Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 14/04; Petition 11.568
Session:	Hundred and Ninteenth Regular Session (23 February – 12 March 2004)
Title/Style of Cause:	Luis Antonio Galindo Cardonas v. Peru
Doc. Type:	Decision
Decided by:	President: Jose Zalaquett; First Vice-President: Clare K. Roberts; Commissioners: Evelio Fernandez Arevalos, Paulo Sergio Pinheiro, Freddy Gutierrez, Florentin Melendez. In accordance with the provisions of Article 17(2)(a) of the Rules of Procedure of the Inter-American Commission on Human Rights, Commissioner, Susana Villaran, of Peruvian nationality, did not participate in the discussion or decision in the present case.
Dated:	27 February 2004
Citation:	Galindo Cardonas v. Peru, Petition 11.568, Inter-Am. C.H.R., Report No. 14/04, OEA/Ser.L/V/II.122, doc. 5 rev. 1 (2004)

I. SUMMARY

1. The instant report concerns the admissibility of petition Nº 11.568. The Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission", the "Commission" or "IACHR") initiated the proceeding on January 24, 1996, after receiving a petition dated January 3, 1996, submitted by Mr. Luis Antonio Galindo Cárdenas against the Republic of Peru (hereinafter "Peru", "the State", or "the Peruvian State"). The petitioner alleges that he had been illegally detained on October 16, 1994, in application of Decree Law No. 25475 on terrorism, had been imprisoned in the barracks of the Yanac Anti-Subversive Batallion, in the city of Huánuco, for 31 days and was initially held incommunicado, subjected to psychological torture and falsely and publicly accused of having sought recourse to Decree Law No. 25499, known as the Law on Repentance. He further alleges that the State has not fulfilled its obligation to investigate the complaints and to punish those responsible.

2. The petitioner alleges consequently that the Peruvian state violated his rights to humane treatment, personal liberty, freedom from ex post facto laws, to compensation, to have his honor respected and his dignity recognized, the right of correction and reply, the right of protection of the family, freedom of movement and residence, the right to a fair trial and the right to judicial protection, enshrined in Articles 5, 7, 9, 10, 11, 14, 17, 22, 8 and 25 of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"), respectively, in accordance with Article 1.1 of the aforementioned international instrument.

3. The State for its part alleges that the petitioner has not exhausted all the remedies available under domestic law and that the petition was presented after the deadline for presentation.

4. After reviewing the arguments of the parties and compliance with the requirements for admissibility provided for in the Convention, the Commission decided to declare the petition admissible in accordance with the provisions of Articles 46 and 47 of the American Convention on Human Rights, and without prejudging the substance of the case.

II. PROCESSING BY THE COMMISSION.

5. On January 24, 1996, the Commission, in accordance with its Rules of Procedure then in force, opened the case, transmitted the pertinent parts of the complaint to the Peruvian State and requested information to be submitted within a period of 90 days. The State responded in its communications of April 29 and May 6, 1996. On June 10, 1996, the petitioner submitted observations on the reply of the State. After an extension had been granted, the State submitted its observations on December 26, 1996. The petitioner provided additional information on October 6, 1996, on December 25, 1996, and on January 8, 1997. The petitioner responded to the State's observations on January 23, 1997.

6. Both parties subsequently presented additional observations on various occasions reiterating their main arguments, which were transmitted to the opposing side. On November 29, 2001, the State submitted a copy of reports of the Huánuco Counter-Terrorism Department concerning the actions of the police in the case. The petitioner and the State made additional observations on the matter, which were transmitted to the opposing side.

7. On August 11, 1997, the State requested a private hearing of the case, which was granted for October 9, 1997, in application of Article 67.3 of its Rules of Procedure then in force.

8. On December 26, 1996, the State indicated that it was willing to initiate a friendly settlement procedure, to which the petitioner agreed on various occasions. However, on October 15, 2001, the State considered that the friendly settlement procedure was not appropriate.

II. POSITIONS OF THE PARTIES

A. Position of the petitioner

9. The petitioner alleges that on or about September 15, 1994, while working as a provisional member of the High Court of Justice of Huánuco, he became aware through unofficial sources that his name had been mentioned in a statement to the police by a member of the subversive group Sendero Luminoso, who had accused him of being a member of that organization through the "Association of Democratic Lawyers".

10. On October 14, 1994, the petitioner presented himself to the offices of the Counter-Terrorism Command (hereinafter "JECOTE") of the Huánuco National Police in order to clarify the situation. There he was told to go to the Army Military Headquarters, where he met with the

Head of the Political/ Military Command, Colonel EP Eduardo Negrón Montestruque. The petitioner alleges that the meeting lasted approximately three hours and dealt with the accusations made against him and which were related to events that had taken place 1993, when he was ordered under threat to defend a person who had been detained for the crime of terrorism. He had abandoned the defense and had moved to Lima. At the end of the meeting, the petitioner returned to his job as a judge and participated in an extraordinary session of the High Court of Huánuco.

11. The petitioner alleges that on October 16, 1994, at about 9:30 a.m., the President of the Republic, Alberto Fujimori, made public statements in which he accused of being members of Sendero Luminoso the President of the High Court of Huánuco and the Rector of the Hermilio Valdizán University of Huánuco, among others, and reported that they had been detained in an operation and had sought recourse to Decree Law No. 25499, the Law on Repentance.[FN2] At approximately 10:30 a.m. on the same day, the Head of JECOTE had turned up at his home and requested that he accompany him to the "Yanac" Army Headquarters to meet with the Head of the Political/ Military Command, to which he had agreed. Once at the Army Headquarters, he had been made to wait for approximately five hours before the Head of the Political/Military Command had informed him of the statements of President Fujimori, of which he had had no information up to that point and which were related to his case.[FN3] The petitioner alleges that he denied belonging to that group and demanded that he be set free immediately. Nevertheless, he was detained in that military establishment from that day on.

