

Institution: Inter-American Commission on Human Rights
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Title/Style of Cause: Alvaro Jose Gonzalez Robelo v. Nicaragua
Doc. Type: Decision
Decided by: Chairman: Claudio Grossman;
First Vice-Chairman: Juan Mendez;
Second Vice-Chairman: Marta Altolaguirre;
Commissioners: Helio Bicudo, Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.
Dated: 5 March 2001
Citation: Robelo v. Nicaragua, Case 12.144, Inter-Am. C.H.R., Report No. 25/01, OEA/Ser.L/V/II.111, doc. 20, rev. (2000)

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I. SUMMARY

1. On January 26, 1999, Dr. Alvaro José Robelo González (hereinafter “the petitioner”) lodged a complaint with the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) against the Republic of Nicaragua (hereinafter “the Nicaraguan State” or “Nicaragua”), alleging that said State of Nicaragua violated his right to nationality and his political rights by declaring him a foreigner and thus preventing him for running in the presidential election of October 20, 1996. He claims that later he was also prevented from running for the legislature and, subsequently, he was kept from voting in the election when the Electoral Verification Office refused to give him his citizen’s identification card. As a result, he filed an amparo constitutional relief suit with the Supreme Court of Justice, which ruled in his favor; however, the decision was not enforced.

2. The Nicaraguan Alliance, the political party for which Mr. Robelo was the presidential candidate, challenged this situation before the Supreme Electoral Council, arguing that Mr. Robelo was a Nicaraguan citizen who was born in the city of León to a Nicaraguan mother and father. Mr. Robelo also stated that he had acquired Italian nationality when he married an Italian citizen but that he had never renounced his Nicaraguan citizenship.

3. The petitioner also claimed that a judicial error was made in the judgment handed down by the Supreme Electoral Council and that a campaign of political persecution had been waged against him. To summarize, the petitioner challenges the elections held in Nicaragua in October 1996 and claims that the State is responsible for violating several of his rights that are protected by the American Convention on Human Rights: to personal integrity (Article 5), to due process (Article 8), to compensation for the miscarriage of justice (Article 10), to nationality (Article 20),

to participate in government (Article 23), to equality before the law (Article 24), and to judicial guarantees (Article 25).

4. The Nicaraguan State challenged these claims, alleging that domestic remedies had not been exhausted, and said that the Supreme Court of Justice had approved the manufacture of an identification card, which could be collected by the applicant after he had demonstrated his status as a citizen. However, Mr. Robelo did not pursue the procedure for reclaiming his original nationality.

5. After analyzing the legal and factual claims submitted by the parties during processing of this complaint, the Inter-American Commission, meeting at its 110th session from February 20 through March 9, 2001, decided to declare Case 12.144 inadmissible.

II. PROCESSING BY THE COMMISSION

6. On May 7, 1999, the Commission opened this case as N° 12.144, transmitted the relevant parts of the complaint to the Nicaraguan State, and asked it to reply within 90 days. On that same date, it informed the petitioner that the case had been opened.

7. In the months of May, June, and August 1999, the petitioner sent the Commission additional information, repeating the content of his complaint.

8. The State sent its reply on August 2, 1999, stating that domestic remedies had not been exhausted in this case and consequently asking the Commission to declare it inadmissible.

9. On October 6, 1999, the petitioner told the Commission that the Immigration and Nationality Directorate had cancelled his Nicaraguan passport. He also told the Commission that he had received death threats over the telephone and, as a result, was seeking precautionary measures for himself and his wife, Lucía Raffone.

10. On October 7, 1999, the State of Nicaragua sent the IACHR a copy of the Immigration and Nationality Directorate's Resolution 095/99, dealing with Mr. Robelo's case, in which it was resolved to refuse him a certificate of Nicaraguan nationality.

11. After considering the documents submitted by Mr. Robelo González, the Commission, meeting at its 104th session, decided to instruct the State of Nicaragua to implement precautionary measures on October 7, 1999.

12. On October 12, 1999, the Nicaraguan State informed the Commission that it had forwarded the request for precautionary measures to the Interior Ministry so that, in consultation with the interested parties, it could proceed to comply with the requests made by this international agency.

13. The petitioner duly informed the Commission that on October 25, 1999, the Interior Minister met with him and his wife in order to reach a joint agreement on the precautionary measures. As a result of this meeting, Mr. Robelo was assigned a police escort at his home.

