. The State concluded in that report that

there [was] no evidence to prove that Ernesto Rafael Castillo-Páez had been detained by police, and that the Peruvian State could not be held responsible for a breach of the Convention, since - in the opinion of the Task Force- the remedies under domestic law [had] not been exhausted.

12. On January 13, 1995 the Commission referred this case to the Court for its consideration and decision.

IV

13. The application submitted to the Court on January 13, 1995, was sent to the State by the Secretariat of the Court (hereinafter "the Secretariat"), together with its attachments on February 9 of that year and was received by the State on February 13.

14. The Inter-American Commission named Patrick Robinson as its Delegate, who was later replaced by Carlos Ayala-Corao and Alvaro Tirado-Mejía; Domingo E. Acevedo as its Attorney, and the following persons as Assistants: Juan Méndez, José Miguel Vivanco, Ronald Gamarra, Kathia Salazar, Viviana Krsticevic, Verónica Gómez and Ariel E. Dulitzky, who represented the plaintiff as petitioners before the Commission. Mr. Méndez later withdrew by note of September 16, 1996.

15. On March 23, 1995, the State informed the Court that it had appointed Mario Cavagnaro-Basile as Agent, and on the following day it reported that it had appointed Julio Mazuelos-Coello as Alternate Agent.

16. On March 24, 1995, the State filed written preliminary objections of failure to exhaust domestic remedies and inadmissibility of the petition. In its brief it further requested "*the suspension of the proceedings on the merits until such time as the objections presented are disposed of.*" By Order of May 17, 1995, the Court decided to declare the request inadmissible and to continue processing the Case.

17. On May 8, 1995, the Government submitted its answer to the application, in which it "*refute[d] and contest[ed] the entire [application] and ask[ed] the Court ..., on the merit of [its] arguments*" to declare it to be totally unfounded. It further stated that for the State to incur responsibility for the violation of a specific right there must have been an act or omission on the part of the authorities, which resulted in an injury attributable to it; otherwise, it may be an infringement or crime for which only the individual who committed it can be held responsible; accordingly, only that person can be responsible for the effects of the act and for reparation of the damage caused. In that brief the State repeated at length its arguments of failure to exhaust the domestic remedies (*infra*, para. 21).

18. In response to the request of the Court of May 20, July 27 and October 24, 1995, the State submitted, through communications of July 26, September 22 and November 28 of that year, the documentation missing from the file on the domestic proceedings in the case.

19. On May 31, 1995, the Commission submitted the original file on the proceeding before it.

20. On September 23, 1995, the President granted the Commission until November 23 of that year to submit its brief of reply, and to the State a period of two calendar months from the date of its notification to submit its rejoinder. The parties, however, did not submit those briefs.

21. By Judgment of January 31, 1996, the Court unanimously dismissed the preliminary objections raised by the State with regard to the failure to exhaust the domestic remedies.

22. On March 21, 1996, the State sought the nullification of the Judgment on preliminary objections delivered by the Court on January 31 of that year. On April 30 the Commission submitted its observations on that request. By Order of September 10, 1996, the Court rejected "*the motion for review as being out of order.*"

23. On March 4, 1996, the Commission presented a list of the following witnesses who should be summoned to appear at the public hearing on the merits of the case: María Esther Aguirre-Vera, Erika Katherine Vera-de la Cruz, María Elena Castro-Osorio, Joe Roberto Ruiz-Huapaya (all witnesses to the events), Cronwell Pierre Castillo-Castillo (father of the alleged victim), Elba Minaya-Calle (the Examining Magistrate who heard the petition

of *habeas corpus* filed on behalf of Ernest Rafael Castillo-Páez), Augusto Zúñiga-Paz (attorney for the alleged victim in the domestic proceeding), Luis Delgado-Aparicio (Member of the Special Commission of the Chamber of Deputies), and Cecilia Valenzuela (journalist). Expert reports were also produced by Enrique Bernales-Ballesteros (former Peruvian Senator and erstwhile Chairman of the United Nations Human Rights Committee), and Francisco Eguiguren-Praeli (Deputy Director of the Andean Commission of Jurists).

24. On April 8, 1996, the State submitted a brief in which it objected to Ms. María Esther Aguirre-Vera and Ms. Erika Katherine Vera-de la Cruz as witnesses on the ground that their statements had been made anonymously and because they held a particular view of the events; to Ms. María Elena Castro-Osorio and Mr. Joe Roberto Ruiz-Huapaya on the ground that they were totally unknown in the case since they had never testified in it; to Mr. Cronwell Pierre Castillo-Castillo because he was the father of Ernesto Rafael Castillo-Páez and therefore had a direct interest in the outcome of the Case filed with the Court; to Judge Elba Minaya-Calle because she had heard and disposed of the appeal of *habeas corpus* filed on behalf of Mr. Castillo-Páez; to Mr. Augusto Zúñiga-Paz because he was the attorney for the plaintiff and therefore had a direct interest in the outcome of the case with regard to the material and moral compensation claimed in the petition owing to the attempt on his life; and to Cecilia Valenzuela on the ground that she had been presented as a witness in the petition.

25. In its observations of May 10, 1996, the Commission opposed the State's objection to the witnesses and confirmed the names of the witnesses and experts proposed in its brief of March 4, 1996 (*supra*, para. 24).

26. By Order of September 10, 1996, the Court decided to dismiss the State's objection to the aforementioned witnesses (*supra*, para. 24), and reserved the right to evaluate their statements at a later date. It further authorized the President to order measures designed to permit the witnesses and experts proposed by the Commission to give their statements and opinions.

27. By Order of October 11, 1996, the President summoned the parties to a public hearing at the seat of the Court on February 6 and 7, 1997, to hear the statements of the witnesses and experts proposed by the Commission (*supra*, para. 23).

28. On February 6 and 7, 1997, the Court held a public hearing on the merits of the case and heard the conclusions of the parties.

There appeared before the Court:

for the State of Peru:

Mario Cavagnaro-Basile, Agent, and
Mariano García-Godos, Minister in the Diplomatic Service;

for the Inter-American Commission on Human Rights:

Oscar Luján-Fappiano, Delegate;
Domingo E. Acevedo, Attorney;
Ronald Gamarra, Assistant;
Viviana Krsticevic, Assistant;
Ariel Dulitzky, Assistant; and
Francisco Cox, Assistant;

witnesses presented by the Inter-American Commission on Human Rights:

Cronwell Pierre Castillo-Castillo;
 Joe Roberto Ruiz-Huapaya;
 María Elena Castro-Osorio;
 Elba Minaya-Calle; and
 Augusto Zúñiga-Paz;

expert presented by the Inter-American Commission on Human Rights:

Dr. Enrique Bernales-Ballesteros.

