

Institution: Inter-American Commission on Human Rights
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Title/Style of Cause: Ernst Otto Stalinski v. Honduras
Doc. Type: Decision
Decided by: Chairman: Helio Bicudo;
First Vice-Chairman: Claudio Grossman;
Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie and Julio Prado Vallejo.
Dated: 3 October 2000
Citation: Stalinski v. Honduras, Case 11.887, Inter-Am. C.H.R., Report No. 63/00, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)

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I. SUMMARY

1. On January 26, 1998, Mr. Ernst Otto Stalinski (hereinafter referred to as “the petitioner”) presented a complaint to the Inter-American Commission on Human Rights (hereinafter referred to as “the Commission” or “the IACHR”) against the Republic of Honduras (hereinafter “the State of Honduras”, “Honduras” or “the State”) for the violation of his rights to a fair trial (Article 8), to judicial protection (Article 25) and to equal protection (Article 24), which are set forth in the American Convention on Human Rights (hereinafter “the Convention” or the “American Convention”). The violations denounced in the complaint relate to alleged irregularities committed by the judiciary of Honduras in the criminal proceedings conducted against the persons accused of the attempted kidnapping of the petitioner, which occurred on April 28, 1990, and, specifically, against Messrs. Richard Anderson, Karl Koch and Eduardo Aragón.

2. On the question of admissibility, the petitioner contends that his petition is admissible because he has exhausted all domestic legal remedies with respect to the three above-mentioned accused, who are the only ones to whom his petition refers. He also claims that he presented his petition within six months from December 3, 1997, the date on which the Supreme Court of Justice of Honduras declared the appeal for annulment lodged by him on the grounds of violation of a law or legal doctrine to be unfounded, thereby rendering the three appealed dismissals *res judicata*.

3. For its part, the State alleges that the petitioner has not exhausted all domestic legal remedies, since legal actions (civil and criminal) available under the domestic legislation of Honduras are still being pursued and no definitive legal ruling has as yet been made to convict or acquit any of the nine accused persons. The State alleges, moreover, that the petition is ex

tempore, since it was not presented within six months of the date on which the acts occurred and the State requests that the case be quashed.

4. The Commission concludes that it is competent to consider the petition and that the petition is admissible in conformity with Article 47 of the Convention. It also decides to defer its decision on fulfillment of the requirements concerning exhaustion of domestic remedies and the period of six months provided for in Article 46(1), sub-paragraphs (a) and (b), respectively, until such time as it rules on the merits of the alleged violation of Articles 8 and 25 of the aforementioned international instrument.

II. PROCESSING BY THE COMMISSION

5. On January 26, 1998, the Commission received the petitioner's complaint against the State of Honduras and on March 17 of that year the process was initiated sub judice. On April 3, 1998, the relevant parts of the petition were communicated to the State and a period of 90 days was given to the State to reply. At the request of the State of Honduras, the Commission granted an extension of the aforementioned period. Honduras replied on October 13, 1998 and on October 15 of the same year the relevant parts of this communication were transmitted to the petitioner.

6. On December 11, 1998, the petitioner presented his observations on the State's reply. On February 18, 1999, the relevant parts of these observations were transmitted to the State, which submitted its corresponding comments on March 19, 1999. The relevant parts of the State's comments were transmitted to the petitioner on April 9, 1999. The petitioner submitted his observations on April 26, 1999 and the relevant portions of his observations were transmitted to the State on May 13, 1999. During the extension granted by the Commission, the State sent its comments on the petitioner's observations. On 3 and 15 March 2000, Mr. Stalinski sent the additional information requested by the Commission. That same day (March 15, 2000), this information was sent to the State, which was granted a period of 15 days to prepare its comments on the information. No reply has been received thus far from the State of Honduras.

III. POSITIONS OF THE PARTIES

A. The petitioner

7. The petitioner alleges that on Saturday, April 28, 1990, at approximately 5.30 p.m., Messrs. Leonel Medrano Irías, Juan José Osorio and Richard Anderson, employees of the companies Chiquita International Trading Company and Tela Railroad Company, the first headquartered in Delaware in the state of Illinois in the United States of America and the second headquartered in the municipality of La Lima in the Department of Cortés, Honduras, attempted to abduct him in the Gran Hotel Sula in San Pedro Sula, Department of Cortés, Republic of Honduras. According to the petitioner, this criminal act was carried out with the aim of killing him to prevent him from continuing to compete with the aforementioned companies in the marketing of bananas, a sector in which they had maintained a total monopoly in Honduras for more than 90 years.

