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File Number(s): Report No. 74/90; Case No. 9850  
Session: Seventy-Eight Session (24 September – 5 October 1990)  
Title/Style of Cause: Hector Geronimo Lopez Aurelli v. Argentina  
Doc. Type: Report  
Decided by: Chairman: Leo Valladares Lanza;  
First Vice Chairman: Patrick Robinson;  
Second Vice Chairman: Oscar Lujan Fappiano;  
Members: Gilda M.C.M. de Russomano; Marco Tulio Bruni Celli; Oliver Jackman; Michael Reisman.  
Michael Reisman was elected to serve out the term of John R. Stevenson when the latter resigned.

Dated: 04 October 1990  
Citation: Lopez Aurelli v. Arg., Case 9850, Inter-Am. C.H.R., Report No. 74/90, OEA/Ser.L/V/II.79, doc. 12 rev. 1 (1990-1991)

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At the 72nd regular session of the Inter-American Commission on Human Rights (hereinafter "the Commission"), this case was ruled admissible. Transcribed below are the relevant resolution, No. 22/88 of March 23, 1988, and the comments thereon from both the complainant and the Argentine Government. Lastly, The Commission states its own conclusions on the matter.

I. Resolution No. 22/88 of March 23, 1988

RESOLUTION N° 22/88  
CASE 9850  
ARGENTINA  
23 March 1988

WHEREAS the following information was collected on the case:

I. On December 17, 1986, Mr. Hector Geronimo Lopez Aurelli, an Argentine citizen employed as a workman, at present free on parole, filed with the Inter-American Commission on Human Rights (hereinafter the Commission) a complaint alleging violation of the rights set out in Articles 7 (1, 2 and 5); 8 (2b, c, f, g); 3 and 25 of the American Convention on Human Rights (hereinafter the Convention), based on the facts and legal grounds described in the complaint as follows:

BACKGROUND:

The complainant, Hector Geronimo Lopez Aurelli, has been unlawfully imprisoned since November 1975, when he was arrested on charges of having committed politically motivated offenses.

Like other political prisoners in our country, who were tried before the constitutional government took office, he was convicted in a trial conducted without any legal safeguards by judges sworn to uphold the decrees issued by the military dictatorship. Such judges had neither the independence nor the impartiality needed for the full exercise of due process.

The key evidence used to convict him were confessions obtained under torture and, therefore, worthless, that were not ratified in court despite the pressure exerted on the defendant. The witnesses were the same people who had been his official captors and torturers.

The judicial investigation and lower-court decision were the responsibility of a judge named Zamboni Ledesma, now dead, an acknowledged accomplice of the military junta. This alone is enough to explain the arbitrariness and unconstitutionality of the judgment and the illegality of Hector Geronimo Lopez' continued imprisonment.

The constitutional government has done nothing about this illegality. The defense filed several appeals that would have enabled the present judiciary to review the case, but the rejection of these appeals and the length of time spent by the Supreme Court of Argentina --nearly two years-- to rule on the special appeal before it, amount to a confirmation of the unfair conviction, thereby infringing the American Convention on Human Rights and opening the way for a petition to the Commission to redress this wrong.

#### THE TRIAL:

Hector Geronimo Lopez remains in prison serving an arbitrary and unconstitutional sentence imposed on him under the military dictatorship. In defiance of the law and of the appeals filed, he has been unable to secure from the courts of the constitutional government a reversal of his conviction.

The unlawfulness of the imprisonment of the complainant and other political prisoners tried during the dictatorship is a matter of public knowledge in Argentina. This is borne out by the various declarations from political parties, human rights commissions, and so forth. Noteworthy in this connection is the report by the General Legislation, Interior, and Justice Committee of the Argentine Senate, which refers specifically to this situation and states: "In view of the serious and manifest irregularities in criminal proceedings which, for political, labor or related policy reasons took place between March 24, 1976, and December 10, 1983 ... it is essential to review due process safeguards under Article 18 of the National Constitution, a supreme value that should not be curtailed. It is common knowledge that many political prisoners who remain in jail were convicted or arrested under criminal statutes enacted through decree-laws from the de facto authorities and under an **OBVIOUS LACK OF INDEPENDENCE BY THE JUDICIARY** during this period, as evidenced by the violation of Article 86 (5) of the National Constitution and the oath to uphold the statutes enacted by the military junta, taken by those officials who remained in office ... and the violation of constitutional principles has been duly established ... the confessions and testimonies on which the convictions rest were obtained through torture, provable at the time but not now, because of the time gone by and the absence of timely expert medical examination. This circumstance, as well as the systematic and permanent violation of the right to due process, deprives these trials of any legitimacy ..." (cf. Order of Business 436, Senate Committee, attached).

Similar pronouncements may be found in various bills introduced in the Argentine House of Representatives to mandate a review of these cases, as well as in the findings of the Meeting on the Status of Argentine Political Prisoners held by the Bar Association of Buenos Aires. Reasons of state or political timeliness unrelated to the enforcement of individual human rights keep Lopez Aurelli and other political prisoners in Argentine jails.

In the specific case of the trial to convict the complainant, the following irregularities may be pointed out:

a. THE JUDICIAL INVESTIGATION on which the conviction is based was conducted between November and December of 1975 by the Police Information Service of the Province of Cordoba (Intelligence D-2). It may be noted that although the country had a constitutional government at the time, this was not true of the Province of Cordoba, because in 1974 a "putsch" headed by a Chief of Police deposed the elected constitutional Governor, Dr. Obregon Cano. This marked the beginning of numerous assassinations of political, labor, and student leaders, among them the Deputy Governor, Atilio Lopez, and the disappearance of many persons arrested by security and/or para-police agencies (cf. CONADEP-Cordoba page 103/4).

In other words, when the judicial inquiry began, there were already in the Province of Cordoba serious violations of human rights involving the law-enforcement agencies. Later investigations showed that the Police Information Service (Intelligence D-2) played a major role in these illegal activities, as indicated in the CONADEP-Cordoba report, "It was a torture center operating as such from at least 1975." It is this center of torture, with the same personnel, that later controlled the secret prison -- that is to say, the concentration camp known as "Casa de Hidraulica," which cooperated with the camps known as "La Perla" and "La Rivera."

These facts -- the role played by the investigating agency -- are set out in detail on pp. 44 to 58 of the CONADEP-Cordoba report, an official copy of which is attached. Evidence corroborating this report may be found in the judicial dossier titled "CONADEP s/denuncia," file 20-C 84 heard by Federal Court No. 1 of Cordoba. These illegal activities are also proven in the very proceedings in which Lopez was convicted, which show that all defendants were tortured, as well as in the following attached case files: WIELAND, Alicia s/rev., medica su favor (case file 2-W-75); ROSETTI DE ARQUEOLA s/den. supuestos apremios (case file 29-D-75); ROSETTI DE ARQUEOLA, Marta s/den. apremios ilegales (case file 2-R-76); LOPEZ, Hector Geronimo s/den. apremios ilegales (case file 2-L-76); AUDISIO DE QUIROGA, Ana Maria s/den/ apremios ilegales (case file 2-A-76); QUIROGA, Carlos Agustin s/den. apremios ilegales (case file 1-Q-76); VELASQUEZ, Raquel Aydee s/den. apremios ilegales (case file 2-v/2D76); SALCEDO, Angel Ramon s/den. apremios ilegales (case file 2/2DS-76); BORKOWSKY, Fanny G. s/den. apremios ilegales (case file 3/2DB-76); SILVA, Juan Ricardo s/den. apremios ilegales (case file 3/2DS-76); FIERRO, Oscar Alberto s/den. apremios ilegales (case file 7-1-76).

A reading of these case files shows not only the illegal activities of the investigating officials but also the manifest complicity of the judiciary, in this case Federal Court No. 1 of Cordoba headed by Zamboni Ledesma, through Court Secretary Otero Alvarez, who acquitted the officials without investigating.

b. THE INVESTIGATING OFFICIALS: The authenticity of the whole police proceedings is attested to and certified by the following persons:

1. Americo Ramano: Police Commissioner, alias "GRINGO," as indicated in the CONADEP-Cordoba report, was in charge of the Investigations Brigade Division. "He was in charge of raids, arresting persons, and distributing the loot stolen in these raids" (cf. p. 55 CONADEP report).

2. Raul Telledin: alias "EL TURCO TELLE" [Telle the Turk], identified as one of the heads of the "Comando Libertadores de America" para-police agency that operated in Cordoba in 1975. Chief of the Information Division of the Cordoba Police (Intelligence D-2) since 1976, at which time the secret camp known as "Casa de Hidraulica" was run by that agency. Identified as a torturer by many persons (cf. case files CONADEP-Cordoba), he figures as a participant in the murder of the following political prisoners: MOSSE, Miguel Angel; FIDEI DE RABANAL, Diana; VERON, Luis Ricardo; YUNG, Ricardo; HERNANDEZ, Eduardo; SGAVUZZA, Jose.