The following witnesses and expert proposed by the Inter-American Commission on Human Rights did not appear at this hearing, notwithstanding the summons from the Court:

Luis Delgado-Aparicio;
 Cecilia Valenzuela;
 María Esther Aguirre-Vera;
 Erika Katherine Vera de la Cruz; and
 Dr. Francisco Eguiguren-Praeli.

29. During this hearing, and by communication of February 12, 1997, the President granted the parties a period of thirty days from the date of notification of the copy of the transcripts of the public hearing to present their briefs of final arguments.

30. The following paragraphs contain the Court's summary of the statements and expert report heard at the seat of the Court:

a. *Testimony of Mr. Cronwell Pierre Castillo-Castillo, father of the victim*

The witness stated that on the day his son was arrested he was wearing a light-colored short-sleeved shirt, a pair of black jeans, a jacket that was beige on the outside and dark blue on the inside, tobacco-colored moccasins and glasses; on October 25, 1990 he went to the Villa El Salvador district and was told by eyewitnesses that they recognized his son from the description and had witnessed his arrest. Those witnesses told him that a patrol car stopped at a corner, two policemen got out, made the young man raise his hands, removed his glasses, searched him and placed him in the police vehicle, swearing at him the while; they opened the trunk and made him get in. He further stated that another patrol car approached and after an exchange of words the second vehicle drove off. The witnesses told him that the policemen were wearing the red berets then worn by members of the 33rd Radio Patrol Brigade and that they did not remember whether his son had been handcuffed; that a number of witnesses were afraid to speak out and that he too feared reprisals. From information obtained by Dr. Zúñiga-Paz, he believed that his son was dead. The police had made contradictory reports to the press: that his son had materialized, or that his body had been found. He had unofficially ascertained that his son was taken to the headquarters of the 74th PNT Brigade in San Juan de Miraflores, where the Magistrate found that the page of the log for October 21 had been torn out, and that he was subsequently taken by Commandant Mejía-León to the headquarters of the 29th Brigade next to the State Palace, where he was interrogated, tortured and killed. He further testified that the witnesses saw the police vehicle; that they were all of the same type and bore the

same insignia, the only difference being a number, but that none of the witnesses had noted the number since they did not think that the detainee would disappear.

b. *Statement from Mr. Joe Roberto Ruiz-Huapaya, eye-witness*

He testified that he was inside his home on the day of the events, but went out when he heard sirens and saw a patrol car stop one hundred meters from his house; he had unobstructed view since he was on a higher level. He saw two police cars each carrying two police officers; two policemen got out but only one was involved in the arrest; he knew that they were policemen by their red berets and green uniforms. The detainee was approximately 21 years of age, and was wearing a light-colored shirt and dark pants, and carrying a jacket. The policeman forced the boy to put his hands on the side of the car, searched him, and place him in the trunk; he did not see whether they took anything from him, but the detainee offered no resistance. A few minutes after he was placed in the trunk, another police vehicle appeared on the scene; after some conversation, the second police vehicle drove off, as did the first vehicle carrying the detainee a little later. The arrest had been witnessed by others; the policemen reopened the trunk to push in the end of the young man's jacket. He recognized the detainee as Mr. Castillo-Páez from a weekly television report on Channel 4. He further stated that he feared reprisals and that he had been summoned by the DINCOTE. He testified that the person was stopped on the road in front of the police car; that the detainee had his back to him, so that he had been unable to see his face; he did not see the number of the vehicle, which was entirely white, as police cars were at that time; the entire arrest, from the moment he saw the police car, lasted approximately ten minutes. Although he could not hear what was being said, he could hear that a conversation was taking place.

c. *Testimony of Ms. María Elena Castro-Osorio, eye-witness*

The witness testified that she was selling food at her house on the day of the events when a boy of medium height passed by dressed in dark pants and a light-colored shirt, and carrying a beige jacket; she could not remember whether or not he was wearing glasses; she was 80 meters from the other corner where she saw a police vehicle detain the young man and put him in the trunk; she knew it was the police because of the vehicle, the uniform, and the red beret; there were two policemen in the vehicle but only one of them made the arrest; the young man was not running, but walking slowly, when he was detained. There had been several witnesses to the arrest but they were afraid, as she herself was. The young man was Ernesto Rafael Castillo-Páez, as she learned days later when his father appeared and showed her photographs of him. She testified that she witnessed the events and that the boy was walking in front of the vehicle, which was white; she saw neither its number nor its registration. When she was shown a photograph of a patrol car by the State's Agent during the hearing before this Court, the witness could not remember whether it was the same as the one she had seen on the day of the events.

d. *Testimony of Ms. Elba Minaya-Calle, Magistrate who heard the petition of **habeas corpus***

The witness testified that she learned from her inquiries that the 74th Brigade of San Juan de Miraflores was in charge of several police squads, including the one which is supposed to have made the arrest of the alleged victim; that is, junior personnel of the 29th Brigade radio patrol. In the course of her investigations she visited the San Juan de Miraflores Brigade; when she asked for the logs, she was first given the

wrong one, after which she was brought a log in which entries and arrests were recorded, but that it had been closed and reopened at the last page, and the dates did not match; in other words, in her view, it had been hurriedly filled in. She further testified that the log she requested had never been in her possession; she had visited the scene to familiarize herself with the site, and interviewed several witnesses to the arrest but that, from fear, only two had identified themselves; in order to protect them, she did not divulge their names in the record she drew up in connection with her ruling of admissibility of *habeas corpus*. That the record had been written out by hand, but since the case file was lost, the records was not available in the docket of the Inter-American Court. The versions of the arrest given by those two witnesses and several others were consistent; the witnesses identified Mr. Castillo-Páez from a photograph she showed them, and identified the men who arrested him as police officers; some of the witnesses said that the policemen were tall and heavily built, and even that one of them wore a moustache. The witnesses told her that the gentleman was walking, not running, when he was held at gunpoint, stripped of his eyeglasses, handcuffed and put in the trunk of one of the patrol cars. She further stated that she admitted the petition of *habeas corpus*, and mentioned a cousin of Mr. Castillo-Páez, also disappeared, whose remains had been found at a nearby beach. She was aware of the police reports which admitted that police raids had been made at the same hour at a place nearby, and that four persons had been detained and placed at the disposal of the DIRCOTE. The Magistrate testified that the witnesses told her that the vehicles present at the time of the arrest had been patrol vehicles, and that one of them was white, adding that "*I even believe that I was given the number of the patrol car. As I said, it would have been entered in the record I drew up.*" The Magistrate said that the witnesses told her that there were two vehicles, but that only one was involved in the arrest. She further testified that she had visited the scene not to take statements, but only to prepare the report. She confirmed that she had identified the witnesses but that, for the sake of their safety, had not done so in the report. She claimed that this did not constitute an anomaly.