14. By means of a letter dated March 2, 2000, the State informed the Commission about the partial amendment of the Nicaraguan Constitution, which established that: "No national may be deprived of his nationality. Nicaraguan nationality shall not be lost upon acquisition of another nationality."

III. POSITIONS OF THE PARTIES

A. Position of the Petitioner

15. The petitioner claims that the Supreme Electoral Council, in a decision dated July 5, 1996, declared him a foreigner. As a result, he was disqualified from standing as a candidate for the presidency of the Republic of Nicaragua. Later he was disqualified from running for a seat in the legislature and, ultimately, he was prevented from voting in the 1996 elections. Based on the foregoing, the petitioner's complaint challenges Nicaragua's October 1996 elections.

16. The petitioner states that on July 10, 1996, he filed for amparo constitutional relief with the Supreme Court of Justice. The Supreme Court passed judgment on November 20, 1996, ruling that the Supreme Electoral Council was not empowered to strip any of the country's citizens of their nationality and that the Interior Ministry had not processed Mr. Robelo's nationality or stripped him of it.

17. The petitioner claims that on October 14, 1996, the Electoral Verification Office refused to give him his citizen's identification card, arguing that he had renounced his Nicaraguan nationality and become an Italian citizen.

18. The petitioner reports that he took his case to the Supreme Court, which ruled in his favor on February 3, 1998, ordering the Supreme Electoral Council to instruct the General Directorate of Certificates to enforce, with respect to the petitioner, the terms of Articles 2 and 3 of the Citizen Identification Law. He further states that regardless of the Supreme Court's ruling, the Electoral Council did not obey these instructions and refused to give him his identification card. The petitioner also claims that the ruling handed down by the Electoral Council contains a legal error and constitutes political persecution.

19. Finally, the petitioner points out that Article 2 of Law 205 stipulates that amparo relief is not admissible against resolutions issued in connection with electoral matters. Thus, both the Amparo Law and the Nicaraguan Constitution admit no appeals against the decisions of the Supreme Electoral Council.

B. Position of the State

20. The Nicaraguan State holds that the complaint lodged by Mr. Alvaro Robelo González with the Inter-American Commission is defective on legal and factual grounds. The State denies that Mr. Robelo's human rights were violated or that he has been persecuted by the Supreme Electoral Council or any other agency of the Nicaraguan Government. The State holds that the

complaint as submitted by the petitioner is formally defective, in that Nicaragua's domestic remedies have not been exhausted.

21. The State notes that on February 3, 1998, the Constitutional Chamber of Nicaragua's Supreme Court of Justice ruled on the amparo relief filed by Mr. Robelo against the Supreme Electoral Council, ordering that Council to instruct the General Directorate of Certificates to enforce, with respect to the petitioner, Articles 2 and 3 of the Citizen Identification Law. The State also reports that on May 25, 1998, the Electoral Council sent the Constitutional Chamber the order for the petitioner to be given his identification document once he had complied with the requirements of the Certification Law.

22. The State further claims that the petitioner has not exhausted the procedure set forth in Articles 49 and 50 of the Amparo Law for compliance with the Supreme Court's judgment.[FN1] It adds that Mr. Robelo could have filed for amparo relief against the General Directorate of Certificates for its refusal to hand over his identification card.

[FN1] Article 49 of the Amparo Law provides that: "If, within twenty-four hours of notification, the responsible authority or official fails to comply with the judgment, and if the nature of the case so permits, the Supreme Court of Justice shall call upon the immediate superior of the responsible authority or official to require that they enforce the judgment without delay and, if the authority or official has no superior, said requirement shall be made directly to them."

Article 50 of the Amparo Law stipulates that: "When the judgment is not obeyed in spite of these instructions, the Supreme Court of Justice shall inform the office of the President of the Republic so that said office may order compliance therewith, and it shall inform also the National Assembly; irrespective of this, the office of the Attorney General may also be informed for the appropriate actions to be taken. This shall also apply in cases in which suspensions ordered by the Court of Appeals or the Supreme Court of Justice are not obeyed."