8. The petitioner alleges that on August 3, 1995, he lodged a criminal complaint in the Third Criminal Court of the city of San Pedro Sula, in which he accused Messrs. Robert F. Kistingner, Charles Morgan, Manuel Rodríguez, Alejandro Backoksy or Bacoxi, Juan José Osorio, Mario Matías Galindo, Eduardo F. Aragón, Karl Koch and Richard Anderson, as the intellectual or material authors of the crimes against him of attempted murder, attempted kidnapping, unlawful search of a residence, attempted illegal detention, duress, extortion, blackmail, economic crimes and attempted terrorism. Subsequent to the complaint, the petitioner made a formal accusation of commission of the above-mentioned crimes to the same Court.

9. According to the petitioner, on August 22, 1995, after the examining magistrate had declared the charges admissible, the case was requested ad efectum videndi by the Supreme Court of Justice of Honduras at the request of one of the accused. On October 25 of the same year, the Supreme Court returned the case to the “Court from which it originated, without comment”. The Supreme Court later again requested the case from the lower court and on December 27, 1995 handed down a decision that contradicted the decision of the previous October 25, in which it had made the following observation: “The Judge who tries the case must strictly comply with the order contained in Circular No. 05, Item 3 of the plenary sitting of the Supreme Court held on March 20, 1991...” The abovementioned order provides that “ no person may be detained, arrested or taken prisoner by reason of an obligation that does not arise from a crime or minor offence: infractions that frequently occur when criminal proceedings are instituted and an order of arrest or detention is obtained against persons who have participated in acts or contracts of a purely civil, commercial or administrative nature, from which obligations naturally will arise. Failure to fulfill these obligations, however, does not constitute a criminal act or offence, as in the instant case.”[FN1] As a consequence of this observation, the examining magistrate issued in the first instance a ruling to suspend the enforcement of the arrest warrant and later, on January 24, 1996, issued another ruling suspending the criminal proceeding “until the civil action is settled by means of a final judgment”.

[FN1] The decision of the Supreme Court of Justice reads as follows: “Consequently, the Supreme Court of Justice, in exercise of the powers conferred on it by Article 83 of the Law on the Organization and Powers of the Courts, agrees as follows: Judges or courts before which criminal proceedings are instituted that arise from questions of a civil, commercial, or administrative nature, shall stay the proceedings until such time as a ruling has been made by the judges or courts before which the questions are being heard that sufficient grounds exist where, in accordance with Article 194 of the Procedural Code, the ruling should be based exclusively on the existence of a crime. And, in the absence of such ruling, the criminal judge or court shall not order the arrest, detention or imprisonment or in any way whatsoever inconvenience the person that is subject to the proceeding. All of the foregoing is without prejudice to the hearing of the preliminary issues governed by Article III, Title 1 of the Code of Criminal Procedure and to the hearing of the criminal action to which Article 20 of the same legislation refers.”

10. The petitioner requested that the decision of the Supreme Court of December 27, 1995 be reviewed on the grounds that the order to which the decision referred was not applicable to the specific case, since the criminal proceeding instituted arose from acts that were purely criminal,

which had given rise to two proceedings, one criminal for the punishment of the offenders and the other civil for reparation and compensation for damages.

11. On March 20, 1996, the Supreme Court issued a ruling in which it declared the observation made on December 27, 1995 to be null and void. In that ruling, the Court declared that “the judge of the Third Criminal Court of San Pedro Sula, Department of Cortés, has the judicial independence to make timely, legal and pertinent decisions in her court...” Based on this ruling, the lower court ordered that the criminal proceeding should go forward.