e. *Testimony of Mr. Augusto Zúñiga-Paz, attorney for the victim in the domestic proceeding*

The witness testified that he learned from his investigations and through an official communication from the Minister of the Interior to the Chamber of Deputies that agents from the 74th Brigade, patrol vehicles 741005 and 291034 and officers of the 29th Brigade together with DIROVE, EVEX and SWAT (or "SUAT", according to the videotape produced as evidence by the Commission, Attachment XII to the Petition), were involved in the military operation in which Ernesto Rafael Castillo-Páez was arrested. He had talked at length to a senior military officer on January 29, 1991, after which he learned that Commandant Juan Carlos Mejía-León was the officer responsible for Mr. Castillo-Páez's death; that officer suggested that he drop his investigation because his life was in danger and informed him that Ernesto Rafael Castillo-Páez was dead and that his remains had been taken to a beach south of Lima and exploded. As for the attempt on his own life, he testified that while he was representing Mr. Castillo-Páez before the Second Criminal Chamber of the Supreme Court, he complained of serious threats to his life. The President of the Chamber, Mr. Horacio Valladares-Ayarza interrupted the session to inform him that the Supreme Court had dispatched an official communication to the Minister of the Interior requesting protection and guarantees for him, but that was never done. On June 15, 1991, an attempt was made on his life; on that day he concluded an expert opinion he was delivering in a case against the former President of the Republic, Dr.

Allan García-Pérez, and left the meeting at his office to obtain a coffee; on his return an assistant handed him a manila envelope bearing the stamp of the Press Office of the President of the Republic. He opened the envelope, and saw that smoke was issuing from it; he threw the envelope away from him with his left hand and heard it detonate, as a result of which he lost his left arm, his eardrums were pierced, and he suffered severe burns which almost totally incapacitated his entire left thorax; a great power explosive had been used which, as communicated in a report from the Inspectorate General produced in connection with Ministerial Decision No. 208/91 dated March 21, 1991, can only be handled by specially trained personnel. From his investigations he learned that only four members of the Police Force had received that training, one of whom is Commandant Juan Carlos Mejía-León. The further stated that this type of explosive is only used by Navy units specializing in demolitions and needs to be stored in a special environment. The Navy is the only institution to possess that explosive, and no loss or removal had been reported. It was the witness' view that Commandant Mejía-León participated in the manufacture of the artefact used in the attempt on his life. In response to a question from Judge Montiel-Argüello as to whether there was any connection between the attack against him and the Castillo Páez Case, Dr. Zúñiga-Paz said that the Castillo Páez Case was "*the last straw*." He mentioned two other cases that could have a bearing on the attempt on his life, including the case against Mr. Allan García, and the case concerning the homicide investigation in the "Caso de las Penales" He testified that when Mr. Allan García first entered the Hall of the Chamber of Deputies he was smiling, but that he became extremely perturbed when the expert opinion was communicated to him; on leaving he said: "You will pay for this." The witness therefore did not exclude the possibility that the attack was connected with other cases.

f. *Report of expert Mr. Enrique Bernales-Ballesteros*

He testified on the practice of disappearances in Peru and the situation of violence in general (*infra*, para. 42). He related his experience with violence in Peru and provided statistics on the subject: as of 1989, "Shining Path" (Sendero Luminoso) had begun to escalate its activities in Peru, transforming the city into a hotbed of armed political violence. He told how the disappearance of persons began to manifest itself in parallel with this upsurge of violence, following the same pattern of behavior that some military and police agents had used in the interior and in the city of Lima, thus stepping up the number of disappearances in that city. There was some distrust of the population, rural dwellers in the interior and students in the urban centers, so that the Judiciary found itself pressured by the country's military leaders. He explained that between 1984 and 1990, 1,916 cases of forced disappearance in Peru had been communicated to the United Nations Human Rights Committee, and produced documents to support that figure. In connection with that statement, at the same hearing the representative of the State averred that subversion had need of human beings to swell its ranks and that many persons had been abducted many persons to join it and make it look as though they had disappeared. However, the expert replied that most of the complaints were lodged by the victims' relatives, who were present when the events occurred and who blamed the military or the police. According to the expert, "Shining Path" was also responsible for the disappearance of some persons, but the disappearance of most of the persons whose names are known were reported by their families, who were able to point to members of the military, and to a lesser extent, to members of the police force as the perpetrators.

31. On February 21, 1997, the State presented a brief in which it formulated a number of considerations regarding the public hearing held on February 6 and 7, 1997, and submitted documentation on the general human rights situation in Peru.

32. By note of April 15, 1997, the Commission informed the Court that it did not consider it necessary to receive the statement of any other witnesses it had proposed in this Case.

33. On June 27, 1997, the State presented its brief of final arguments and repeated its position on the preliminary objections it had previously lodged with the Court, to the effect that when the petition from which this case had originated was received by the Commission, not only had remedies through the domestic courts not been exhausted, but they were actually in process. It analyzed the statements given at the public hearing, underscored what it described as discrepancies in the statements and the facts presented, and challenged the veracity of Magistrate Minaya-Calle's testimony. In conclusion, the State requested that the Court declare the petition groundless in all its parts.

34. In June 30, 1997, the Commission submitted its brief of final arguments, in which it reaffirmed that it had proven that the State was responsible for the arbitrary detention and forced disappearance of Ernesto Rafael Castillo-Páez on October 21, 1990, to whose detriment it had violated Articles 7, 5, 4, 8 and 25 of the American Convention, all in relation to the general obligation to respect and guarantee rights as enshrined in Article 1(1). The Commission also adduced new arguments on the possible violation of Articles 17 (Rights of the Family) and "*right to the truth*", to the detriment of Mr. Castillo-Páez.