23. The State maintains that pursuant to Nicaraguan law, the case in hand does not involve the arbitrary or illegal denial of nationality, but rather the petitioner's acquisition of Italian citizenship and, consequently, pursuant to the laws in force at the time, the loss of his original nationality. The State notes that at present, following an amendment made to Nicaragua's Constitution in January 2000, a person can hold both nationalities, Nicaraguan and Italian. To date, however, Mr. Robelo has taken no steps toward recovering his Nicaraguan nationality.

IV. ANALYSIS OF ADMISSIBILITY

A. Competence of the Commission

24. The Commission is, *prima facie*, competent to examine the petition submitted by Mr. Alvaro José Robelo González (*ratione personae*), in that it addresses events that took place under the jurisdiction of the Nicaraguan State (*ratione loci*) and describes alleged violations of rights enshrined in the American Convention (*ratione materiae*)—the right to physical integrity (Article 5), the right to due process (Article 8), the right to compensation (Article 10), the right to a

nationality (Article 20), political rights (Article 23), the right to equality before the law (Article 24), and the right to judicial guarantees (Article 25)—as set forth in Article 44 of the Convention, to which Nicaragua has been a State Party since September 25, 1979.

25. The Commission will now analyze whether this petition meets the formal requirements for admissibility set by Articles 46 and 47 of the American Convention on Human Rights.

B. Exhaustion of Domestic Remedies

26. Article 46(1)(a) of the American Convention provides that:

Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.

27. The Commission has repeatedly emphasized the “accessory and complementary” character of the inter-American human rights protection system. This character is reflected in Article 46(1)(a) of the Convention, which enables states to resolve disputes under their own legal systems before facing international proceedings.

28. In the case at hand, the petitioner claims to have reported the alleged human rights violations to the domestic judicial authorities provided for by Nicaraguan law; nevertheless, the pursuit of those domestic remedies bore no fruit.

29. In turn, the State of Nicaragua explicitly challenges the petitioner’s allegations vis-à-vis the exhaustion of domestic remedies. The State, upon receiving formal notification of the petition, invoked the failure to exhaust domestic remedies and thereby challenged the admissibility of the complaint. The State replied to all the requests for information sent by the Commission, including those dealing with domestic remedies.

30. The following list itemizes the claims related to domestic remedies made by the parties:

Remedies related to political rights:

i) On July 5, 1996, the Supreme Electoral Council issued a resolution disqualifying Mr. Robelo as candidate in Nicaragua’s presidential election, against which he appealed. On July 10, 1996, the Supreme Electoral Council gave Mr. Robelo González a certified resolution declaring him a foreigner and disqualifying him from the presidential race.

ii) On July 10, 1996, the petitioner filed for amparo relief with the Court of Appeals in León against the Supreme Electoral Council’s resolution declaring him a foreigner. The León Court of Appeals admitted the amparo suit and sent the proceedings to the Supreme Court of Justice.

iii) On November 20, 1996, the Supreme Court, in Judgment N° 159, ruled as follows on the appellant’s request to extend the remedy to all the magistrates of the Supreme Electoral Council because he knew that said court was attempting to strip him of his nationality: “This Supreme

Court believes that, although extending the remedy to other officers different from those in the original appeal is inadmissible, the appellant's claim lacks legal grounds in that the Supreme Electoral Council is not empowered to strip any citizen of this country of his nationality, a power that belongs exclusively to the Interior Ministry (...) and the Interior Ministry has neither processed Dr. Alvaro Robelo González's Nicaraguan nationality nor stripped him of it."

iv) In this same judgment (N° 159), the Supreme Court also said: "The resolution of the Supreme Electoral Council (...) does not order Dr. Alvaro Robelo González's nationality cancelled, nor could it, and in fact has not stripped him of his Nicaraguan nationality; what it does determine is his disqualification as a candidate for presidential office in that he does not meet the requirements set, particularly those contained in the Constitution and in the constitutional laws, all of which address the question of elections." The Court also noted that: "in Nicaragua electoral questions are the competence of another independent branch of government: the electoral branch, an autonomous agency with both administrative and jurisdictional functions, against the final decisions of which there is no appeal." Finally, the Court stated that it would not admit the amparo remedy filed as a part of Dr. Robelo's bid to annul the resolution of the Supreme Electoral Council.