12. The petitioner states that the accused Karl Koch, Eduardo Federico Aragón and Richard Anderson Mena voluntarily appeared before the judge of the Third Criminal Court of San Pedro Sula to answer the charges and denied the accusations. The first two were immediately released while Mr. Anderson remained in detention for the period allowed by the law for an investigation to be conducted (six days) and then was released on bail. The petitioner adds that on November 5, 1996, the abovementioned judge issued a ruling in which she dismissed the proceeding against the three accused persons and absolved them of criminal responsibility on the grounds that throughout the investigations no evidence had been brought to prove their participation in the crimes of which they were accused.

13. The complainant alleges that he appealed this decision to the Court of Appeals of San Pedro Sula, which, on February 28, 1997, after reformulating the grounds for its ruling to include the crime of attempted terrorism, confirmed the operative part of the ruling and, consequently, the dismissal of the proceeding against Messrs. Koch, Aragón and Anderson. The petitioner filed an appeal against this decision as flawed[FN2] in form claiming that the Court had overlooked the fact that the dismissals that were the subject of the appeal were not based on proven grounds, despite the fact that the laws of Honduras provide that such dismissals must meet the requirements for final judgments to be handed down.[FN3] The petitioner also filed an appeal for review of the aforementioned decision of the Court of Appeal of San Pedro Sula on the grounds of contravention of the law or legal doctrine, alleging that the statements of eyewitnesses to the acts had been ignored.

[FN2] Article 956 of the Code of Procedure provides that: “notwithstanding the provisions of the preceding Article, Courts of Appeal or Review may on their own motion void judgments when any of the grounds that give rise to review on account of a flaw in form are clearly present.”

[FN3] The petitioner cites in this connection Article 383, paragraph 3 of the Code of Procedures, which states: “the statement of grounds for the ruling shall contain a description of any acts whose commission is deemed to have been proven, the part allegedly played by each of the accused, and a description of the aggravating, attenuating or exculpatory circumstances.”

14. On August 27, 1997, the Supreme Court of Justice declared unfounded the appeal for review on account of violation of procedural rules filed by the petitioner against the judgment of the Court of Appeals of San Pedro Sula, because “appeals can only be filed against final judgments and not against court orders.” The Supreme Court ruled that the appeal for violation

of a law or legal doctrine could go forward, but also declared that appeal inadmissible in its two statements of grounds issued on December 3, 1997.

15. The complainant alleges that a series of irregularities were committed during the course of the trial and that his right to a fair trial with minimum guarantees of due process was violated. He notes among these irregularities that during the trial he presented documentary evidence and the testimony of witnesses but that the examining magistrate took no steps whatsoever to review this evidence, thereby disregarding the principle applicable under the laws of Honduras that a court may initiate action (*principio inquisitivo*). According to the petitioner, the judge in question simply included in the proceedings the depositions which the eyewitnesses had made before a notary public, without examining their relationship to the facts of the case, despite the fact that—according to the petitioner—these statements had been made and ratified by said witnesses before the examining magistrate. Given these circumstances, the petitioner considers that the judicial remedies were neither effective nor adequate to protect the rights that had been violated, since he had been denied the right to real and effective defense, because the evidence he presented during the criminal trial had been neither admitted nor assessed. The petitioner further alleges that during the proceedings the legal deadlines or time limits were not respected and that the courts of Honduras issued rulings after the expiration of the applicable time limits.

16. Among the irregularities alleged to have been committed, the petitioner mentions that documents were tampered with during the proceedings, and that pages were even inserted in the file of the case, which led him to file a complaint before the Inspectorate of Courts and Tribunals against the Judge of the Third Criminal Court of San Pedro Sula, Judge Linda Patricia Reyes, who heard the case, copies of which are included in the file being considered by the IACHR. According to the petitioner, the aforementioned Judge attempted to backdate her ruling to prevent his attorney from filing the ordinary appeals on time. In this connection, the petitioner states that on October 28, 1996 he lodged a complaint about irregular acts and falsification of documents with the Coordinator of Prosecutors of the Office of the Attorney General. In that complaint, he requested that preliminary proceedings for judicial misconduct be initiated against the aforementioned Judge for, *inter alia*, having allegedly ordered a dismissal of proceedings, in which Mr. Karl Koch was acquitted and exonerated of all charges, to be drawn up, backdated and inserted between folios 914 and 915 in the judicial file, where the petitioner claims he found it. According to the complaint, the Judicial Inspector took a statement from clerk No. III, who had custody of the file and who declared that on October 24, 1996 the Judge and the Secretary of the Court had ordered her to type the said dismissal and to backdate it to September 20, 1996. The petitioner states that the authorities have done nothing to investigate the irregularities in respect of which the complaint was lodged.