3. Police Commissioner Tissera, alias "Patilla" ["Sideburns"] and Police Commissioner Gomez Reta: well-known torturers and participants in the abduction of many citizens.

c. The behavior of the judge hearing the case: Dr. Zamboni Ledesma, the late judge who heard this case, had held his office since before the military coup. He not only took an oath to uphold the statutes enacted by the dictatorship but was at all times an accomplice of the perpetrators of the genocide. Indeed, in the Province of Cordoba the federal judges were fully aware of the existence of concentration camps operating within their jurisdictions. This may be seen from a variety of evidence in official documents, for

whenever a person was seized, the family members would usually file a habeas corpus petition. In most cases, the reply given by the military authorities to the requests for information from the federal courts -- and in the City of Cordoba there were only two such courts -- was negative; the person was not in custody. Accordingly, the petition was rejected. Later, in the few cases in which the missing person was made to resurface through legal channels and was brought before the courts, the judges never investigated where the person had been, even though the dossiers indicated as the points of origin "L.R.D. LUGAR DE REUNION DE DETENIDOS" [Prisoner Assembly Point].

In the case of "judge" Zamboni Ledesma, his complicity in the murder of political prisoners who were in his charge also appears to have been established. Thus, in the Cordoba Penitentiary Unit, 28 political prisoners were murdered in 1976. Some of these murders are described in the Report on the Situation of Human Rights in Argentina issued by the Inter-American Commission on Human Rights on 4/11/80 (cf. p. 46 and ff, CIDH report).

The photocopies of public documents attached under the heading "murdered prisoners" show that:

i. the following persons, later killed, were in the charge of this "judge" as detainees: FIDELMAN DE RABANA, Diana, MOSSE, Miguel Angel; VERON, Luis Ricardo; YUNG, Ricardo Alberto; HERNANDEZ, Eduardo Alberto, SGAVUZZA, Jose; FUNES, Jose Cristian; SGANDURRA, Carlos; PUCHETA, Miguel Angel; TRAMONTINI, Ricardo Daniel; PAEZ DE RINALDI, Liliana; DE BREUTL, Jorge Enrique; HUBERT, Oscar.

ii. The "transfer" order, or its authorization, was always given by this same court official (cf. the attached jail records).

iii. In the court dossier -- to which third persons might have access -- there is a different record: it certifies, in an obvious attempt to cover up murders, that news stories report the death of the prisoner while trying to escape in the course of the transfer. In every case the action taken by the court was merely to ask for the death certificate -- in which the cause of death was ironically stated to be shock caused by hemorrhage-- and after notifying the prosecutor, the case against the defendant was closed on account of death. In the dossier pertaining to Lopez' conviction there are two cases of murder, that of PAEZ, Liliana Felisa, the complainant's common-law wife, and that of PUCHETTA, Jose Angel. They are said to have tried to escape while being transferred for trial before a War Council. "Judge" Zamboni Ledesma, who was responsible for investigating the charges against them and had not declined jurisdiction, ordered the case closed on account of death, as in the other instances.

In summary, the partiality of this "judge" may be seen not only from his behavior in office but also from the case file itself: 1. He did not investigate the reported torture (see photocopies); 2. He endorsed the murder of prisoners in his charge; 3. There is information in the record about transfers of these prisoners to illegal camps while they were in his charge (see photocopy); 4. He upheld the validity of statements obtained under torture, claiming that the torture had not been proven ... and this after having first barred any investigation; 5. There is proof of the violation of the defendant's right to defend himself and to communicate with counsel, since meetings between prisoners and lawyers were specifically prohibited (cf. attached photocopies).

Lopez Aurelli eventually appealed his conviction. The decision by the Court of Appeals, also made up of judges who were not impartial, goes even so far as to uphold the torture, stating, in the face of flagrant contradictions in the statements made by the defendants, the dates on which statements had been given, and other records of the investigation, that "as established by this Division of the Court in the "Vanella" case, these are interrogations preceding the formal statements authorized under the procedure to collect evidence and conduct inquiries in difficult investigations, all the more so in times of disturbances such as those that marked this period, and this explains the omissions or flaws in the investigation" ... "and I note that, as in the instance dealt with above in item V, there was a preliminary interrogation (that is to say, torture) of Hector Lopez, recently arrested, as quickly as the situation demanded.

d. The key witnesses in the preliminary inquiry, on the strength of whose testimony Lopez Aurelli was convicted, were the following:

a. The torturers themselves: Americo Romano and his staff (cf. photocopy of the court decision).

b. Others: Kent Lopez and his wife Barrera de Lopez. They are listed in the dossier as co-

defendants. However, a careful reading of the case file indicates that they were part of the staff of the Police Information Division of the Province of Cordoba, for in the course of five years they were never in any jail but were kept "under arrest" in that Division as "collaborators in the effort to break up the PRT Organization." (see attached photocopy of report). Furthermore, while the other co-defendants remained incommunicado, were transferred to secret camps and/or murdered, the woman Barrera de Lopez was authorized to remain at the home of her mother-in-law because she was about to give birth (cf. attached photocopy). In addition, the Information Division of the Cordoba Police indicates that "the above-mentioned persons were kept in facilities of the Regional Unit of Villa Dolores, but that Unit of the penitentiary service reports that "they were not kept or housed in this Unit at any time to this date" (cf. p. 1099).

As a result of this mockery of a trial in which Lopez Aurelli was subjected to the most horrifying torments, being first tortured (cf. attached photocopy), his wife murdered, kept without an attorney for long periods of time, having prefabricated evidence used against him, and being judged by a judge who was himself a participant in government terrorism, the defendant was sentenced to life in prison for allegedly perpetrating the following offenses: possession of military weapons, possession of emblems of subversive organizations, possession of materials intended for the manufacture of explosives, and possession of a military weapon component, all concurrently; kidnapping, homicide, and causing bodily injury.

#### THE APPEALS FILED AFTER THE CONSTITUTIONAL GOVERNMENT TOOK OFFICE IN ARGENTINA

Once the constitutional government was in place in the country, the following appeals (copies of which are attached) were filed:

a. Petition for parole: lodged with Federal Court No. 1 in Cordoba. Along with this petition based on the nullity of the proceedings and the elapsed time, the defendant asked that the case be reopened on account of the torture inflicted during the investigation.

The reopening of the case, either to take account of the new evidence turned up by various investigations or to simply investigate what the court had not investigated, would have led to the immediate release of Hector G. Lopez Aurelli because there is no legal evidence against him. Both motions, for parole and for reopening the case because of torture, were denied by the lower court as well as on appeal.

b. Petition to review the case: heard by the Federal Court of Appeals of Cordoba, based on:

1. More favorable criminal provisions under the new legislation enacted in the country. Denied, on the grounds that the new legal provisions did not apply to offenses carrying an accessory penalty of life in prison.

2. The discovery of a crucial document hitherto unknown, as provided for in Article 443 of the procedural law. The document was the testimony given before international agencies by a former guerrilla who later joined the Police Information Service in Cordoba. This document was corroborated by submitting other evidence or identifying judicial case files where such evidence could be located. These pieces of evidence as a whole showed the coordinated action carried out by the armed forces, the police and the judiciary and the repression that took place in the Province of Cordoba, and made a specific mention of the proceedings in which the defendant had been convicted. The grievous nature of these facts, which involved current officials of the judiciary, led to the rejection of the petition for review as well as to penalties repeatedly imposed on the defendant's attorney, Dr. Ines Valdes de Lazcano, for trying to secure recognition of her client's rights.

The judge hearing the case even visited Lopez Aurelli in the Penitentiary Unit and advised him to change attorneys, claiming "untidiness on the part of your lawyer" (cf. photocopy of page).

This "untidiness" of his attorney boiled down to her:

1. Having asked the current federal judge, Dr. Rodriguez Villafane, to disqualify himself because, though only recently appointed, he had been a government official at the time of the events, and in October 1978, as a university professor, had signed an open letter addressed to the United States Ambassador to Argentina, Mr. Raul Castro, stating that to criticize Argentina for its human rights record was to meddle in the country's internal affairs, and describing as "anti-Argentine" the campaign to protect human rights (evidence attached);
2. Having requested the removal of Secretary Otero Alvarez, the same who held that office since the opening of the trial and who was a participant in the irregularities denounced.
3. Having requested that the prosecutor of the Court of Appeals, Dr. Ali Fuad, should be removed from the investigation because he had been challenged for cause in the case of "Fermin Rivera s/denuncia," in which the murders of the political prisoners held in U.P. No. 1 were being looked into. The same situation was being repeated in this case, because the lower court prosecutor was shown to have condoned the murders, including that of the common-law wife of the defendant.
4. Objecting to the failure to notify the defendant of the composition of the Court, which precluded her challenging one of its members.