Remedies related to the rights of physical integrity and liberty:

v) Mr. Robelo filed a habeas corpus suit with the Appeals Court in Managua on July 15, 1996, alleging threats of illegal arrest and naming the Interior Minister, the Director of Immigration and Nationality, and the magistrates of the Electoral Council. The Court ruled in his favor that same day, ordering that Mr. Robelo's liberty and security be respected.

vi) On June 2, 1999, Mr. Robelo filed an amparo remedy with the First Criminal Judge in Managua, alleging threats of illegal arrest made by officials from the General Directorate of Immigration and Nationality. In a resolution dated June 25, 1999, the judge ruled that remedy admissible and ordered that Mr. Robelo's liberty and personal security be respected.

Remedies related to the right to nationality:

vii) Along with the other remedies, on January 23, 1996, the petitioner lodged a request for a citizen's identification card with the General Directorate of Certificates. On October 14, 1996, that Directorate sent Mr. Robelo its Resolution N° 1, refusing to give him a card on the grounds that he was not Nicaraguan.

xiii) On November 15, 1996, Dr. Robelo filed an appeal against Resolution N° 1 with the Supreme Electoral Council. On June 19, 1997, when no answer was forthcoming, the petitioner once again filed suit with the Court of Appeals, which processed it and forwarded the proceedings to the Supreme Court. The Supreme Court gave its ruling on February 3, 1998, ordering the Supreme Electoral Council to instruct the General Directorate of Certificates to enforce, with respect to the petitioner, the terms of Articles 2 and 3 of the Citizen Identification Law.

ix) On March 31, 1998, the National Certification Commission, by means of its Resolution N° 2, decided to approve continued processing of Mr. Robelo's identification card, ordering that prior to requesting delivery of the card, the certificate from the Interior Ministry's General Directorate of Immigration and Nationality showing the status of his nationality should be presented.

x) On July 30, 1999, the petitioner asked the Director General of Immigration and Nationality for a certificate of Nicaraguan citizenship. On August 27, 1999, the Immigration and Nationality Directorate, in its Resolution 095-99, refused Mr. Robelo that certificate on the grounds that, despite having been born Nicaragua, he was an “Italian citizen by his own volition since 1976, which nationality has been confirmed both by his request for a foreign citizen’s residence permit in Nicaragua,[FN2] and by the fact that he has retained his Italian nationality and made no request to reclaim his original nationality.”

[FN2] The case documents at the IACHR contain a copy of the request for a foreign citizen’s residence permit dated June 6, 1993.

xi) On September 3, 1999, the petitioner filed for a review of Resolution N° 095-99 with the General Directorate of Immigration and Nationality. In a letter dated September 27, 1999, the petitioner was told that the Resolution was upheld because he had lost his Nicaraguan nationality upon acquiring Italian citizenship.

xii) The General Directorate of Immigration and Nationality informed Mr. Robelo on October 1, 1999, that with the upholding of Resolution N° 095-99, his Nicaraguan passport (N° C-384586), was cancelled.

xiii) On November 11, 1999, the petitioner was informed of Resolution N° 042-99, with which the Interior Ministry decided to uphold Resolution N° 095-99, denying Mr. Robelo's request for a certificate of Nicaraguan nationality. Resolution 042-99 also ordered Mr. Robelo to put his migratory status into good legal order.

31. After analyzing the different domestic remedies pursued by Mr. Robelo, the Commission concludes that: with regard to the exhaustion of domestic remedies related to the petitioner’s alleged violations of his political rights, he pursued the different legal remedies offered by Nicaraguan law; the courts, in turn, ruled on them and handed down their final decision on November 20, 1996. Consequently, the Commission concludes that the exhaustion of domestic remedies requirement set by Article 46(1)(a) of the Convention has been met.

32. With regard to the exhaustion of domestic remedies related to the alleged violation of his right to integrity, the Commission has noted that the petitioner filed an amparo suit and a habeas corpus action in connection with threats of illegal arrest. In both cases, the courts ruled in Mr. Robelo’s favor, ordering that his liberty and personal security be respected. Consequently, the Commission holds that the domestic remedies were exhausted in compliance with Article 46(1)(a) of the Convention and, in addition, that they proved to be effective.