The Commission described in detail the inefficacy of the judicial proceedings and investigation conducted in the case and summed up the testimony delivered by Magistrate Elba Minaya and Mr. Cronwell Pierre Castillo-Castillo, father of the alleged victim, concerning the State's obstruction and lack of cooperation they had encountered in the process. It also summarized the statements of eye-witnesses Joe Roberto Ruiz-Huapaya and María Elena Castro-Osorio.

35. On September 9, 1997, the State submitted a brief in which it declared that Ernesto Rafael Castillo-Páez's cousin, José Abel Malpartida-Páez, had been killed while handling explosives in a "Shining Path" maneuver. In that brief the State claimed that José Abel Malpartida Páez and Ernesto Rafael Castillo-Páez were not enrolled as students at the Catholic University of Lima.

V

36. As attachments to the application, and during the proceedings, the Commission submitted copies of a series of documents and statements concerning the Peruvian authorities' abduction and subsequent disappearance of Ernesto Rafael Castillo-Páez, as well as judgments, copies of statements and declarations. It likewise submitted official communications from a number of public departments, conclusions, rulings and judicial decisions.

37. As evidence in the Case, the State submitted a number of documents: judgments, copies of declarations and statements, police statements and reports, and a photograph.

38. In the instant case, the Court will assess the value of the documents presented by the Commission and the State, against which, incidentally, no challenge or objection was made.

39. The State objected to some of the witnesses produced by the Commission, for the reasons set forth in this judgment (*supra*, para. 24). The Court reserved the right to assess the value of their statements at a later date. To that end, the Court repeats that the criteria used in evaluating the evidence before a human rights tribunal possesses special characteristics, since the determination of a State's international responsibility for violation of the rights of a human person bestows greater latitude in the evaluation of the testimony it has heard on the pertinent facts, in accordance with the rules of logic and on the basis of experience (*Loayza Tamayo Case*, Judgment of September 17, 1997. Series C No. 33, para. 42).

VI

40. The Court now considers the relevant facts which it deems to have been proven or not to have been disputed, from the study of the actions of the State and the Inter-American Commission, and from the documentary, personal and expert evidence submitted in the instant case.

41. The Commission alleged that there existed, during the period in which the facts in this Case occurred, a *modus operandi* or a practice by the Security Forces in Peru to carry out forced disappearances of persons considered as members of subversive groups as "Shining Path." The Commission presented documents and the expert report of Enrique Bernales-Ballesteros in the course of the public hearing held by the Court.

42. On the basis of the documentary and personal evidence, especially the expert report submitted by the Commission, the Court deems it to have been proven that during the period in question, there existed in Peru a practice on the part of the forces of law and order which consisted in the forced disappearance of persons thought to be members of subversive groups, a practice well-publicized by the press. Students were also the victims of such disappearances. In the early nineties the security forces also placed the detainees in the trunks of police cars, as had occurred in this case (*1991 Annual Report by the National Human Rights Coordinator on the Human Rights Situation in Peru; Report [s of 1991 and 1993] of the [United Nations] Task Force on Forced or Involuntary Disappearances; expert report by Dr. Enrique Bernales-Ballesteros; press cuttings.*)

43. The Court studied the documentary and personal evidence submitted by the parties in order to decide whether the alleged facts demonstrate that members of the police had detained Ernesto Rafael Castillo-Páez and whether that detention was the cause of his disappearance. In that regard, the Court considers the following facts to have been proven:

a. Mr. Ernesto Rafael Castillo-Páez left his home on October 21, 1990 (Testimony of Cronwell Pierre Castillo-Castillo);

b. on that same day the subversive group "Shining Path" detonated explosives near the "Monumento a la Mujer" in the Villa El Salvador district of Lima, Peru (Answer to the application, testimony of Joe Roberto Ruiz-Huapaya, Judge Elba Minaya-Calle, and María Elena Castro-Osorio; statement of María Esther Aguirre-Vera on the videotape enclosed as Attachment XII to the application).

c. shortly after the explosions, the Peruvian security forces organized an operation to detain those responsible. During that action, a white patrol vehicle (Statements of Joe Roberto Ruiz-Huapaya, María Elena Castro-Osorio, and Judge Elba Minaya-Calle; videotape enclosed as Attachment XII to the application)

approached Mr. Ernesto Rafael Castillo-Páez in the vicinity of the Central Park of Group 17, Sector Two, Zone Two of the Villa El Salvador district. Mr Castillo-Páez was wearing dark pants and a white shirt, and was carrying a beige jacket; he was identified by several witnesses (Testimony of Cronwell Pierre Castillo-Castillo, Judge Elba Minaya-Calle, Joe Roberto Ruiz-Huapaya, and María Elena Castro-Osorio; statement of María Esther Aguirre-Vera on the videotape enclosed as Attachment XII to the application);

d. two policemen wearing green uniforms and red berets got out of the patrol vehicle. One of them arrested Ernesto Rafael Castillo-Páez, who did not resist, and minutes later he was placed in the trunk of the patrol vehicle (Testimony of Joe Roberto Ruiz-Huapaya, Judge Elba Minaya-Calle, and María Elena Castro-Osorio; statement of María Esther Aguirre-Vera on the videotape enclosed as Attachment XII to the application);

e. shortly afterwards, another police vehicle arrived at the scene of the arrest and the policemen exchanged words. The second vehicle left, followed by the vehicle carrying Mr. Castillo-Páez to an unknown destination. These events lasted approximately ten minutes (Application, testimony of Joe Roberto Ruiz-Huapaya, Judge Elba Minaya-Calle, and María Elena Castro-Osorio; statement of María Esther Aguirre-Vera on the videotape enclosed as Attachment XII to the application);

f. Mr. Castillo-Páez's parents initiated a search and, not finding their son at the different police precincts, instituted the appropriate judicial measures for locating him (Testimony of Cronwell Pierre Castillo-Castillo, Judge Elba Minaya-Calle, and Augusto Zúñiga-Paz);