A review of this case would have made it necessary to investigate the behavior of part of the present judiciary. Excessive formal rigor was used to uphold my unlawful imprisonment. When these appeals were turned down, denial of justice complaints were filed with the Supreme Court of Justice in February 1985. These remain undecided (cf. attached record).

#### FULFILLMENT OF THE REQUIREMENTS FOR ADMISSIBILITY OF COMPLAINTS UNDER THE CONVENTION

- a. Term: the unlawful imprisonment of Lopez Aurelli is an ongoing crime; accordingly, each moment he remains jailed entails a violation of Article 7 of the American Convention on Human Rights.
- b. Exhaustion of internal remedies: The two petitions --parole and review-- that were filed in an effort to put an end to the illegal imprisonment were rejected by the lower and the upper courts, the latter dismissing the special appeal based on unconstitutionality and arbitrariness that was lodged against those decisions. That is why a denial of justice complaint was filed directly with the Supreme Court (this being a non-mandatory appeal). Although nearly two years have passed since it was filed, and although a petition to expedite a decision was submitted in December 1985, no ruling has been handed down. This is an unwarranted delay and opens the way for this application under Article 46-2-b.
- c. Reservation expressed by the Argentine Government: Lopez Aurelli's illegal jailing and the actions of the judiciary upholding his imprisonment are events that took place after the Convention was ratified; accordingly, the irregularities in that trial and the ensuing unlawful imprisonment are not covered by the reservation made by Argentina.

#### THE INFRINGED RIGHTS

Article 7 (3): NO ONE SHALL BE SUBJECT TO ARBITRARY ARREST OR IMPRISONMENT. Inasmuch as the imprisonment dealt with here is the result of an apparent trial that was actually devoid of all due process safeguards and was heard by no impartial judge, the decision by the Argentine courts to bar its review is a confirmation of the arbitrary imprisonment.

Article 8: EVERY PERSON HAS THE RIGHT TO A HEARING, WITH DUE GUARANTEES, BY A

COMPETENT, INDEPENDENT, AND IMPARTIAL TRIBUNAL. For the sake of brevity, on this point I refer to the above.

Article 8.2:THE RIGHT OF THE ACCUSED TO DEFEND HIMSELF PERSONALLY OR TO BE ASSISTED BY LEGAL COUNSEL OF HIS OWN CHOOSING, AND TO COMMUNICATE FREELY AND PRIVATELY WITH HIS OWN COUNSEL. The violation of this right, which took place during the trial now implicitly upheld, derives from the following evidence:

- a. The report by that Honorable Commission on the situation of human rights in Argentina, 1978;
- b. The conditions under which the defendant was imprisoned. Attached are copies of the regulations to which he was subject, which specifically prohibit visits from attorneys;
- c. The records on page ... which show that at some moments not even the judge knew where he was being sent as a hostage;
- d. Bills introduced in the Argentine Congress, particularly the message introducing bills that deal with the review of trials of political prisoners, and the report from the General Legislation committee of the Argentine Senate (cf. attached documents).

Article 8.2.g:THE RIGHT NOT TO BE COMPELLED TO TESTIFY AGAINST HIMSELF OR TO PLEAD GUILTY. This is shown by the complaints filed in due course by all defendants in that trial (a copy of which is attached), from the records on page ... of the judicial case file, and from the CONADEP-Cordoba report.

Article 8.3:A CONFESSION OF GUILT BY THE ACCUSED SHALL BE VALID ONLY IF IT IS MADE WITHOUT COERCION OF ANY KIND. In this case, the basis for the conviction was the "confession" extracted in a torture center and never ratified in court.

II. By note dated January 9, 1987, the Commission asked the Argentine Government to provide the relevant information, conveying to that Government the relevant portions of the complaint (Article 34, 1 c of the Regulations).A copy of that note was sent on the same date to the Ambassador, Permanent Representative of Argentina to the OAS.

On January 9, 1987, the complainant was informed of the initial steps taken in connection with his complaint.

III. By note dated April 10, 1987, (No. 107) the Government of Argentina asked for an extension of the time set in the note of January 9, 1987, to answer the request from the IACHR.

In response to the above request the IACHR granted the Argentine Government an extension of 60 days, which was communicated to that Government by note of April 13, 1987.

IV. By note of June 11, 1987, (No. 212) the Argentine Government replied to the note of January 9, 1987, providing the following information:

The Government of the Argentine Republic has the honor to address the Executive Secretary of the Inter-American Commission on Human Rights with regard to the communication dated January 9, 1986, concerning Case No. 9850 on the situation of the Argentine citizen, Hector Geronimo Lopez Aurelli, and to provide the following answer without prejudice to such other clarifications as the Commission may see fit to request:

I. Mr. Hector Geronimo Lopez Aurelli has been imprisoned since November 1975 and is now at the INSTITUTO DE DETENCION DE LA CAPITAL FEDERAL [Federal Capital Detention Institute] (U.2).

Mr. Lopez Aurelli has been convicted under a final decision from the courts. In the lower courts, on November 25, 1979, he was sentenced by Federal Court No. 1 of Cordoba to life imprisonment for the following offenses: possession of military weapons and munitions, possession of emblems of subversive organizations, possession of materials intended for the manufacture of explosives, all concurrently, aggravated kidnapping, primary participation in the crimes of aggravated homicide and serious bodily injury, and commission of the crime of aggravated conspiracy, all separately (Article 2 (C) and Article 3 (A) of Law 20840 and Articles 189 bis (3) and (5), 142 bis, 80 (4), 90, 281, 213 bis, 55, 54, and 46 of the Criminal Code, and was sentenced to a term of life in prison on October 16, 1980. On appeal, the Federal Court of Appeals of Cordoba, Division A, confirmed the decision. Subsequently, the defendant filed a special appeal with the Supreme Court of Justice, but the Federal Court of Appeals of Cordoba ruled it inadmissible, at which point Mr. Lopez Aurelli filed with the Supreme Court a special application based on denial of justice, which application was again held inadmissible by that Court on September 10, 1981. This made the judgment by the Federal Court of Appeals of Cordoba final.

It may be noted that under law 23070 enacted by the constitutional government, which establishes a special system to compute sentences served between 3/24/76 and 12/10/83 and shortens sentences, Mr. Lopez Aurelli will be held to have served 20 years in prison on February 14, 1988, at which time he will become eligible for parole (Article 13 of the Criminal Code).

II. When constitutional government was restored, Mr. Hector G. Lopez Aurelli filed the following appeals:

a. Petition for parole and the reopening of his case, which was denied by the lower court --Federal Court No. 1 of Cordoba -- and then by the upper court, Division A of the Federal Court of Appeals of Cordoba, on November 30, 1984.

b. Application for review based on Article 551 of the Code of Criminal Procedure, which was rejected by the Federal Court of Appeals of Cordoba on November 12, 1984.

c. Subsequently, Mr. Lopez Aurelli lodged two special appeals with the Federal Court of Appeals of Cordoba, but the latter rejected them both, whereupon Lopez Aurelli went directly to the Supreme Court of Justice and filed two complaints, one concerning the application for review (L.202) and one concerning the petitions for parole and the reopening of the case (P.246).

III. Although it is true that the conviction has become final, Argentine Law provides for an exceptional remedy --the review of *res iudicata* decisions --for situations in which, after judgment has been rendered, there is a discovery, for instance, of "documents that are decisive or were unknown, misplaced or made unavailable by force majeure or by the accusing party" (Article 551 of the Code of Criminal Procedure). Thus, the appeals that have been lodged may have decisive consequences on the legal status of the defendant, if a decision should be made to review the judgment.

When asked about the matter, the Supreme Court of Justice indicated that it had the case under review and would soon issue a decision.

IV. In light of the above, the Argentine Government believes there is no evidence that the constitutionally established judiciary and, therefore, our Government, has failed to comply with any of the provisions of the American Convention on Human Rights mentioned by Mr. Lopez Aurelli in communication No. 9850.

Nevertheless and, notwithstanding the contents of the next paragraph, the Argentine Government remains at the service of that Honorable Commission to supply any information deemed necessary.

V. Accordingly, and bearing in mind that the above-mentioned appeals are being heard by the Supreme Court of Justice, the Argentine Government requests that communication No. 9850 be ruled inadmissible because it does not meet the requirements of Article 46 (a) of the American Convention on Human Rights, inasmuch as the domestic remedies available under Argentine law have not been exhausted.

V. By note dated June 18, 1987, the Commission conveyed to the complainant the pertinent portions of the reply from the Argentine Government, asking him to submit any comments or observations within 45 days.