33. As regards the exhaustion of domestic remedies related to alleged violations of the petitioner’s right to nationality, the Commission notes that the Supreme Court ruled in his favor on February 3, 1998. Consequently, on March 31, 1998, the National Certification Commission decided to approve the issue of a citizen’s identification card to Mr. Robelo, ordering that prior to delivery of the card, the certificate from the Interior Ministry and the General Directorate of Immigration and Nationality showing the status of his nationality should be presented. However, the petitioner allowed a year and four months to go by before pursuing the formalities needed to

obtain that certificate of status. When the petitioner finally requested the nationality certificate, on July 30, 1999, it was refused, on the grounds that he had failed to follow the correct procedure—namely, he took no steps toward recovering his original nationality (an indispensable prerequisite for demonstrating his status as a Nicaraguan citizen).

34. In this regard, the Inter-American Court of Human Rights has stated that: “the mere fact that a domestic remedy does not produce a result favorable to the petitioner does not in and of itself demonstrate the inexistence or exhaustion of all effective domestic remedies. For example, the petitioner may not have invoked the appropriate remedy in a timely fashion.”[FN3]

[FN3] Inter-American Court of Human Rights, Series C: Decisions and Judgments N° 4, Velásquez Rodríguez Case; Judgment of July 29, 1988, paragraph 39.

35. It should be noted that the complaint was lodged with the Commission even before the domestic remedies related to the petitioner’s right to Nicaraguan nationality were fully exhausted and that, while it was being processed, the domestic proceedings came to an end. Consequently, the Commission will now analyze the parties’ claims regarding this right. Irrespective of this, the IACHR holds that the petitioner did have access to the domestic remedies offered by the country’s laws; however, he did not exhaust the appropriate or applicable remedies in accordance with the terms of Article 46(1)(a) of the American Convention.

C. Timeliness of the Complaint

36. Article 46(1)(b) of the American Convention provides that for a petition to be admitted, it must 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.”

37. In his complaint, the petitioner claims that the Supreme Electoral Council’s resolution of July 10, 1996, declared him a foreigner and, as a result, he was kept from exercising his political rights (Article 23); for that reason, he challenges the elections held in Nicaragua in October 1996.

38. In this regard, the Commission notes that the resolution was relayed to the petitioner on July 10, 1996, and the final judgment of the Supreme Court of Justice rejecting the amparo relief sought by Mr. Robelo is dated November 20, 1996. In addition, the complaint as lodged with the IACHR is dated January 26, 1999: in other words, two years and two months after the six-month period allowed by the Convention.

39. Thus, the Commission holds that Mr. Robelo’s alleged violations of his political rights, together with the alleged related violations of his other rights—due process (Article 8), compensation for miscarriages of justice (Article 10), equality before the law (Article 24), and judicial guarantees (Article 25)—are extemporaneous and therefore inadmissible under the terms of Article 46(1)(b) of the American Convention.

40. With regard to the alleged violations of the right to physical integrity (Article 5), the Commission notes that the petitioner filed a habeas corpus action, which was resolved in his favor on July 15, 1996. Since the initial complaint was lodged with the IACHR on January 26, 1999, the six-month period had been exceeded. The amparo relief filed with the Supreme Court of Justice was submitted and ruled on, in the petitioner's favor, while this case was being processed. The Commission notes, as stated above, that in both instances the petitioner obtained a favorable judgment, ordering that his liberty and personal security be respected.

41. With regard to the alleged violations of the right to nationality (Article 20), the Commission notes that the Interior Ministry's final resolution is dated November 11, 1999, when the petitioner was informed that his request for a certificate of Nicaraguan nationality had been refused. It should be noted that the initial complaint was lodged with the IACHR on January 26, 1999, and the final resolution was issued while it was being processed. For that reason, the Commission will examine the parties' claims in connection with this right in a later part of this report.

D. Duplication of Proceedings and Res Judicata

42. Article 46.1.c of the Convention stipulates that for the Commission to admit a petition or communication, the incidents it describes must not be pending in any other international proceeding. Similarly, Article 47(d) of the Convention provides that the Commission will declare inadmissible any petition or communication that is substantially the same as one previously studied by the Commission or another international organization.

43. The parties' claims and the documents contained in the case file do not indicate that the petition is pending in any other international proceeding for settlement, or that it is substantially the same as any petition previously studied by the Commission or other international organization. The Commission therefore concludes that the case at hand meets the admissibility requirements established by Articles 46(1)(c) and 47(d) of the American Convention on Human Rights.

E. Characterization of the Alleged Facts

44. Article 47(b) of the Convention stipulates that the Commission will declare inadmissible any petition or communication when it "does not state facts that tend to establish a violation of the rights guaranteed by this Convention."