17. With regard to the State's submission that documents in the file on the case show that on April 28, 1990 (the date on which the acts with which the case is concerned took place) the competent authorities tried to execute a warrant for the arrest of the petitioner, the petitioner claims that the file contained no warrant for his arrest and that the police authority that would have had to execute such a warrant in Puerto Cortés stated that the warrant was not in its files. In this regard, the complainant submitted a statement signed by the Sectional Delegate of the Public Security Force of Puerto Cortés, declaring:

That he had carefully searched in the files of this Delegation and had found no record of any warrant for the arrest or detention of Mr. Ernst Otto Stalinski issued by the District Court of this city of Puerto Cortés during the month of April 1990.

18. With regard to the argument by the State that the case is a single one and that action is still proceeding against six of the nine accused, which means that domestic remedies had not yet been exhausted, the petitioner stated that:

When the ruling of dismissal was handed down with the force of a final judgment in respect of Eduardo F. Aragón, Richard Anderson, and Karl Koch, the examining magistrate instructed that testimony be closed in the case in order to proceed separately against the other accused, which goes to show that the case was not a single one, as the State alleges.

19. The State affirms that the Examining Magistrate conducted the proceedings against the other six accused as a special subdivision of the case and that on January 14, 1999 he had dismissed the proceedings against Manuel Rodríguez, Alejandro Andrés Bacoxi and Juan José Osorio, absolving them of all criminal responsibility. The petitioner filed an appeal against this decision with the Court of Appeals of the city of San Pedro Sula, in Cortés, which confirmed the dismissals based on the background information used to dismiss the proceeding against Messrs. Richard Anderson, Karl Koch and Eduardo Aragón. The petitioner added that he did not file an appeal for review on the grounds of violation of procedural rules or infraction of the law because, since the facts of the case and the law were the same, he knew beforehand that the result would be the same as that regarding the other three accused.

20. In its statement of reply, the State contended that in its domestic jurisdiction an ordinary proceeding was still pending in which Mr. Stalinski was claiming damages and prejudice suffered from the same kidnapping attempt and other acts allegedly committed against him by various employees of the companies Chiquita International Trading Company and Tela Railroad Company. In this regard, the petitioner states that the criminal action instituted by him arose from acts that were purely criminal in nature, which gave rise to two legal actions, one criminal to punish the perpetrators and the other civil for reparation and compensation for damages, and that, in any case, no progress has been made in the civil case for the past four years because the companies accused have not responded to the complaint, which itself constitutes a violation of his human rights.

21. On March 11, 2000, the petitioner, at the request of the Commission, sent a copy of the decision of the Third Criminal Court of San Pedro Sula, of January 14, 1999, dismissing the case against Messrs. Manuel Rodríguez Escalera, Alejandro Bacoxi, Juan José Osorio and Robert Francis Kistingner. He also sent a “judgment” of the Court of Appeals of San Pedro Sula, of August 11, 1999, in which the appeal filed by the petitioner against the dismissal of January 14, 1999 was declared to be inadmissible, since “ in the preliminary stage of Court proceedings, it was not established with certainty that the accused were the authors of the crime in question.” That decision confirmed the dismissal that was the subject of the appeal and provided that “the parties be notified of this judgment” and that the matter be returned to the court whence it originated for such legal action as may be required. (Underlining not in the original).

22. On March 29, 2000, also responding to a request from the Commission, the petitioner sent a statement from the Third Criminal Court of the First Instance, of March 28, of the same year, which summarized the current state of the criminal proceeding against Messrs. Charles Morgan and Mario Matías Galindo, the two remaining accused persons. In this regard, the Court declared that the aforementioned accused “had not presented themselves voluntarily before this court, and are therefore fugitives from justice and that no dismissal of the proceeding had been decided in their favor.”