VI. On August 24, 1987, the applicant filed the following comments on the reply from the Argentine Government:

I. The contents of the note from the Argentine Government corroborate the substance of my complaint. The Argentine Government attributes *res iudicata* status to the decision handed down in the mockery of a trial I was made to go through. In so doing, the Government confirms each and every one of the irregularities denounced, which perverted that trial and turned my imprisonment into unlawful confinement, in violation of our laws, our constitution and international treaties such as the American Convention on Human Rights.

II. The Argentine Government does not dispute any of the charges made by me, which are self-evident in the judicial case file I impugn and which are as follows:

a. The absence of an independent and impartial judge: the facts on which I based this assertion have not been expressly denied; a judge who turned other co-defendants over to the military of the dictatorship in order that they might be murdered, clearly showed by his own behavior his lack of impartiality.

b. I was prevented from communicating freely and in private with my attorney.

c. Nor does the Argentine Government say anything about the evidence on which my conviction rests: depositions from my torturers and an alleged "confession" also obtained under torture in a secret prison, a prison on the operation of which the Commission as well as the Argentine Government have abundant information. That confession was not even ratified by me in court.

Of all these things I provided ample evidence, including public documents such as: the newsletter from the Senate, the report by CONADEP (National Commission on Missing Persons in Cordoba), photocopies of court and administrative dossiers, about which the Argentine Government is silent except for its statement that I have been convicted by a final judgment from the courts.

d. May I point out to that Commission that this argument about "criminal *res iudicata*" now yielded against me and the other political prisoners convicted during the military dictatorship and still in prison, is not to be found in the case law of the Supreme Court of Justice of Argentina, as I will now explain. Our highest court has held that "the concept of *res iudicata*, like all legal concepts, must rest on foundations consistent with constitutional rights and guarantees" (Judgment 238:18). In another decision (281:421) the Court adds: "the praiseworthy motives that inspired it (*res iudicata*) are not absolute and must yield before the need to reaffirm other constitutional legal values."

No immutable validity can be attached to judgments that are not preceded by a regular trial conducted with all due process safeguards (see Argentine Supreme Court decisions 279:74-281:421-283-66). To accept the contrary, as the Argentine Government reasons when arguing the unchangeable nature of *res iudicata*, is to favor the accessory over the principle, over the substantive provisions designed to protect people from the acts of such tyrants as may at times seize power. The reply from the Argentine Government is driven by political motives that have little to do with the law.

e. In paragraph II. the Argentine Government acknowledges that I petitioned for a reopening of the case and for parole, both petitions being rejected by the Federal Court of Appeals of La Plata on November 30, 1984; that I applied for a review of the final judgment and was also turned down on November 12, 1984; and that within 15 days of notification of these two decisions I filed a special appeal with the Supreme Court, which has kept the matter before it for more than two and a half years without

any decision, thereby infringing the right of every person under Article 25 of the American Convention on Human Rights to a simple and prompt recourse or any other effective recourse for protection against acts that violate his fundamental rights recognized by the constitutional laws or by this Convention.

f. Accordingly, in view of the time the Supreme Court has allowed to pass without deciding the appeals lodged with it, and the violation of human rights embodied in the fact that nearly four years after the constitutional government took office (Article 46 (2) C) I remain in prison, it is proper and fitting, and I so request, that the complaint be ruled admissible and that inasmuch as the nature of it precludes a friendly settlement (Article 45 (7) of the IACHR Regulations) the report prescribed by Article 50 (1) of the American Convention and Article 46 of the CIDH Regulations be drafted and sent to the parties, recommending a review of the trial in which I was convicted, after my immediate release by the Argentine Government.

VII. In a letter dated September 28, 1987, the Commission acknowledged receipt of the communication from the complainant.

Furthermore, on September 19, 1987, the complainant's representative to the IACHR delivered the following comments on the legal issues in this case:

... Mr. Lopez, convicted of activities termed "subversive" during the military dictatorship, is one of the seven political prisoners who remain jailed since then, nearly four years after a democratic government took office.

His application for review of the judgment, filed in the form of a special appeal to the Supreme Court, has remained before that Court for nearly three years without any ruling, even though the defendant denounces extremely serious flaws in the conduct of his criminal trial that ignore the most elementary due process safeguards.

According to our information, the delay is due to the Supreme Court's request for information on the hearing conducted in connection with the complaint about torture, which the defendant filed with the federal courts in Cordoba when the charges against him were still being investigated by the courts.

Because of this inexcusable delay, I reiterate my request of August 24, 1987, that the Honorable Commission rule this case admissible, stating that its nature precludes a friendly settlement (Article 45 (7) of the IACHR Regulations), and that the Commission prepare the report stipulated in Article 50 of the Convention, including the recommendation to the Argentine Government to have the case reviewed by the courts.

VIII. On September 10, 1987, the Commission acknowledged receipt of this communication from the representative of the complainant.

IX. By note of December 18, 1987, the Commission reiterated to the Government of Argentina its request for the available information on the legal status of Mr. Hector Geronimo Lopez Aurelli, particularly on the complaint he had lodged with the Supreme Court seeking a review of his case and, in the meantime, his parole. The pertinent portion of that note reads as follows:

By note of June 11, 1987, (No. SG 212 (2/7/17)) the Government of Argentina supplied information relevant to this complaint, which information, to sum it up, showed that the case was before the Supreme Court in the form of an application filed by the complainant seeking a hearing of his request for review as well as of the applications for parole and the reopening of the case. The note added that the Supreme Court, when consulted about the matter, indicated that it had the case under consideration and would soon rule on it.

Subsequent information received by the Commission indicates that no progress has been made in those proceedings and that the application has been before the Court "has remained before that Court for nearly three years without any ruling, even though the defendant denounces extremely serious flaws in the

conduct of his criminal trial that ignore the most elementary due process safeguards," and that, furthermore, the "delay is due to the Supreme Court's request for information on the hearing conducted in connection with the complaint about torture, which the defendant filed with the federal courts in Cordoba when the charges against him were still being investigated by the courts." all of which would be inexcusable, according to the complainant, and would not justify keeping this matter unresolved before the highest Argentine Court.

In view of the foregoing and of the fact that the Commission has received from Your Excellency's Government no information on the outcome of the appeals to the Supreme Court, may I ask that Your Excellency take the appropriate steps as soon as possible to furnish this Commission with current information on the legal status of this case, in order that the Commission may make an informed ruling on the matter at its next regular session scheduled for mid-March 1988.

X. The Argentine Government did not reply to the above communication, a copy of which was conveyed to the Argentine mission to the OAS on November 30, 1987.

However, by note dated February 22, 1988, (VS11-2.7.17) the Government advised the Commission that by order of Federal Court No. 2 of Cordoba Mr. Lopez Aurelli had been paroled.

AND WHEREAS:

1. The complaint in Case 9850 meets the formal admissibility requirements of Article 46.d of the Convention and Article 32,a, b, and c of the Regulations of the Commission.

2. The subject of the petition is not pending in another international proceeding for settlement, as provided for in Articles 46 c of the Convention and 39 a of the Regulations.

3. The petition in Case 9850 does not duplicate one pending or already examined by the Commission (Article 39 b of the Regulations).

4. The complainant Hector Geronimo Lopez Aurelli was sentenced in the lower courts on November 25, 1979, by a decisions of Federal Court No. 1 of Cordoba, to life in prison for the offenses he was charged with in the trial; that on October 16, 1980, the conviction was upheld on appeal to the Federal Court of Appeals of Cordoba, which affirmed the 1979 conviction by Federal Court No. 1. Subsequently, the complainant filed a special appeal with the Supreme Court of Justice of Argentina, which appeal was ruled inadmissible by the Federal Court of Appeals of Cordoba. Finally, the complainant lodged a special complaint with the Supreme Court of Justice, which, in turn, rejected it as inadmissible on September 10, 1981. Thus, the decision of the Federal Court of Appeals of Cordoba became final.

5. In addition, the complainant has filed the following appeals: i. a request to have the case reopened and to be granted parole, which was rejected by the Federal Court of Appeals of La Plata on November 30, 1984; ii. a request for review of the final judgment, which was rejected on November 12, 1984; and, iii. a special appeal to have the decision reviewed, filed with the Supreme Court of Justice of Argentina and said to have been denied on February 18, 1988, according to the additional information furnished by the applicant in his letter of March 3, 1988.