g. on October 25, 1990, Ernest Rafael Castillo-Páez's father, Cronwell Pierre Castillo-Castillo, filed a petition of habeas corpus on his behalf with the Twenty-Fourth Examining Court of Lima, which declared the action well-founded on October 31, 1990, on the basis of the evidence, and of a series of irregularities discovered in the proceeding, which obstructed the investigation (Decision of October 31, 1990, of the Twenty-Fourth Examining Court, Attachment II to the application; testimony of Judge Elba Minaya-Calle, Cronwell Pierre Castillo-Castillo, and Augusto Zúñiga-Paz). That ruling was appealed by the Public Prosecutor for Terrorism before the Eighth Correctional Court of Lima. On November 27, 1990, that Tribunal ruled the petition out of order, upheld the ruling of first instance, and ordered the remittal of the necessary documents for formulating the appropriate criminal complaint (Judgment of November 27, 1990, of the Eighth Correctional Court of Lima, Attachment III to the application; testimony of Judge Elba Minaya-Calle, Cronwell Pierre Castillo-Castillo, and Augusto Zúñiga-Paz);

h. on the basis of the *habeas corpus* ruling, a trial was held in the Fourteenth Criminal Court of the Judicial District of Lima for the crime of abuse of authority against several members of the police force -which comes under the Ministry of the Interior- who were allegedly involved in the disappearance of Mr. Castillo-Páez. By judgment of August 19, 1991, that Criminal Court found that the proceedings showed that Ernesto Castillo-Páez had been stopped by a vehicle of the Peruvian National Police, on the morning of October 21, 1990, since which time his whereabouts have been unknown. However, that judgment declared that there was no evidence to prove the defendants' responsibility; it was therefore ordered that the case be closed without anyone being punished, and without any compensation ordered to be paid to Mr. Castillo-Páez' next-of-kin (Judgment of August 19, 1991, of

the Fourteenth Criminal Court of the Judicial District of Lima, Attachment VI to the application; testimony of Augusto Zúñiga-Paz). This judgment was appealed before the First Criminal Chamber of the Superior Court of Justice of Lima, which upheld it (Decision of December 27, 1993 of the First Criminal Chamber of the Superior Court of Justice of Lima, Attachment VII to the application; testimony of Augusto Zúñiga-Paz); and

i. ever since Mr. Castillo-Páez's disappearance, although a process was instituted to ascertain his whereabouts and secure his release, he has not been released by the police nor has any information about him been provided (Testimony of Cronwell Pierre Castillo-Castillo and Augusto Zúñiga-Paz).

VII

44. Before considering the arguments of the parties, the Court must examine Peru's claim that both the Inter-American Commission and this Tribunal improperly assumed jurisdiction to hear this Case, on the ground that the remedies under the State's domestic law had not been exhausted.

45. The Court considers that, with that declaration, Peru attempts to reopen at the present stage on the merits of the Case, a matter of admissibility which was firmly and definitively disposed of by this Court in its judgment of January 31, 1996 (*supra*, para. 21) for which reason it rejects that argument as being exceedingly out of order.

VIII

46. Once it has been proven that the detention and disappearance of Ernest Rafael Castillo-Páez are imputable to Peru, inasmuch as they were committed by members of its National Police, the Court intends to examine those facts in the light of the American Convention.

IX

47. The Court now considers whether Article 7 (Right to Personal Liberty) was violated by the State. That article establishes in its pertinent parts that:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation if the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In State Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on

the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

48. In its application, the Commission stated that "*Ernesto Rafael Castillo-Páez was violently and arbitrarily arrested by agents of the Peruvian Government*" in violation of Article 7 of the Convention. It added that his detention was effected "*in disregard of the essential proceedings and requirements provided both in Peru's domestic legislation and in the Convention.*" It further stated that "*in accordance with the statements of eye-witnesses, the abductors did not notify the victim of any charge against him or of any other reason for his detention*" and that the State also violated Mr. Ernesto Rafael Castillo-Páez' right to recourse to a competent court for a decision as to the lawfulness of the arrest.

49. The Commission further stated that although habeas corpus is the appropriate means of locating someone allegedly detained by the authorities and of obtaining his release, in the instant case "*it was ineffective in determining the victim's whereabouts inasmuch as the police authorities never furnished that information.*"

50. In its answer to the application, the State considered that "*failure to determine a person's whereabouts does not necessarily mean that he has been deprived of his freedom; [that would constitute] a presumption of his unlawful detention or abduction, which is not legally admissible.*" It reiterated that the statements of the Commission's eye-witnesses were obtained by Judge Elba Minaya-Calle "*improperly, as the Supreme Court of Justice of Peru found when it issued the Final Judgment of February 7, 1991,*" inasmuch as those persons did not know Ernesto Rafael Castillo-Páez, and "*did not even identify the police car (patrol car) in which trunk he was allegedly placed*". It further stated that said cars have their numbers painted in big characters in their rear bumpers and the hood of the trunk, which are visible from far away.

51. To demonstrate the lack of proof that it was police officers that had detained Mr. Castillo-Páez, the State submitted as attachments the statements made to the police by Mr. Genaro Huamán-Abad, Mr. Andrés Alberto Albay-Mallma, Mr. Luis Gómez-del Prado, and Mr. Wilmar Pablo Belleza-Napán, detained on the same date, in which they said that "*there was no indication that any other detention or the detention of the student Ernesto Rafael Castillo-Páez was carried out [in the events of October 2, 1990].*"

52. Furthermore, the State based its position on statements taken from police service personnel at the Villa El Salvador Precinct Station, and from staff of other units involved, to the effect that "*during the police operation of October 21, 1990, the aforesaid student [had neither been] arrested nor detained.*"

53. As stated earlier, the Court deems to have been proven a number of facts relating to the detention of Mr. Ernesto Rafael Castillo-Páez (*supra*, para. 43). In this regard, of particular interest are the statements given by the eye-witnesses at the public hearing on February 6 and 7, 1997, who agreed that two policemen wearing green uniforms and red berets, traveling in a white patrol vehicle, violently detained Ernesto Rafael Castillo-Páez, identified by his appearance and his clothes, put him into the trunk of the vehicle and took him away to an unknown destination (*supra*, para. 30.b., c., and d.).

54. The State affirmed, both at the hearing and in its final arguments, that those witnesses were guilty of inconsistencies which invalidate their statements. However, the imprecisions indicated by Peru were not substantial, but merely concerned some details, including the number of the police vehicle, which could be explained, in the view of this

Court, by the circumstances surrounding the events, the condition of the witnesses, and the time that had elapsed since the events.

55. The witnesses' description of the vehicle as white is corroborated by the videotape submitted together with its application as evidence by the Inter-American Commission (Attachment XII), -and which the State did not refute, although it was duly transmitted to it- reproducing the pertinent part of the Peruvian television broadcast "90 Segundos" on the day of the events, showing a white police vehicle which participated, along with others, in the same operation. Hence, the photographs presented by the State at the public hearing on vehicles of other colors does not contradict the witnesses' statements.