45. In the initial stage of the proceedings, the State claimed that the complaint was groundless and denied that Mr. Robelo's human rights had been violated by the Government of Nicaragua.

46. In turn, the petitioner claimed that on August 27, 1999, the State of Nicaragua, in its Immigration and Nationality Directorate's Resolution 095/99, refused Mr. Robelo González a certificate of Nicaraguan nationality, thus violating his right to a nationality under Article 20 of the American Convention.

47. Consequently, the Commission must determine, by means of a preliminary examination of the petition's merits, whether the allegations it contains are duly grounded and do constitute violations of Mr. Robelo's right to nationality by the Nicaraguan State.

48. Legal doctrine distinguishes between sociological nationality and political nationality. The concept varies according to whether the system adopted follows *jus soli*, wherein natural nationality is defined by place of birth, or *jus sanguinis*, where nationality is determined by the nationality of the parents. Finally, "nationality by naturalization" is that conferred on a foreigner who requests, in accordance with given conditions set by a State, its nationality or citizenship and, as such, is eminently voluntary in nature.

49. Regulating and determining nationality is the competence of each sovereign state; it falls to the state to legislate the regulation of its nationality and the acquisition of that nationality through naturalization. Thus, each state stipulates, on a sovereign basis, the rules for acquiring, losing, and recuperating its nationality.[FN4]

[FN4] Nationality is related to the concept of the nation. A national of a state is that individual who belongs to a particular group and shares common factors—origin, history, customs, language, or awareness of a common destiny—although he does not necessary belong to the State. Nationality is a cultural and historical binding that unites the individual with the Nation. There is an element of racial, political, and institutional solidarity that constitutes the nation. It is the status of a person born into or naturalized by a nation.

50. The petitioner claims that he is a Nicaraguan citizen, born in the city of León on January 6, 1947, to a Nicaraguan mother and father. He further states that he acquired Italian citizenship on April 24, 1976, by marrying an Italian citizen; nevertheless, he never renounced his Nicaraguan nationality.

51. The evidence before the IACHR indicates that under Italian law, Dr. Alvaro Robelo holds Italian nationality, which he obtained pursuant to Article 4(3) of Italy's Law N° 555 of June 13, 1912, which was the law in force at the time he acquired that nationality. The aforesaid article reads as follows:

Italian citizenship, including enjoyment of political rights, may be granted by a decree from the Head of State, after hearing the opinion of the Council of State... to a foreigner who has resided for two years in the State and who has performed notable services to Italy or has contracted marriage with an Italian woman.

52. In the present case, the petitioner claimed that preserving his Nicaraguan citizenship was at no time an impediment to Italian law, since in Italy he was not required to renounce his original nationality.

53. The Nicaraguan legal provisions governing the petitioner's nationality at the time he acquired Italian citizenship are set forth in the Constitution of 1974, Article 21 of which stipulated that:

Nicaraguan nationality is lost: (1) By voluntary naturalization in a foreign country that is not a nation of Central America. Natural citizens of Nicaragua who thus lose their Nicaraguan nationality shall recuperate the same if at any time they return to Nicaragua.

54. When Mr. Robelo acquired Italian citizenship on April 24, 1976, the Nicaraguan Constitution stipulated the ipso iure loss of his Nicaraguan nationality, irrespective of the terms of Italian law.

55. Mr. Robelo subsequently entered Nicaragua on January 7, 1993, using his Italian passport (N° 545752), as can be seen on the list of admissions to the country provided by the State. Later, on June 6, 1993, in his capacity as an Italian citizen, he requested a Nicaraguan foreign resident's card; this was granted on June 15, 1993, in the shape of Temporary Residence Card N° 29151, expiring on July 14, 1994.

56. Article 15 of Nicaragua's Nationality Law (N° 149), published in the Official Gazette on June 30, 1992, provides that:

Nationals shall lose their Nicaraguan nationality when they are voluntarily naturalized in a foreign state, except when they acquire the nationality of another Central American country or a dual nationality agreement applies.

57. The petitioner claims that under the Italian-Nicaraguan Convention on Citizenship[FN5] of September 20, 1917, in force since 1923, he holds dual nationality. Thus, the question of Dr. Alvaro Robelo's dual nationality must also be examined in accordance with that Convention.