6. Furthermore, the record shows the following:

a. The key evidence against the defendant is said to have been confessions obtained under torture and "therefore worthless, that were not ratified in court despite the pressure exerted on the defendant," and "the witnesses were the same people who had been his official captors and torturers";

b. The judicial investigation of this matter is said to have been carried out not by the competent judicial authorities but by the "Police Information Service of the Province of Cordoba (Intelligence D-2)," which would mean a flagrant violation of the judicial guarantee enshrined in Article 8 (1) of the Convention;

c. At the time of the events that gave rise to the application, and according to information on record and obtained by the Commission from other sources, the Police Information Service of the Province of Cordoba (Intelligence D-2) acted as a repressive body in conjunction with military forces, and there were in existence several secret prisons, such as the one known as "Casa de Hidraulica" and concentration camps such as "La Perla" and "La Rivera" where many people were held and tortured or mistreated, among them the applicant, as shown by the CONADEP report (pp. 44 to 58);

d. In view of this situation, which was common knowledge in Argentina, it may be said that the applicant was convicted in an irregular trial in which, according to the records made available to the Commission, there was a disregard of other guarantees set out in Article 8 of the Convention and that the scales of justice were fully tilted by a judiciary that conducted itself with political and repressive aims;

7. In the Report on the Situation of Human Rights in Argentina (OEA/SER.L/V/II 49, doc. 19 of April 11, 1980, pp. 243/244) the Commission described the manner in which the courts had conducted trials within their jurisdiction, denying due process. In that same report, moreover, the Commission voiced its concern over safeguards in the administration of justice.

8. In its reply to the Commission's request for information (note of June 11, 1987) the Argentine Government states the following:

III - Although it is true that the conviction has become final, Argentine Law provides for an exceptional remedy --the review of *res iudicata* decisions-- for situations in which, after judgment has been rendered, there is a discovery, for instance, of "documents that are decisive or were unknown, misplaced or made unavailable by force majeure or by the accusing party" (Article 551 of the Code of Criminal Procedure). Thus, the appeals that have been lodged may have decisive consequences on the legal status of the defendant, if a decision should be made to review the judgment.

9. From the foregoing, as well as from the context of the above reply, it might be interpreted that the government does not challenge the essence of the applicant's petition to review or reexamine his trial on the basis of Article 551 of the Argentine Code of Criminal Procedure, so as to define the serious situation created by a judgment handed down after a trial in which the judicial guarantees prescribed by Article 8 of the American Convention on Human Rights were not honored, as the record shows;

10. The benefit of parole granted to the applicant does not, in the view of the Commission, constitute redress for the situation in which Mr. Hector Geronimo Lopez Aurelli finds himself, for it does not change the basic reason for his complaint, namely, that he was denied a fair trial in which his conviction might be overturned. As the applicant himself puts it:

The fact that I was paroled on February 17 of this year does not change the situation. This is a restricted freedom and a way of serving out the sentence. And what I demand is my right to a fair trial, to have my whole case reviewed and be given the possibility of having my conviction overturned. And it this possibility that is now fully exhausted in terms of domestic remedies.

#### RESOLVES:

1. That the communication on Case 9850 (Argentina) from Mr. Hector Geronimo Lopez Aurelli is admissible.

2. That, at prima facie, the events reported in this case constitute a grave breach of the judicial rights and guarantees prescribed in Articles 7 and 8 of the American Convention on Human Rights, even though the applicant is now on parole;

3. That pursuant to Articles 48 (1) (f) of the Convention and 45 of the Regulations, it will place itself at the disposal of the parties with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in the American Convention on Human Rights. The Commission believes that the nature of the matter is such as to be amenable to settlement by this procedure.

4. That this resolution is to be conveyed to the Government of Argentina and to the applicant.

## II. Observations by the Government and the petitioner

1. By note of April 5, 1988, the Commission sent a copy of the above-transcribed resolution to the Government of Argentina and the petitioner.

2. By note of May 15, 1988, the petitioner Mr. Hector Geronimo Lopez Aurelli, reported that he continued to be "submitted to restricted measures of his personal freedom as well as limitations to his right of free circulation and submitted to surveillance and control;" and that he was lending "formal acceptance to the mediation offered by the Commission in order to reach a friendly settlement that will respect the human rights guaranteed in the Convention."

3. The Argentinian Government on August 12, 1988, submitted its observations to the resolution in the following terms:

### Comments on the resolution:

3. The Government of Argentina reiterates to that Honorable Commission its permanent readiness to cooperate with the Commission's work and, accordingly, believes it advisable to comment on the above resolution.

4. The fourth item in the resolution issued by that Honorable Commission shows unquestionably that the events that prompted the report from Mr. Lopez Aurelli took place before this democratic Government took office--and, therefore, also before the American Convention took effect in this country--and that they led to a trial culminating with a final judgment in 1981, in other words, at a time when there was no reasonable prospect of an early return to the rule of law in Argentina.

5. Consequently, in light of the American Convention, of the declaration made by this Government upon ratifying the Law of Treaties (Article 28 of the 1969 Vienna Convention) and of international law in general, all of which provide that international legal rules may not be retroactive, this constitutional Government cannot legitimately be held responsible for those events.

6. Items 8 and 9 of the whereas clauses of that resolution state that this Government has not denied the essence of the applicant's petition. It must be kept in mind in this connection that the Argentine reply of June 1987, did not go to any length into the allegations set out in the complaint, inasmuch as internal remedies had not yet been exhausted and this is a prerequisite for the international hearing of cases such as this one, as provided for in the Convention itself and confirmed by the Inter-American Court of Human Rights (In re. Viviana Gallardo et al, No. G 101/81, series A, number 15, 16, 26), and even under customary rules (article 20 of the Statute of the IACHR).

7. The foregoing shows, therefore, that this Government has neither conceded nor rejected the complainant's allegations; it has simply collected the information furnished to that Honorable Commission on a substantive aspect prior to considering the report.

8. That domestic remedies had not yet been exhausted when this Government conveyed its report to that Honorable Commission in June 1987, is clearly shown by subsequent information reflected in the last

part of item 5 as additional information, namely, that the Supreme Court of Justice decided this case on February 18, 1988.

9. With regard to this judgment from the Supreme Court of Justice of Argentina, which according to the Honorable Commission marks the ending of internal remedies, this Government believes some comments are in order.

By a judgment issued on February 18, 1988, the court rejected the applicant's complaint against the denial of the special appeal from the decision of the Federal Court of Appeals of Cordoba that refused to review his case.

The ground for this judicial decision that reflects the opinion of the Attorney General, is the absence of "a specific, reasoned critique of the arguments given by the Court of Appeals to reject the petition for a special appeal." Thus, the application filed "fails to fulfill its primary purpose, that is to say, to fully refute the reasons for the rejection that prompted it."

10. Likewise, this Government wishes to point out that in contrast to other cases bearing some resemblance to this one, here the tribunal found in the appeal brief no basis whatever on which to order -- as it did in other cases--an investigation leading to a fresh appeal for review. This comment, which obviates discussion of the existence or inexistence of grounds justifying a review of the judgment, is intended solely to point out that courts are subject to limitations in their decisions, and that such limitations are usually set by the parties in their briefs. It bears repeating, therefore, that in cases somewhat similar to this one, the parties succeeding in bringing to the attention of the Court situations that in turn enabled it to order an investigation. That was not the case in these proceedings, and it is not something for which this GOVERNMENT can be held responsible.

The applicant's freedom:

11. On February 16, 1988, the Federal Judge of Cordoba issued a decision freeing the complainant on parole, a decision which has become final. In other words, the complainant has been at liberty ever since. This Government played a major role in that event, both generally and specifically.

Thus, it was thanks to the 1984 enactment by the National Congress of Law 23070 that changes were made in the computation of prison terms served between March 24, 1976, and December 10, 1983, by persons convicted under the correctional system governed by de facto Decrees 1209/76, 780/79 and 929/80. This made it possible for the complainant to show, at the time of the above-mentioned court decision, that he had served 20 years and three days in prison and was therefore entitled to apply for parole, which was granted.

12. In addition, with regard to this case, this constitutional Government took specific steps in the form of instructions issued by the Executive, through the Secretary of Justice, to the Attorney General, asking him to render an opinion in favor of granting parole to the complainant, and thereby making the Court decision final.

This measure, adopted by the National Executive and carried out under the legal system in force and without doing violence to the democratic principle of separation of powers, is evidence of the interest of this constitutional Government in settling cases such as this one.

13. For the above reasons, the Argentine Government believes that Case 9850 concerning Mr. Hector Geronimo Lopez Aurelli should be closed. The applicant was convicted in connection with events that occurred long before December 10, 1983, by a final judgment from a court whose members were confirmed by a de facto government. Restoration of democracy led to a fair and reasonable computation of the prison term he served.

This CONSTITUTIONAL GOVERNMENT secured his final release.

Accordingly, the Argentine Government believes that case number 9850 should reasonably be regarded as closed.