23. Without prejudice to the provision of this information requested by the Commission, the petitioner stressed that the complaint presented by him to the IACHR against the State of Honduras refers to “violations committed by the authorities of that country through the judicial branch which, on December 3, 1997, rejected the appeal for review on the grounds of infraction of the law or legal doctrine of the final judgment of March 3, 1997 handed down by the Court of Appeal of San Pedro Sula, Cortés, which had heard specifically the case of the dismissals handed down in favor of Richard Anderson, Karl Koch and Eduardo Aragón”. “This case was definitively concluded when the Honorable Supreme Court of Justice handed down on the above-mentioned date its decision on the appeal for review ...”

24. Based on the foregoing, the petitioner states that the State of Honduras violated, inter alia, the right to a fair trial and the right to judicial protection (Articles 8(1) and 25 of the American Convention), as well as the right to equal protection of the law without discrimination (Article 24) of the aforementioned international instrument.

B. The State

25. With regard to the facts, the State alleged in summary that on April 28, 1990 a group of persons came to the Gran Hotel Sula of San Pedro Sula, including the attorney Leonel Medrano Irías, some of them wearing police uniforms, and asked for Mr. Stalinski. The group, accompanied by Mr. Marcos Muñoz, manager of the hotel, then went up to the petitioner’s room, but did not find him there. The attorney Medrano Irías said that there was a warrant of arrest out for Mr. Stalinski.

26. The State declared that it was stated in the court documents that the District Court of Puerto Cortés had issued a warrant on April 27, 1990 for the arrest of Mr. Stalinski, who was accused of the crime of disobedience of the authorities, that the warrant was processed through the appropriate police authority, and that on the day of the events an effort was being made to execute the warrant.

27. On the question of admissibility, the State of Honduras contended in the initial stages of the proceeding that Mr. Stalinski had not exhausted all domestic remedies, since the judicial actions—civil and criminal—instituted by him against the accused were still pending. With regard to the criminal action, the State declared, inter alia, that of the nine persons who were accused in the same case, three of them were acquitted by dismissal of the proceedings against them because the court had found that “they were not involved in the acts of which they were accused”. Mr. Stalinski filed an appeal against these dismissals. Subsequently, when the Court of

Appeals confirmed the decision of the lower court, the petitioner filed two appeals for review, which were dismissed on both procedural and substantive grounds.

28. The State contended that after the appeal for review on the ground of infraction of the law or legal doctrine had been declared inadmissible, the case had returned to the Third Criminal Court of San Pedro Sula, where the proceeding is taking its normal course. Thus, on July 30, 1998, the same court had ruled that the other three accused persons should be conditionally released, namely, Messrs. Juan José Osorio Acuña, Alejandro Andrés Bacoxi and Manuel Rodríguez Escalera. At the same time, it had stated that a final judgment had not yet been handed down to convict or acquit the nine accused and that the petitioner could file the corresponding appeals and requests for review against this final judgment, when it was handed down.

Since this criminal proceeding was initiated as a single action, in the same case, by the same accuser, for the same crimes, against various accused persons (9), it seems improper to us that the petitioner, Mr. Ernst Otto Stalinski, should attempt to surprise the Honorable Inter-American Commission by presenting appeals in respect of three (3) of the nine (9) accused, as if he had exhausted all the remedies available under the domestic jurisdiction of the State of Honduras.

29. With regard to the civil action, the State alleged that an ordinary lawsuit for damages, loss of earnings, indirect damages, and moral prejudice was still pending, which had been filed on October 7, 1994 by Mr. Stalinski against the companies Tela Railroad Company and Chiquita International Trading Company in the Second Civil Court of San Pedro Sula, seeking a joint conviction and the payment of five million six hundred and thirty thousand dollars or its equivalent in national currency at the applicable rate of exchange at the time the judgment is executed. In the aforementioned civil case, the plaintiff, Mr. Stalinski, claims damages and injury suffered in the kidnap attempt and other acts allegedly committed against him by various employees of the aforementioned companies.