[FN5] The 1917 Convention on Citizenship was ratified on October 16, 1923, enacted by Law N° 2531 of October 18, 1923, and published in Italy's Official Gazette N° 293 on December 14, 1923.

58. Article 1 of the Italian-Nicaraguan Citizenship Convention rules that:

Italian citizens resident in Nicaragua and Nicaraguan citizens resident in Italy shall maintain and transmit, in accordance with the corresponding national laws, their citizenship, except as provided for in this Convention.

59. Article 4 of the same Citizenship Convention stipulates that:

Italian citizens who have acquired Nicaraguan citizenship and Nicaraguan citizens who have acquired Italian citizenship shall recuperate their original citizenship after two years' residence in the territory of the State whose citizenship they had abandoned.

60. Thus, Article 1 of the Italian-Nicaraguan Convention states that Nicaraguan citizens resident in Italy shall maintain and transmit their citizenship,[FN6] but it should be noted that this prerogative applies only to those Nicaraguan citizens who have resident status.[FN7] In Mr. Robelo's case this provision does not apply, in that he is not a resident and because, by marrying an Italian citizen, he acquired Italian nationality. This reading is supported by Article 4, quoted above, which clearly states that a Nicaraguan citizen who has acquired Italian citizenship shall recuperate his original citizenship after two years' residence in the state whose citizenship he had "abandoned". It is clear that upon acquiring one nationality, the other is lost. And, in order to reclaim his original nationality, the individual in question has to meet a two-year residence requirement in the country of origin. This shows that the 1917 Convention is not a treaty governing dual nationality applicable to Mr. Robelo. In its preamble, the 1917 Convention states that its purpose is to establish rules to govern the citizenship of the descendants of people emigrating from Italy to Nicaragua and vice-versa. The spirit of the treaty is such that it cannot apply to Dr. Alvaro Robelo's situation, since he is not descended from Italians.

[FN6] The citizen is the subject of the political rights he enjoys, exercising them within the government of a country. When sovereignty is wielded by the people and the people give their consent and choose their rulers, states have to decide who can enjoy that sovereignty. This leads to the emergence of citizenship or of the concept of a citizen of a self-governing state. Citizenship is the bond between the individual and the legally established state, within which the individual perpetuates his sovereignty as an entity of the state.

[FN7] Resident: A person who remains in a place with the idea of staying there indefinitely, with his family, and in order to pursue his professional activities or for retirement. The terms citizen and resident can be distinguished as follows: the words citizen and resident are not interchangeable when other political entities (e.g., cities) are the frame of reference, for citizen implies political allegiance and a corresponding protection by the state, whereas resident denotes merely that one lives in a certain place.

61. The Citizenship Convention does not provide for the existence of dual nationality of the general kind. It refers only to the possibility of choosing between one nationality and the other, and that right is restricted to the descendants of Italians or Nicaraguans born in the territory of the other state and, even in those cases, it applies only to those not yet of adult age. This interpretation is supported by the second paragraph of Article 2 of the 1917 Convention, which stipulates that descendants of Italians or Nicaraguans, "within one year of coming of age, as determined by their laws, may choose either Nicaraguan or Italian citizenship by means of a statement rendered personally to the authorities of the state whose citizenship is being declined." If the Convention really did address dual nationality, this provision would be meaningless, since the individuals in question would not have to choose between one nationality and the other upon reaching adult age.

62. The Commission holds that the 1917 Convention is not applicable to Mr. Robelo's situation and that, essentially, Nicaraguan law did not allow simultaneous possession of Italian

and Nicaraguan nationalities after adult age had been reached. Mr. Alvaro Robelo's acquisition of Italian nationality in this case meant the ipso iure loss of his Nicaraguan nationality.

63. The Commission believes that if Mr. Robelo wanted his original nationality back, he should have followed the procedure established in the 1992 Nationality Law, to wit, a Nicaraguan who has lost his nationality and wishes to reclaim it must meet the requirements contained in Article 20, which provides that:

Nationals who have changed their nationality shall reclaim their Nicaraguan nationality by informing the Interior Ministry's Immigration and Nationality Directorate that they wish to do so and renouncing the nationality they currently hold, record of which shall be taken in a deed and certification of which shall be given to the individual involved.