Conclusions

In line with the foregoing, the Government of Argentina believes that inasmuch as the events and the judgment by which the applicant was convicted preceded its taking office, and therefore the entry into force of the American Convention in this country, it cannot legitimately be held responsible for them. In its view, moreover, it neither admitted nor rejected the allegations made by the applicant, because

domestic remedies were still available at the time. It further believes that in contrast to other cases that might bear some resemblance to this one, here there was unfortunately a failure to prove to the Court the existence of situations that would have enabled it to order a judicial investigation. It takes the view that since the applicant has been set free by a final judgment made possible by the legislation and specific steps adopted by the Government, it is reasonable to close the case.

THE GOVERNMENT OF ARGENTINA reiterates to that Honorable Commission its permanent readiness to cooperate in anything requested of it within the bounds of the legal system in force in the country--which obviously includes the international legal system--without doing violence to the constitutional principle of separation of powers, which is a true safeguard of the effectiveness of the democratic system.

4. By note of August 19, 1988, the Commission transmitted the Government's reply to the petitioner.

5. On October 31, 1988, the petitioner responded to the Government's reply as follows:

1. The Argentine Government states that:"The fourth item in the resolution issued by that Honorable Commission shows unquestionably that the events that prompted the report ... took place before this democratic Government took office --and, therefore, also before the American Convention took effect in this country-- and that they led to a trial culminating with a final judgment ... consequently ... under the principle that international legal rules may not be retroactive, the Government cannot be held legitimately responsible for those events (items 4, 5, 6 of the brief).It may be noted in this connection that Article 18 of the Argentine Constitution establishes the principle that no one may be punished without a legal trial. In this case, as set out in our arguments and shown by the evidence we attached, Lopez Aurelli was convicted in an irregular trial in which every safeguard of a fair trial was violated, and which culminated with a spurious, arbitrary and illegal judgment. Accordingly, since Lopez was unlawfully in prison when the Convention was ratified, his subsequent imprisonment and the limitations and restrictions on his freedom to which he is now subject are matters for which the Argentine Government is responsible, because they occurred after the Convention was ratified.

Indeed, inasmuch as illegal imprisonment is a permanent crime, "every moment of its duration may be regarded as consummation" (cf. Manzini Volume i-233); and as Sebastian Soler points out, this crime may be committed by omission, in which case it consists of failing to put an end to the preexisting imprisonment when there is a legal obligation to do so (Soler, *Tratado de Derecho Penal [Criminal Law Treatise]*, Volume 4, page 49).But it has not been only by omission that the rights established in the Convention have been violated, for the Argentine courts have refused--always alleging formal impediments--to:1. reopen the case of the tortures inflicted on Lopez and everyone else charged in the same case, which torture was reported at the proper time and never investigated; 2. accept new documents including testimonies of survivors of secret prisons and the CONADEP Cordoba report that invalidated proceedings in the case;3. review the whole case on the basis of the serious irregularities in the trial itself. Those actions, which have the effect of sanctioning an irregular trial, are human rights violations that occurred, as stated earlier, after the Convention was ratified, so that the irregularities in that trial and its sequels --including the current restrictions on Lopez' freedom-- do not amount to retroactive application of the Convention and are not covered by the reservations made by Argentina upon ratification.

In addition, as pointed out by the Inter-American Court of Justice in its Judgment of July 29, 1988, --the Velazquez Rodriguez case-- Article 11 of the Convention provides as follows:

Article 1.Obligation to respect rights.

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure all persons subject to their jurisdiction the free and full exercise of those rights and freedoms without any discrimination ..."This obligation implies the duty on the part of the Contracting States to organize the Government apparatus and, more broadly, all structures through which public authority is exercised, in such a way that they may legally guarantee the free an open exercise of human rights. As a

consequence of this obligation, States must prevent, investigate and punish any violation of the rights recognized by this Convention and endeavor to restore those that were violated."

Under Article 2, moreover, the States Parties undertake to adopt such legislative or other measures as may be necessary to give effect to those rights or freedoms. In line with this obligation, a State has a duty to investigate every situation in which the human rights protected by the Convention have been infringed. If the State apparatus acts in such a way that the violation remains unpunished and the victim is not restored, insofar as possible, to the full enjoyment of his rights, a State may be said to have failed to comply with its duty of guaranteeing free and full enjoyment of these rights to the persons under its jurisdiction."

2. In item 6, 7, 8 of its brief the Argentine Government says it rejects items 8 and 9 of the resolution adopted by the Commission because the Government has "neither admitted nor rejected the allegations of the applicant," and this because in June 1987 "domestic remedies had not yet been exhausted ... which is a prerequisite for the international hearing of cases such as this one."

The Government's criticism of the resolution adopted by the Commission is patently baseless: under Article 46 (2) of the Convention, exhaustion of domestic remedies does not apply when "there has been unwarranted delay in rendering a final judgment under the aforementioned remedies," and when the application was filed, the dossier had been before the Supreme Court of Justice for two years, which became more than two and a half years by the time the Government replied to the Commission. Consequently, Article 46(2)(c) of the Convention is strictly applicable. In this connection, a longstanding ruling of our Supreme Court of Justice, which for reasons other than strictly legal has not been applied to political prisoners sentenced by the dictatorship, holds that "to postpone sine die the settlement of any case amounts to a denial of justice, for if the judgment settling the dispute could be deferred beyond a foreseeable term, this would lead to the conclusion that rights might remain indefinitely unrecognized (cf. Human Rights Palace of Strasbourg, European Court of Human Rights, In re: Zimmerman and Steiger vs. Swiss Canton).

Unwarranted delay in settling a case, which we complained of in our application and which opened the way for it, is yet another violation by the Government of the obligations it undertook in signing the Convention. This delay, which was implicitly acknowledged in its reply, required the Government to provide answers to the substance of the matter or incur the penalty of Article 42 of the Regulations, which reads: "The facts reported in the petition whose pertinent parts have been transmitted to the Government of the State in reference shall be presumed to be true if, during the maximum periods set by the Commission under the provisions of Article 34 paragraph 5, the government has not provided the pertinent information, as long as other evidence does not lead to a different conclusion." For the effectiveness of the legal remedy must be proven by the State alleging failure to exhaust. The remedy, which in this case led to a ruling four years after the lodging of the complaint, turned out to be ineffective, and the Argentine Government has furnished no evidence to refute the statements of Lopez Aurelli and the evidence on file.

3. In item 9 of its brief the Argentine Government, stating that some comments are warranted, justifies the ineffectiveness of the domestic remedy--which it previously used to excuse itself -- saying: "The petition was rejected by a judgment of February 18, 1988, --in other words FOUR YEARS AFTER IT WAS FILED-- because it "failed to fulfill its primary purpose, that is to say, to fully refute the reasons for the rejection that prompted it." It needs no saying that "to fully refute" is a subjective concept used in this case as a formal impediment in order not to rule on the merits of the issue raised. I should like to point out that even if there was no "full refutation" --which was the argument of the lower court that turned down the appeal to the Supreme Court and which I specifically deny-- such a ruling would constitute in the words of the latter court "excessive formal rigor" and would therefore disqualify it as a judicial ruling, because "rulings which owing to obvious ritual excess conceal the objective truth fail to fulfill the requirement of adequate administration of justice guaranteed under Article 18 of the National Constitution."

The Argentine Government adds that "it bears noting that courts are subject to limitations in their decisions, and that such limitations are usually set by the parties in their briefs, and in this case they did not succeed in proving situations that would have required review." May I point out in this connection

that:

a. The current judiciary refused to reopen the case concerning torture suffered and in due course reported by Hector Lopez and all those imprisoned with him, during the investigative procedure at the torture center belonging to the Cordoba Information Service. I enclose a xerox copy of those proceedings, titled "Wieland, Alicia et al, on coercion," which proves the torture suffered by them and the connivance of the judge who dismissed the case without investigating.

b. The judiciary rejected the validity of testimony given before national and international agencies in connection with human rights violations in our country that specifically mentioned the judge who heard this compliant and those who conducted the investigative proceedings, claiming that "they did not constitute documents" justifying a reopening of the case.

c. The same ruling applied to the Report by the Commission on the Disappearance of People -- CONADEP-- Cordoba, which we have already sent to that Commission and which indicates the place where the investigative procedure was conducted when Lopez was in prison. This place operated as a torture center and those who conducted the procedure are identified as torturers.

d. The judiciary refused to review the very documents in the file, which showed that there had been no legal trial (in the file may be found proof of transfers of prisoners to secret prisons, no investigation of the death of co-defendants who were in the prison).

These facts bear out the strict justice of the statement of reasons for the resolution issued in March of this year, which takes full account of a judiciary whose aims were political and repressive.

In its brief, the Argentine Government adds that "in contrast to other cases bearing some resemblance to this one, here the tribunal found in the appeal brief no basis whatever on which to order --as it did in other cases-- an investigation leading to a fresh appeal for review." I want to make it clear that in all similar cases the Supreme Court of Justice has refused review, with the sole exception of the case of Osvaldo Antonio Lopez. And in that case it made only a partial review after that Honorable Commission that the case was violated the rules of the Convention. And the arguments put forward by the Court to reopen that case were the same arguments it had rejected two years earlier in two separate decisions, alleging "insufficient grounds" and "no proof of a violation of due process." To paraphrase the Argentine Government we could say that "this comment obviates any consideration of the objective existence or inexistence of grounds for review."