56. In accordance with the above, the Court finds that Peru violated, to the detriment of Mr. Castillo-Páez, several paragraphs of Article 7 of the Convention, which governs personal liberty in a general manner. Firstly, it is proven that the victim was detained by members of the National Police of Peru without application of the causes and conditions set forth in the Political Constitution of July 12, 1979, in force at the time at which the detention took place, inasmuch as that fundamental law provided that no one may be arrested except by written order issued by a judicial authority, which did not occur in this Case. It has not been proven, nor has the State so claimed, that Mr. Castillo-Páez's detention took place when he was surprised *in flagrante delicto* in the commission of a crime or that there was a state of emergency in force at the time, circumstances which would have justified the victim's detention by police officers without any judicial intervention. The foregoing has its basis in Article 7, paragraphs 2 and 3, of the American Convention, and Article 2, paragraph 20 (g), of the Political Constitution.

57. Nor does it appear from the acts of the proceedings that the detainee had been brought before a competent court within 24 hours or otherwise if distance was a factor, nor within fifteen days on suspicion of terrorism, pursuant to Article 7, paragraph 5, of the Convention, and Article 2, paragraph 20(c), of the Constitution of Peru.

58. On the contrary, with the statements by Judge Elba Minaya-Calle during the public hearing (*supra*, para. 30.d.), it has been demonstrated that the police authorities denied the arrest and hid the detainee so that he could not be located by the aforementioned magistrate, since they furnished her with altered logs of entry of detainees. Mr. Castillo-Páez' name did not appear in those logs, although those of other persons detained in the same operation did appear, and they had been placed at the disposal of the investigating authorities (DINCOTE). Ms. Minaya-Calle's testimony was confirmed by Mr. Cronwell Pierre Castillo-Castillo, father of the victim, who also conducted a fruitless search for his son in the police establishments.

59. The State simply denied Mr. Castillo-Páez' arrest and, in support of the denial, presented evidence in the form of reports from policemen on duty at the Villa El Salvador Precinct Station, and from other units involved in the October 21, 1990 operation. However, the Court considers that evidence to be insufficient to refute the statements of the aforementioned witnesses.

60. Peru's affirmation in its final arguments, supported by the document issued by the Catholic University of Peru, that Mr. Castillo-Páez had been failed in the second semester of his Sociology course and was, therefore, not a student at the time, is irrelevant in the instant case.

61. Lastly, this Tribunal is of the view that the evidence indicated above is reinforced by the decision of August 19, 1991 of the Fourteenth Criminal Court of the Lima Judicial

District, in the case against the police officers for abuse of authority against Mr. Castillo-Páez, in the *habeas corpus* proceeding filed on the victim's behalf in two courts (*supra*, para. 43.g. and h.). That court, which acquitted the accused for lack of evidence, maintained, however, that:

it had been duly and adequately proven that during the morning of October twenty-first of the year nineteen hundred and ninety the victim Ernest Rafael Castillo-Páez was stopped and arrested by the occupants of a Peruvian National Police vehicle as he was walking near the Central Park of Group Seventeen, Second Sector, Second Zone, of the Villa El Salvador District, since when his whereabouts have been unknown, and for which reason during the jurisdictional investigation it [has been found] that the crime of abuse of authority had been committed in that investigation.

All of which coincides with the statements of the aforementioned eye-witnesses (*supra*, para. 30).

X

62. The Court analyzes the complaint on the violation of Article 5 (Right to Humane Treatment) on the part of the State. That article establishes that:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

63. In its application, the Commission considered that from the witnesses' account of the abduction, "*it transpires that Ernesto Rafael Castillo-Páez was the victim of physical and psychological maltreatment when he was arbitrarily detained and taken away by police officers ... and placed in the trunk of the police car,*" and that those acts constitute *per se* a violation of physical integrity as established in the Convention.

64. The Commission further stated that the very fact of the abduction, "*the result of an unlawful and arbitrary arrest- and the circumstances surrounding it*" and the "*coercive isolation to which the victim of the crime of forced disappearance was subjected represent*" in themselves forms of cruel and inhuman treatment.

65. In its answer to the petition, the State declared that the statements of the witnesses produced by the Commission, to the effect that Mr. Castillo-Páez was unlawfully detained by police agents and subjected by them to "*abusive*" treatment was in no way corroborated and that there was no "*valid evidence to substantiate the Peruvian State's violation of Ernesto Rafael Castillo-Páez' right to humane treatment.*" The State claimed that the witnesses did not know Ernesto Rafael Castillo-Páez and that their statements were improperly taken by the Magistrate of the Twenty-Fourth Criminal Court of Lima, Dr. Elba Minaya-Calle.

66. The Court deems to have been proven by the eye-witnesses' accounts that Mr. Castillo-Páez, after being detained by the police, was placed in the trunk of the official vehicle (*supra*, para. 43.d.). The foregoing constitutes an infringement of Article 5 of the Convention relating to humane treatment, inasmuch as, even if no other physical or other maltreatment occurred, that action alone must be clearly considered to contravene the respect due to the inherent dignity of the human person.

67. The foregoing is corroborated by the statement of the agent of the State during the public hearing on February 6 and 7, 1997, who declared that on the day on which the events occurred there had been police operations in which individuals were detained and "*they were even apparently placed in the trunk.*"

XI

68. The Court now considers whether the State violated Article 4 (Right to Life). Paragraph 1 of that article establishes that:

Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

69. In its petition, the Commission considered that the forced disappearance of persons implies several violations of the Convention and, as a basis for its argument, cited the jurisprudence of this Court. With regard to the violation of Article 4, the Commission alleged that "*since his detention by members of the police force in October 1990, Ernesto Rafael Castillo-Páez remains disappeared, which is grounds for presuming that he is now dead.*"

70. In its answer to the application, the State alleged that a disappearance does not necessarily imply the victim's death and that the possible author of the detention could not be punished for the crime of murder, "*since the body in the crime is missing, a condition unanimously required by contemporary criminal doctrine.*" Furthermore, the State pointed out that "*the actual situation of failure to determine a person's whereabouts is one thing, but that person's death is quite another, with the consequent damage to the juridical good that is life.*" The State also claimed that the Commission has not proven "*beyond a doubt that it was police agents who deprived Ernest Rafael Castillo-Páez of his liberty, let alone made any attempt on his life.*" It added that mere ignorance of Mr. Castillo Páez' whereabouts could not lead to the affirmation that the State is responsible. In concluding its analysis with regard to Article 4, the State considered that the Court should have "*dismissed outright this extreme of the petition which is not substantiated by any proof, but rather on a strong dose of speculation that attempts to involve the Peruvian State in events for which it has no responsibility, since it has not violated the right to life.*"

71. The Court deems to have been proven the violation of Article 4 of the Convention which protects the right to life, inasmuch as Mr. Castillo-Páez was arbitrarily detained by agents of the Peruvian police force; that the detention was denied by authorities who, on the contrary, hid him so that he would not be located, and his whereabouts have been unknown since that time, so that it may be concluded that the victim was deprived of his life, given the time that has elapsed since October 21, 1990 (*supra*, para. 43).