30. The State denies that there was an unjustified delay in the granting of justice, insofar as the legal time limits and delays were respected and the judicial investigations were conducted in a timely manner having regard to the circumstances and the reasonable limitations that were without prejudice to a fair trial. It also contended that a ruling against the petitioner could not be considered as a denial of justice, when a fair trial had been granted and the petitioner had exercised and was continuing to have recourse to the remedies and appeals available to him under domestic jurisdiction. The State claims, moreover, that the complaint was filed after the applicable time limit had expired, since it was submitted after the expiration of the six-month period following the acts that are the object of the complaint.

31. The State of Honduras also contends that evidence has not been brought against the judges and magistrates who were alleged to have violated the human rights of the petitioner. It further contends that there is no evidence in the files of the Inspectorate of Courts of Honduras that the petitioner has made use of the remedy of amparo to complain against these violations.

IV. ANALYSIS

A. Competence *ratione loci*, *ratione personae*, *ratione temporis* and *ratione materiae* of the Commission.

32. The Commission is competent to hear the petition presented by the petitioners. The acts alleged, should they be proven, could violate the rights set forth in the Convention and thereby wrong a natural person who is subject to the jurisdiction of the Honduran State, in circumstances in which the obligation to respect and guarantee the rights set forth in that instrument was already binding on the State of Honduras.[FN4]/ The Commission therefore proceeded to examine whether the present case fulfills the other requirements set forth in Articles 46 and 47 of The American Convention.

[FN4] Honduras ratified the American Convention on Human Rights on September 8, 1977.

B. Other requirements for admissibility of the petition

a. Exhaustion of domestic remedies

33. Article 46(1)(a) of the Convention establishes as a requirement for a petition to be admissible “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of International law.”

34. In this case, the State opposed during the first phase of the proceeding an exception to the rule that the petition should not be deemed admissible on the grounds that available domestic remedies had not been exhausted, arguing that judicial actions—both civil and criminal—were still being pursued in the domestic jurisdiction and that the dismissals against Messrs. Anderson, Koch and Aragón were interlocutory orders and not final judgments. Continuing its argument, the State contended that the criminal case was a single proceeding, that is to say, the same action being taken against nine accused and that, consequently, it should be decided in a single final judgment which, in this case, had still not been handed down. The State argued that if a petitioner was not satisfied with the judgment handed down, he could appeal it using the remedies for appeal that were available within the domestic jurisdiction of Honduras. With regard to the alleged violations committed by the judges and magistrates hearing the case, the State claimed that the petitioner should file a remedy of *amparo* to complain of the violations, which he did not do.

35. The petitioner, for his part, claims that he has exhausted all domestic remedies with respect to the only judicial proceeding brought before the Commission, which is the one instituted by him, in criminal court, against Messrs. Anderson, Koch and Aragón. The said proceeding culminated in the decision of the Supreme Court of Justice, of December 13, 1997, in which the appeal on the grounds of violation of the law or legal doctrine, which had been filed by the petitioner, was declared to be inadmissible. According to the petitioner, the above-mentioned decision definitively confirmed the dismissal of the aforementioned accused, a decision that has the force of a final ruling of acquittal and the effect of *res judicata*. The

petitioner also claims that in this judicial proceeding there was a delay in the hearing of the case and that the jurisdictional remedies available to him were not effective.

36. With respect to the other six accused, the petitioner, at the request of the Commission, sent a copy of the decision of the Third Criminal Court of San Pedro Sula, of January 14, 1999 to dismiss the proceedings against Messrs. Manuel Rodríguez Escalera, Alejandro Bacoxi, Juan José Osorio and Robert Francis Kistingner. He also sent a “ruling” of the Court of Appeals of San Pedro Sula, of 11 August 1999, in which the appeal filed by the petitioner against the dismissal of January 14, 1999 was declared inadmissible. The dismissal, which was the subject of appeal, was confirmed and the court ordered that the sentence should be returned to the court whence it originated for such legal action as might be appropriate.

37. With regard to the two remaining accused—and also at the request of the Commission—the petitioner sent a statement by the Third Criminal Court, dated March 28, 2000, which certified that Messrs. Charles Morgan and Mario Matías Galindo “had not voluntarily appeared before this court and that they were therefore fugitives from justice and that no decision to dismiss the proceeding against them had been taken”. The State did not challenge the authenticity of these documents.