#### Lopez' parole

Argentine criminal law adopts the system of progressiveness in serving prison terms. Sentences are served in the following stages:

- a. Observation.
- b. Treatment.
- c. Early releases,
- d. Parole.

Under Article 13 of the Criminal code, parole may be granted only by the judge who heard the case, provided the following requirements are met: a. minimum time, b. regular compliance with correctional regulations. Since parole is a way of serving out the sentence, it is a form of release subject to legal restrictions. Under the Criminal Code the parolee must:

- a. Reside in the place set by the parole decree.
- b. Comply with the inspection rules set in the parole decree.
- c. Obey the Parole Board [Patronato de Liberados].
- d. Refrain from drinking alcoholic beverages, etc.

In addition, the parolee may not:

- a. Freely dispose of his property.
- b. Hold public employment or office.
- c. Be a member of the teaching profession.
- d. Carry on political activities.

e. Take part in the election of authorities.

Lopez must endure these restrictions on his freedom and these disqualifications for five years. During that time, and because parole is a way of serving out the sentence, his release order may be revoked by the judge, and in that case, according to the Criminal Code: " Upon revocation of parole, the time spent at liberty shall not be computed towards the term of the sentence."

Having made these preliminary comments on the consequences of parole under Argentine law, I will now go on to comment on the statements made in this connection by the Argentine Government.

a. It is not true that the freedom given to Lopez is a definitive freedom: it may be revoked within five years.

b. This conditional release entails grave restrictions on a person's fundamental rights.

Further, I must point out the significance of questioning that Honorable Commission's resolution by asserting the validity of a "final judgment from a court whose members were confirmed by a de facto Government." Article 29 of the Argentine Constitution provides that the National Executive may not be granted special powers, or the sum of public power, or be allowed any authority or supremacy whereby the life, the honor or the fortunes of Argentines may be at the mercy of any Government or person whatever. Acts of this nature are incurably null and void and those who propose, consent or sign them shall be accountable as, and incur the penalties for, infamous traitors to the nation. Our current criminal legislation stipulates that the penalties for treason shall apply to ... the members of any of the three branches of the national or provincial governments who ... remain in office or take office after the Constitution has been amended or any branch of Government has been deposed by force, or who enforces the measures adopted by those usurping such powers. And today, in this case, we have before us the enforcement of measures ordered by a judiciary that took part in or condoned state terrorism and, as that Honorable Commission has pointed out, pursued political and repressive aims.

This is in no way changed by the rules on computation of sentences served, for by preventing a review of the case as a whole, an illegal and arbitrary trial is being sanctioned.

The Argentine Government says it took specific steps, through instructions given to the Attorney General, to have a favorable opinion issued in the granting of parole to the applicant, so that the court decision might become final. We do not know whether such instructions existed; if they did, their import would have been merely to order the prosecutor to comply with the law, inasmuch as parole is the right of every convict who has served a certain part of his sentence and observed good behavior. What we do know is that despite the regulations governing progressiveness in the correctional system, Hector Lopez was not granted during his imprisonment any of the early releases authorized by the Federal Penitentiary Law to convicts who are not yet eligible for parole. And those early releases are the responsibility of the Penitentiary System under the National Executive.

But what is even more serious and reflects the lack of interest of the Argentine Government in correcting situations such as this one is the fact that, after Lopez was granted parole by the courts, measures were taken at the urging of the Attorney General's Office that gravely threatened the continuity of parole.

Indeed, as shown on the xerox copies I have enclosed, while Lopez was under the control and supervision of the Parole Board [Patronato de Liberados], which is responsible for verifying compliance with the restrictions imposed on the parolee's freedom and for reporting to the judge in the event of violations, the Attorney General's Office, which receives its instructions from the Executive, asked the Judge, without any justification, to investigate whether Lopez complied with the conditions set in the release order, a task that was entrusted to the Federal Police Superintendence.

Thus it was that two persons belonging to that agency went to Lopez' home. They did so at night, dressed in civilian clothes, showed no badges, and without giving any explanation and in a threatening tone demanded access to his residence.

Subsequent inquiries made it possible to establish the origin of these actions and to file the proper complaints, in view of the irregularities of the situation, with the judge and with the Parole Board. This prevented revocation of his parole, for the report subsequently submitted by the Federal Police -- which contained false information -- would have compelled the judge to revoke parole (see xerox copies).

And this happened after that Honorable Commission placed itself at the disposal of the parties with a

view to reaching a friendly settlement of the matter.

All of the foregoing shows how inaccurate is the information given by the Argentine Government that Lopez' freedom is final.

On the contrary, it is a release subject to serious restrictions. And even so, there is the danger that it may cease at any time, even if the applicant abides by the limitations imposed on him.

Accordingly, since Hector Lopez is subject to grave restrictions on his fundamental rights, such as freely disposing of his property, choosing his residence, moving about freely, leaving and reentering the country, holding public employment, taking part in political activities, etc., with the latent danger over a period of five years of being once again put in prison, and all as a consequence of the spurious trial to which he was subjected and the refusal of the Argentine Government to restore his rights, I request:

a. Confirmation of the ruling by that Honorable Commission that the case is admissible. Let these proceedings be brought before the Inter-American Court of Justice.

### III. Opinion and Conclusions of the Commission

1. The Commission's offer to the parties for arriving at an amicable settlement grounded in respect for the human rights recognized in this Convention did not lead to any actual negotiations. Accordingly, pursuant to Article 51.1, the Commission now presents a report on the issue submitted to it for consideration.

2. The Commission confirms the position it took in the decision transcribed above that the present case meets the formal requirements for admissibility.

3. The Commission must examine the allegation of the Argentine Government that the acts in violation of due process occurred before "the American Convention entered into force in this country" and that, "in consequence, in light of the American Convention, the declaration made by this Government in ratifying it, the law of treaties (Article 28 of the Vienna Convention of 1969) and general international law, all of which affirm the principle of nonretroactivity of international legal provisions, responsibility for those acts may not be laid at the door of the Constitutional Government."

4. The Argentine Government is legally in the right in arguing the inapplicability *ratione temporis* of the Convention to the grave violations of legal guarantees that took place before September 5, 1984, the date on which its instrument of ratification was deposited and the Convention entered into force for that State. Specifically, the following events took place before that date: the torturing of the defendant and obtaining of his confession; the assigning of evidentiary value to that confession despite his not having ratified it and his filing of charges of having been tortured, to the acts committed by the investigators and torturers, and to the incriminating testimony of codefendants also obtained under coercion; and the judge's partiality and complicity in these irregularities. All these serious violations of due process led to the judgment pronounced by the Federal Court of Cordoba on November 25, 1979; the upholding of that judgment by the Federal Court of Appeals of Cordoba on October 16, 1980; and the denial of the special appeal by that Court and of the special application to compel jurisdiction by the Supreme Court of Justice on September 10, 1981, which rendered final the judgment of the court of original jurisdiction.

5. However, the Commission does not concur in the possible implication of the argument for inadmissibility *ratione temporis* that the member States of the Organization contract obligations to respect human rights only as from the date of their ratification of the Convention. This premise would appear to suggest that prior to such ratification the member States had no international obligation whatever in respect of human rights and, concretely, that this Commission has no competence to receive complaints other than those in the text of the Convention.

6. The Commission points out that the events that took place prior to the Convention's entry into

force for Argentina were nevertheless grave violations of the rights of personal security and to human treatment, and to justice and due process established in Articles I, XVIII, and XXVI, respectively, of the American Declaration of the Rights and Duties of Man. Ratification of the Convention by the member States at least complemented, augmented or perfected the international protection of human rights in the inter-American system, but did not create them ex novo, nor did it extinguish the previous or subsequent validity of the American Declaration. Specifically, in its advisory opinion OC-10/89 of July 14, 1989, the Inter-American Court of Human Rights decided that:

45. For the member States of the Organization the Declaration is the text that determines which are the human rights referred to in the Charter. Moreover, Articles 1.2.b. and 20 of the Commission's Statute also define its competence in respect of the human rights enunciated in the Declaration. That is, the American Declaration is for the States, in pertinent matters in relation to the Organization's Charter, a source of international obligations.