72. This Court has pointed out in previous rulings that the disappearance of persons violates several rights established in the Convention, including the right to life, when, as in this case, several years have passed without knowledge of the victim's whereabouts (*Neira Alegría et al. Case*, Judgment of January 19, 1995. Series C No. 20, para. 76; *Caballero Delgado and Santana Case*, Judgment of December 8, 1995. Series C No. 22, para. 56, and *Blake Case, Preliminary Objections*, Judgment of July 2, 1996. Series C No. 27, para. 39).

73. The State's argument that the fact that there is no knowledge of a person's whereabouts does not mean that he has been deprived of his life, since "*the body in the crime ... would be missing,*" which it claims to be a requirement of contemporary criminal

doctrine, is inadmissible. This reasoning is unsound since it would suffice for the perpetrators of a forced disappearance to hide or destroy a victim's body, which is frequent in such cases, for there to be total impunity for the criminals, who in these situations attempt to erase all traces of the disappearance.

74. With regard to disappearances, the foregoing is reinforced by the statements of the expert Dr. Enrique Bernales-Ballesteros, during the public hearing, which the State did not refute, to the effect that when the events in this case occurred the forces of law and order had the practice of forced disappearances of persons considered to be members of subversive groups; he presented statistics on the increase of such disappearance during that period (*supra*, para. 42).

XII

75. In its petition, the Commission alleged that the State had violated Article 8 of the Convention with "*regard to the right of Castillo-Páez and his family to defend their rights through a lawyer.*"

76. In that regard, the Commission pointed out that an attempt had been made on the life of the attorney of the victim's family, Dr. Augusto Zúñiga-Paz, obliging him to withdraw from the defense and be replaced by the legal team of the Institute of Legal Defense of the Human Rights Commission of Peru.

77. The above-mentioned attorney, Augusto Zúñiga-Paz, in his statement before this Court, affirmed that on June 15, 1991 (March 15, 1991, according to the file) he was attacked by means of an envelope containing explosives which caused him serious injury and that this attack was made because of his defense in a number of cases, including the case concerning the detention of Mr. Castillo-Páez, which led him to cease his legal representation of the relatives; he was forced to leave the country and is currently living in Sweden (*supra*, para. 30.e.).

78. What is not clear, nor is there any evidence to prove it, is that the attack was intended specifically to deprive the victim's family of legal defense, inasmuch as the witness himself said that he was assisting various persons, and that he was involved in an accusation against the former President of Peru, Mr. Allan García-Pérez.

79. At the same time, it is recorded that the victim's relatives received legal assistance in order to file the remedy of *habeas corpus* and the corresponding criminal case, so that the relatives were not deprived of legal defense, although in exercising it they did encounter difficulties [not directly linked to this Case] which, in the Court's view, do not constitute a violation of Article 8 of the Convention, inasmuch as other lawyers took over the defense.

XIII

80. As regards the violation of Article 25 of the Convention concerning judicial protection, the parties adduced the following arguments:

- a. In its application, the Commission considered that the right enshrined in that article obliges the State to provide effective recourse and that this duty "*was violated by Peru through several actions taken by the State that prevented [Mr. Castillo-Páez from being set free] and ultimately caused the crimes to go unpunished.*" In support of this argument, the Commission invoked the judgment of August 19, 1991, in which the Fourteenth Criminal Court of the Lima Judicial District referred to the

disappearance of Ernest Rafael Castillo-Páez as having been produced when he was arrested by members of the National Police.

b. The Commission alleged that the actions of the State's agents prevented effective recourse. It further stated that although the State is obliged to guarantee that the competent authorities will comply with all the court rulings and decisions, *habeas corpus*, the appropriate remedy in this case, "*proved ineffective to determine [the victim's] whereabouts and secure his release.*" According to the Commission, "*the Supreme Court of Justice did not have jurisdiction to take cognizance, in the third instance, of a habeas corpus proceeding, given that such action is prohibited under Article 21 of Law 23506.*" According to that article, "*the party that is the cause of the alleged violation of a right may not file a petition seeking nullification.*" It further claimed that "*the police refused to cooperate in the enquiry into the disappearance, and supplied the magistrate with adulterated logs, which was clearly an obstruction of justice.*"

c. During the public hearing held on February 6 and 7, 1996, the State, in its cross-examination of Judge Minaya-Calle, stressed that to take statements from witnesses anonymously was an anomaly prohibited under Criminal Trial Law. In response to the questions from the Agent of the State, the magistrate said that she had visited the scene, not to take statements, but only to draw up a report; she confirmed that she did identify the witnesses, but that for security reasons she had not named them in her report, but this did not constitute an anomaly. *Habeas corpus* had not been effective and that, both in her own court experience in which she had dealt with many petitions of *habeas corpus*, and from her knowledge of others, none had borne results in cases of forced disappearance of persons. The State also pointed out that there was no evidence against the Minister of the Interior and the other persons named in the writ of *habeas corpus*, to which the magistrate replied that, in hierarchical institutions, responsibility lies with the highest ranking official.

d. With regard to the violation of the aforementioned Article 25 of the Convention, Peru, in its answer to the application denied that there had been any obstruction of the investigation or any irregularities in the trial. It listed in detail the actions taken in the judicial investigations up to the date of the presentation of its brief of final arguments, and repeated that domestic remedies had not been exhausted. It further indicated the actions taken by the competent authorities to determine and locate the whereabouts of Mr. Castillo-Páez.