38. The Commission considers that, in the case sub judice, the determination as to whether the general rule concerning the exhaustion of domestic remedies (Article 46, paragraph 1, of the Convention) had been respected was a matter that was closely related to the merits of the question in dispute. In this regard, the Inter-American Court has established that where the State opposes in a timely manner an exception to the rule of non-exhaustion of its domestic remedies:

... the relationship between the decision regarding applicability of the rule and the need for timely international action in the absence of effective domestic remedies may frequently recommend the hearing of questions related to that rule together with the merits, ...[FN5]

[FN5] Inter-American Court of Human Rights, case of Velásquez Rodríguez, Preliminary Objections, Judgment of June 26, 1987, paragraph 93.

39. Based on the foregoing, the Commission will rule on the questions concerning the exhaustion of domestic remedies at the same time as it rules on the merits, especially with regard to compliance with Articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention.

b. Deadline for filing of petition

40. Article 46(1)(b) of the American Convention establishes as a requirement for a petition to be admissible that the petition should be “lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment.”

41. In any case, the Commission considers that in the case sub examine, the fulfillment of the requirement set forth in Article 46(1)(b) of the American Convention relates to the exhaustion of the remedies available under domestic jurisdiction and, consequently, decides to defer its decision on this question until it rules on the merits of the case.

c. Duplication of proceedings and res judicata

42. Articles 46(1)(c) and 47(d) of the Convention establish as a requirement for admissibility of a petition that, respectively, the subject of the petition or communication should not be pending in another international proceeding for settlement and that it should not be substantially the same as one previously studied by the Commission or by another international organization. The Commission is of the view that the matter, which is the subject of the complaint, is not substantially the same as one that had been previously studied by the Commission or by another international organization. Consequently, the Commission concludes that the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention have been met.

d. Characterization of the acts alleged

43. Article 47(b) of the Convention provides that a petition shall be inadmissible if it “does not state facts that tend to establish a violation of the rights guaranteed by this Convention.”

44. The petitioner alleges that the State has violated, inter alia, the rights guaranteed to him under Articles 8(1) and 25 of the Convention. The Commission wishes to point out that, while Article 8 applies, in general, to accused persons who are under the criminal jurisdiction of the State, in conformity with paragraph 1 of the same instrument[FN6], it also provides for an obligation to respect the right of the accusing party, in this case the petitioner, Mr. Stakinski,[FN7] to due process.

[FN6] Article 8.Right to a fair trial:

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 or for the determination of his rights and obligations of a civil, labor, fiscal or any other nature.

[FN7] See IACHR, case of Génie Lacayo, ruling of 29 January 1997, paragraph 75.

45. Consequently, the Commission considers that the acts alleged, if proven, could constitute violations of the rights set forth in Articles 8(1) and 25 of the Convention, in conjunction with Article 1(1) of the same international instrument.

46. Based on the foregoing, the Commission concludes that the requirement set forth in Article 47(b) of the American Convention has been satisfied.

V. CONCLUSIONS

47. The Commission concludes that it has competence to examine this case and that the petition is admissible, in conformity with Article 47 of the Convention, and decides to consider the question concerning fulfillment of the requirements set forth in Article 46(1), sub-paragraphs (a) and (b) at the same time as its rules on the merits of the case.

48. Based of the arguments of law and of fact presented above, and without prejudice to the substance of the questions.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the present petition admissible, insofar as it relates to alleged violations by the State of Articles 8(1) and 25 of the Convention, in conformity with Article 1(1) of the same international instrument.
2. To consider the question of the fulfillment of the requirements set forth in Article 46(1), sub-paragraphs (a) and (b) at the same time as it rules on the merits of the question in dispute.
3. To notify the parties of this decision.
4. To continue with the substantive analysis of the question that is the subject of the complaint; and
5. To publish this decision and to include it in its annual report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in Washington D.C., on this the 3rd day of October, 2000. (Signed): Hélio Bicudo, Chairman; Claudio Grossman, First Vice-Chairman; Commissioners: Marta Altolaguirre, Robert K. Goldman, Peter Laurie and Julio Prado Vallejo.