7. The American Declaration of the Rights and Duties of Man, by which the Argentine State was and remains bound, provides in articles I, XVIII, and XXVI the rights to the security and integrity of the person, to a fair trial, and to due process. In consequence, the acts charged constitute violations of those articles. And Article 20 of the Commission's Statute states that:

In relation to the member states of the Organization that are not Parties to the American Convention on Human Rights, the Commission shall have the following powers, in addition to those designated in Article 18:

a. to pay particular attention to the observance of the human rights referred to in Articles I, II, III, IV, XVIII, XXV, and XXVI of the American Declaration of the Rights and Duties of Man. (Underlining added)

8. The following specific points may be made about the violation of the text of the Convention. In the trial of the complainant not one but several violations of due process were committed, not all in the same time frame or before the same bench. After the entry into force of the Convention a request to reopen the case was denied by the Federal Court of La Plata on November 30, 1984; another petition for review of judgment that has acquired the force of res judicata was denied on November 12, 1984, and the special appeal for review of judgment was dismissed by the Supreme Court of Justice on February 18, 1988. All these decisions were taken when the Argentine State was already a party to the Convention.

9. In referring to the Supreme Court decision of February 18, 1988, the Argentine Government asserts that "the foundations of this judicial decision --which underlie the earlier opinion of the Solicitor General of the Nation-- rest on the absence of 'a reasoned critique of the specific arguments enunciated by the Court of Appeals in denying the special appeal.' Thus, the presentation made 'omitted the pursuit of its principal purpose, which was to rebut fully the reasons for the dismissal that prompted it,'" for which reason "the Court found no merit at all in the complaint that would enable it to order - as in other cases - an investigation with a view to the formulation of another petition for review."

10. The evidence presented in this file, as stated in the decision of the Commission transcribed above, contains information convincingly coincidental with and confirmatory and corroborative of the tortures to which Mr. Lopez Aurelli was subjected when a confession was wrested from him, and of grave violations of due process in his trial.

11. The Commission also took into consideration the defendant's own complaint of these tortures to the judge, when he not only recanted the confession he had made to the police, but acted to open a separate case (Lopez, Hector G. s/ apremios ilegales, Expt. 2-L-1976), which was dismissed "because the perpetrators could not be identified." The Commission also evaluated similar complaints and

circumstances on record in the cases opened by co-defendants in the same trial, referred to in the decision transcribed above (pp. 3-4 supra).

12. The defendant's allegations about the investigating unit, the Cordoba Police Information Service (D-2, Intelligence) are also corroborated by the official CONADEP-Cordoba report, where it is stated that "it was a torture facility, and had operated as such at least since 1975." This unit also operated in conjunction with military forces, and there were several secret detention installations such as "La Perla" and "La Rivera," where people were imprisoned and, like the complainant, tortured to extort confessions and other "evidence for the prosecution," as may be read in the official CONADEP-Cordoba report (pp. 44-58). This was the evidence which, months later, was presented in proceedings when the prisoners were brought before a judge. Moreover, this Commission's Report on the Situation of Human Rights in Argentina (OEA/Ser. L/V/II.49, doc. 19, 11 April 1980) abounds in references to those two detention facilities "La Rivera" and "La Perla" which corroborate the regular practice of interrogation under torture in the phase preceding official detention (pp. 202, 203, 206, and 208).

13. The judgment of the bench of original jurisdiction was upheld, despite all the irregularities charged, by the Federal Appeals Court of Cordoba in its decision of October 16, 1980. This decision endorses the violations of due process in stating that "As the Court established in 'Vanella,' these were interrogations prior to the formal statements authorized by Procedure for the purpose of obtaining evidence and conducting investigations in difficult inquiries, especially in times of unrest such as those of that time, which account for the omissions and defects in the investigation" (underlining added). This statement by the Court of Appeals is of utmost gravity in that it shows that this court not only refused to exercise its function of jurisdictional review, but justified violations of due process.

14. A fresh appeal was filed by the defense on October 15, 1984, based on access to a document unknown during previous appeals. This document was a deposition from Mr. Carlos Raimundo Moore that narrates in greater detail events, circumstances, and names (of torture victims, torturers, authorities, and judges who were accomplices to the proceedings) and would serve to confirm the repeated allegations by the applicant concerning the nullity of the evidence used against him, the bias of the judge, and other extremely serious violations of due process. This detailed and long statement (31 single-spaced pages, legal size) given in Sao Paulo, Brazil, on November 15, 1980, is signed, countersigned on all pages, bears a thumb print, is attested to by three duly identified witnesses, and was made before human rights organizations. It was nevertheless dismissed by the Federal Court of Appeals of Cordoba on the ground that it "is not authentic because it has not been acknowledged before the Court by the person named" (Carlos Raimundo Moore), adding that "nor does this document appear to contain information capable of significantly upsetting the key evidence used against the convicted defendant Lopez." In view of such serious allegations about grievous institutional violations of due process, these arguments strike the Commission as excessive formalism inconsistent with the spirit of the Convention.

15. Among democratic institutions it is the role of the judiciary to look out for the proper enforcement of both the law and the administration of justice. Nothing can undermine respect for the courts and their authority more than their own indifference or impotence in the face of grave injustices, which may result from blind adherence to legal formulas. Democratic nations respectful of the human rights of their people commit themselves, both to their own citizens and to the international community at large, to guarantee respect for fundamental human rights.

16. Articles 25.1 and 8.1 of the Convention provide, respectively, as follows:

Everyone has the right to simple and prompt recourse or any other effective recourse to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed

by persons acting in the course of their official duties. (...)

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him (...) (underlining added).

17. The principles established in these articles --the right to judicial protection and to judicial guarantees-- rank as fundamental rights within our Convention, because they protect individuals in their complex relationship with the state. Consequently, enforcement of these principles cannot be confined to a mere formal verification of procedural requirements.

18. Although it is true that the due process guarantee appears to deal primarily with the stage of judicial lower-court inquiry or investigation of the charges against the defendant, full observance of the principle of due process encompasses all subsequent stages of appeal or review by higher courts, for it is before these that any flaws may be corrected. As zealous custodians of the majesty of justice, the courts that hear an appeal or an application for review must examine not only the grounds for the appeal but also whether or not due process has been observed, even in regard to unreported irregularities.

19. The ruling handed down by the Argentine Supreme Court on February 18, 1988, states that the review requested by the defense "must be denied outright, inasmuch as it cites no grounds whatever to demonstrate that such a review is in order" and "the alleged grave institutional failing in not in evidence."It neither examines nor explains the reasons why it dismisses the evidence.

20. It is not for this Commission to decide whether Argentine Law was correctly applied by the country's courts. However, based on all the evidence examined in this report, that is to say, the case file of Mr. Lopez Aurelli's criminal trial as well as the subsequent information and statements confirming the reported irregularities, the Commission finds that the Argentine judiciary's failure to review the trial after a democratic government had been installed and the Convention had been ratified by Argentina is inconsistent with the letter and the spirit of that Convention as regards judicial guarantees and the principle of due process.

21. The Commission makes it clear that it is passing no judgment concerning the final evidentiary weight of the new evidence in a new criminal trial. That is why it voices no opinion, based on such evidence, concerning the guilt or innocence of the applicant, a matter outside the jurisdiction of this Commission and solely within that of the competent national courts.

22. In this connection, furthermore, it is useful to recall that the European Commission on Human Rights has held as follows: "The Commission may examine how the evidence has been obtained, but not how it has been assessed by the Court, unless there has been gross unfairness" (D.7987/77 (Aus.) 12/13/79, 18/31); and "The Commission is not called upon to decide whether or not domestic courts have correctly assessed evidence before them, but whether evidence for and against the accused has been presented in such a manner and the proceedings in general have been conducted in such a way that he has had a fair trial" (D.6172/73 (UK) 7/7/75, 3/77).

23. In the view of the Commission, based on the case file record as well as the evidence mentioned, there are more than enough indications that Mr. Hector Geronimo Lopez Aurelli was imprisoned on the strength of evidence illegally obtained under coercion. The applicant made available a document that appears to corroborate the grave irregularities in the trial and, consequently, his unlawful imprisonment, and he thereby exhausted all domestic remedies up to the Supreme Court itself, to no avail.

Based on the above,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

1. FINDS that the Argentine Government violated the rights to personal safety and due process of Mr. Hector Geronimo Lopez Aurelli, infringing Articles I, XVIII, and XXVI of the American Declaration.
2. FINDS that denying Mr. Hector Geronimo Lopez Aurelli a review of his trial at a time when Argentina was already a party to the Convention also violated Articles 8.1 and 25.1 of the Convention, in light of article 1.1.
3. RECOMMENDS that the Argentine Government pay to Mr. Hector Geronimo Lopez Aurelli, as damages, a fair compensation for the injuries suffered.
4. ASKS the Argentine Government to report, within 90 days of the remittal of this resolution, on the measures taken to settle the matter.
5. DIRECTS that this report be conveyed to the Argentine Government and to the complainant and be published in the Annual Report from this Commission to the General Assembly of the Organization.