81. The Court considers that the remedy filed by Mr. Castillo-Páez' next-of-kin against his detention (*habeas corpus*) was obstructed by State agents through the adulteration of the logs of entry of detainees, which made it impossible to locate the victim (*supra*, paras. 30.d and 58); that although the appeal of *habeas corpus* was favorably disposed of in two instances, the Supreme Court of Justice nullified the ruling in its judgment of February 7, 1991.

82. Consequently, it has been proven that the remedy of *habeas corpus* was ineffective for securing the release of Ernesto Rafael Castillo-Páez and, perhaps, for saving his life. The fact that the ineffectiveness of *habeas corpus* was due to forced disappearance does not exclude the violation of Article 25 of the American Convention. This provision on the right to effective recourse to a competent national court or tribunal is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society in the terms of the Convention.

83. Article 25 is closely linked to the general obligation contained in Article 1(1) of the American Convention, in that it assigns duties of protection to the States Parties through their domestic legislation. The purpose of *habeas corpus* is not only to guarantee personal liberty and humane treatment, but also to prevent disappearance or failure to determine the place of detention, and, ultimately, to ensure the right to life.

84. It having been proven, as stated above (*supra*, para. 71), that Mr. Castillo-Páez was detained by members of the Peruvian police force and that, consequently, he was in the custody of the police, who hid him so that he would not be located, the Court finds that the ineffectiveness of the remedy of *habeas corpus* is imputable to the State and constitutes a violation of Article 25 of the Convention, in connection with Article 1(1).

XIV

85. In its final arguments the Inter-American Commission further invoked two alleged violations. The first refers to Article 17 of the Convention concerning protection of the family, in that, according to the Commission, Mr. Castillo-Páez' family disintegrated as a result of his disappearance. Secondly, the Commission considers that there has been a violation of the right to truth and information, in the light of the State's lack of interest in investigating the events that gave rise to this case. It adduces that argument without citing any specific provision of the Convention, while pointing out that this right has been recognized by several international organizations.

86. Regardless of the fact that these arguments were invoked in its final pleadings and that they were not challenged by the State, it should be noted that the former refers to a consequence of the forced disappearance of Ernesto Rafael Castillo-Páez, which this Court deems to have been proven, in violation of the American Convention, with all its legal consequences. The second argument refers to the formulation of a right that does not exist in the American Convention, although it may correspond to a concept that is being developed in doctrine and case law, which has already been disposed of in this Case through the Court's decision to establish Peru's obligation to investigate the events that produced the violations of the American Convention (*infra*, para. 90).

XV

87. The Court now examines the Commission's arguments that Peru should compensate the victim's attorney, on the ground that the attack of which he was the victim (*supra*, para. 30.e.) occurred because of his legal defense of Mr. Castillo-Páez and his relatives.

88. In this regard, the Court indicated above (*supra*, para. 78) that no details have been provided to show that the attack which severely injured attorney Zúñiga-Paz took place specifically because of his legal assistance to the victim and his relatives. Furthermore, let it be said that the Commission did not name Mr. Zúñiga-Paz as a victim. The reparation which the Commission is seeking was not included in its recommendations to Peru in its Report 19/94 of September 26, 1994, which is the antecedent to this matter, the only victim indicated in that report being Mr. Castillo-Páez, and the only reparations sought were for violations against his person.

89. Nor does attorney Zúñiga-Paz appear as a victim in the petition nor the corresponding reparation; although in the body of the text and in the petition it is stated that the State should make reparation for the damage suffered by the attorney; the Court cannot therefore examine this request in the merits of this case.

XVI

90. In connection with the above-mentioned violations of the American Convention, the Court considers that the Peruvian State is obliged to investigate the events that produced them. Moreover, on the assumption that internal difficulties might prevent the identification of the individuals responsible for crimes of this kind, the victim's family still have the right to know what happened to him and, if appropriate, where his remains are located. It is therefore incumbent on the State to use all the means at its disposal to satisfy these reasonable expectations. In addition to this duty to investigate, there is also the duty to prevent the commission of forced disappearances and to sanction those responsible for them. These obligations on Peru shall remain in force until such time as they have been fully performed (*Neira Alegria et al. Case, supra 72*, para. 69 and Operative Paragraph 4; *Caballero Delgado and Santana Case, supra 72*, paras. 58 and 59; *El Amparo Case, Reparations (Art. 63(1) of the American Convention on Human Rights)*, Judgment of September 14, 1996. Series C No. 28, para. 61, and Operative Paragraph 4).

XVII

91. Article 63(1) of the Convention provides that:

If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

92. It is evident in the instant Case that, given the irreversible nature of the damage incurred, there is no possibility of guaranteeing the injured party enjoyment *in integrum* of his right to personal liberty that has been violated. In that situation, the Court deems it proper that reparation be made for the consequences of the violation of the rights specified in this Case by the Court, including the payment of fair compensation. To that end, the Court keeps the instant Case open so that reparations may be fixed at the appropriate procedural stage.

XVIII

Now, therefore:

THE COURT,

DECIDES:

unanimously,

1. That the State of Peru violated the right to personal liberty recognized in Article 7 of the American Convention Human Rights, in relation to Article 1(1) thereof, to the detriment of Ernesto Rafael Castillo-Páez.

unanimously,

2. That the State of Peru violated the right to humane treatment recognized in Article 5 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Ernesto Rafael Castillo-Páez.

unanimously,

3. That the State of Peru violated the right to life recognized in Article 4 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Ernesto Rafael Castillo-Páez.

unanimously,

4. That the State of Peru violated the right to effective recourse to a competent national court or tribunal, recognized in Article 25 of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Ernesto Rafael Castillo-Páez and his next-of-kin.

unanimously,

5. That the State of Peru is obliged to repair the consequences of those violations and compensate the victim's next-of-kin and reimburse them for any expenses they may have incurred in their representations to the Peruvian authorities in connection with this case, for which purpose the proceeding remains open.

Done in Spanish and English, the Spanish text being authentic, at the seat of the Court in San José, Costa Rica, on this third day of November, 1997.

Hernán Salgado-Pesantes
President

Antônio A. Cançado Trindade

Héctor Fix-Zamudio

Alejandro Montiel-Argüello

Máximo Pacheco-Gómez

Alirio Abreu-Burelli

Manuel E. Ventura-Robles
Secretary

Read at a public session at the seat of the Court in San José, Costa Rica, on this tenth day of November, 1997.

So ordered,

Hernán Salgado-Pesantes
President

Manuel E. Ventura-Robles
Secretary