64. In addition, the Commission notes that the procedure described in Article 20 was the process Mr. Robelo had to pursue in order to certify his nationality status and obtain his citizen's identification card. However, although on March 31, 1998, the National Certification Commission ordered him to present the certification from the Interior Ministry before the card could be handed over, the petitioner did not take the necessary steps for the following 16 months. Finally, on July 30, 1999, when the petitioner requested his certificate of Nicaraguan nationality from the General Directorate of Immigration and Nationality, the application was refused and he was instructed that to obtain the certificate, he had to reclaim his original nationality and renounce his current citizenship, in accordance with Article 20 of the Nationality Law.

65. The State noted that the certificate of nationality was refused because: "despite having been born in Nicaragua, Mr. Robelo was an Italian citizen by his own volition since 1976, which nationality has been confirmed both by his request for a foreign citizen's residence permit in Nicaragua, and by the fact that he has retained his Italian nationality and made no request to reclaim his original nationality." [FN8]

[FN8] See communication from the Nicaraguan State, dated October 7, 1999; Resolution N° 095-99.

66. Indeed, from the evidence of the case documents, the Commission notes that Mr. Robelo entered Nicaragua on January 7, 1990, using an Italian passport (N° 545752). Later, on June 6, 1993, he applied for a Nicaraguan foreign resident's card, so he could work for a year; this card, N° Q-29151, was issued to him on June 15 of that year. The Commission also notes that between 1990 and 1995, Mr. Robelo entered and left Nicaragua 60 times with his Italian passport and 18 times with a Nicaraguan passport. [FN9]

[FN9] The case file with the IACHR contains a list of admissions to and departures from Nicaragua. See communication from the Nicaraguan Government, October 18, 1999, folder 3.

67. From the above it follows that not only did Mr. Robelo not seek to reclaim his original nationality, but also that he showed a particular interest in preserving his Italian citizenship and status as a foreign resident in Nicaragua.

68. The current Constitution of Nicaragua,[FN10] as partially amended on January 19, 2000, by Law 330,[FN11] allows dual nationality. Thus, Article 20 of the aforesaid law provides as follows:

[FN10] Article 20 of Nicaragua's 1987 Constitution provided that: "No national may be deprived of his nationality, except when he voluntarily acquires another; neither shall he lose his Nicaraguan nationality when he acquires the nationality of another Central American country or a dual nationality agreement applies."

[FN11] Law 330, published in the official journal on January 19, 2000.

No national may be deprived of his nationality. Nicaraguan nationality shall not be lost upon acquisition of another nationality.

69. The Commission believes that in this case, the petitioner's submissions do not indicate sufficient grounds or evidence to indicate that Mr. Robelo's right to nationality has been violated. This case does not involve the arbitrary or illegal denial of nationality, but rather the petitioner's acquisition of a new nationality and, consequently, pursuant to the laws at the time in force, the loss of his original nationality. In other words, Mr. Robelo lost his Nicaraguan nationality by acquiring Italian nationality.

V. CONCLUSIONS

70. The Commission concludes with regard to the alleged violations of Mr. Alvaro Robelo's political rights (Article 23), together with his allegations of related violations of other rights—to personal integrity (Article 5), due process (Article 8), compensation for miscarriages of justice (Article 10), equality before the law (Article 24), and judicial guarantees (Article 25)—that they are extemporaneous and thus inadmissible, in accordance with the terms set in Article 46(1)(b) of the American Convention.

71. The Commission concludes, in connection with the alleged violations of the right to nationality (Article 20), that the petitioner did not pursue the procedure established by domestic law in order to comply with the requirement of first exhausting domestic remedies set forth in Article 46(1)(a) of the American Convention.

72. On the contrary, from its analysis of the documents submitted by the parties, the Commission concludes that they do not describe duly grounded facts that tend to establish violations by the Nicaraguan State of the right to nationality (Article 20), pursuant to the terms set forth in Article 47(b) of the American Convention on Human Rights.

73. In light of the foregoing legal and factual considerations,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this case inadmissible.
2. To give notice of this decision to the parties.
3. To publish this decision and to include it in its Annual Report to the General Assembly of the OAS.

Adopted by the Inter-American Commission on Human Rights on the 5th day of March, 2001.
(Signed): Claudio Grossman, Chairman; Juan Méndez, First Vice-Chairman; Marta Altolaguirre, Second Vice-Chairman; Commissioners Hélio Bicudo, Robert K. Goldman, Peter Laurie, and Julio Prado Vallejo.