[FN2] In his communication of August 29, 2001, the petitioner provided two videotapes containing these and other statements.

[FN3] The statements by President Fujimori were repeated on October 17, 1994 in official army communiqué No. 068/RRPP/F-H, in which it was indicated that the petitioner had been detained since October 14, 1994, which the petitioner alleges is incorrect.

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12. The petitioner alleges that during his detention he was pressured psychologically by the Head of the Political/Military Command, Colonel EP Eduardo Negrón Montestruque, the Provincial Criminal Prosecutor, Ricardo Robles Coz, and members of the national police of Peru to implicate other judges as terrorists and to seek recourse to the Law on Repentance, which he refused to do.

13. According to the petition, it was only on October 18, 1994 that he was permitted to communicate with his wife. Through her he had submitted his resignation from the post of judge on October 19, 1994, determining that his detention was aimed at damaging the image of the judicial branch in Huánuco.

14. He alleges that a police statement was taken from him by JECOTE and the National Counter-Terrorism Command of Lima (DINCOTE-Lima) in the presence of the Deputy Provincial Prosecutor, without the presence of a judge, and that this statement had been misplaced. Also, on October 26, 1994, the Attorney General of the Nation, Dr. Blanca Nélida Colán Maguiña, visited and interviewed the detainee. The petitioner alleges that he complained

of the injustice and psychological abuse to which he had been subjected and attaches a copy of the record of that complaint.

15. The petitioner alleges that while he was being illegally detained at the Army Military Headquarters he only had access to potable water for 10 minutes in the morning and 10 in the evening. He further alleges that during the night shots were fired in the window of his room and that in the early morning hours he heard the anguished cries of persons who were being punished. He also alleges that the authorities permitted incidents to occur in the early morning hours with the aim of driving fear into him and breaking him down, such as the entry into his cell while he was asleep of the "hooded repented female terrorist" for him to be pointed out as the "democratic attorney".

16. According to the complaint, after 31 days of illegal detention, the Provincial Prosecutor determined that there were no grounds for charges to be brought against him, a decision that was confirmed by the Office of the Senior Prosecutor, which ordered the petitioner's release on November 16, 1994. The petitioner attaches a copy of a request of December 13, 1995 in which he requested from the Prosecutor of the First Criminal Jurisdiction of Huánuco, Dr. Ricardo Robles Coz, certified copies of the investigation led against him, alleging that his request had not been granted.[FN4] On December 16, 1994, he complained to the Senior Criminal Prosecutor of Huánuco, again without positive results.

[FN4] In that request, the petitioner denounced his detention as illegal and stated that he had been the victim of psychological torture and had been held incommunicado.

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17. The petitioner alleges that by being publicly accused of being a repented terrorist, his physical and personal integrity had been endangered, he had been exposed to harassment in various public places and his professional work as an attorney had been impaired. He further alleges that he and his family, especially his wife and his son Luis Idelso Galindo Díaz, had suffered grave moral harm.

18. The petitioner alleges that the Peruvian State violated his right to personal liberty, since he had been detained without a prior court order and without having been caught in flagrante delicto. He alleges that he was never formally advised of the charges against him, that he was not informed of the reasons for his detention, nor was he given any record of his detention or release. He stated that the period of his unlawful detention exceeded all legal limits, including those provided for crimes of terrorism. He adds that he was held in a detention center that was not authorized by the law.

19. The petitioner further alleges that the Peruvian State violated his right to freedom of movement and residence, since he was forced to abandon his residence in the city of Huánuco in the face of continuing threats to once again deprive him of his freedom if he did not cease his public complaints, threats that were made by the Head of the Political/Military Command of Huánuco and by the Provincial Criminal Prosecutor of Huánuco.

20. The petitioner alleges that the State of Peru violated his right to protection of his honor and dignity because he had been presented to public opinion as an alleged member of the armed group Sendero Luminoso who had had recourse to the Law on Repentance.

21. He further alleges a violation of Article 9 of the Convention, since the characterization of the crime of terrorism in Decree Law No. 25475, pursuant to which the investigation against him had been conducted, is the basis of the characterization established in Decree Law No. 25659, which had been called into question by the Inter-American Court as violating the principle of legality.

22. As regards the exhaustion of domestic remedies, the petitioner states that his family did not bring legal action while he was being held in detention, since they had been threatened by the Peruvian army that, should they do so, the petitioner would not regain his freedom. He further alleges that a state of emergency had been declared in the city of Huánuco under the control of the Political/Military Command, which was headed by the author of the alleged violations, Colonel EP Eduardo Negrón Montestruque as the highest authority in the zone. As a result, the constitutional guarantees were not in force and proceedings to enforce the guarantees were not protected, since the organs of justice and oversight of the city were subordinated to the Political/Military Command.

23. The petitioner alleges that immediately upon regaining his freedom, he had lodged a complaint against the Provincial Prosecutor of Huánuco, Ricardo Robles y Coz, and against the Senior Prosecutor of Huánuco, Carlos Schult Vela, for the crimes of abuse of authority against the jurisdictional function and malfeasance in office as a consequence of his arbitrary detention. However, as indicated in the complaint brought before the Inter-American Commission, in a decision dated May 8, 1998, the Internal Oversight Office of the Attorney General ordered the closing of the file on the complaint, in application of Article 4 of Amnesty Law No. 26479.

24. The petitioner also filed a complaint with the Executive Council of the Judicial Branch, which in its decision of January 17, 1995, decided to demand from the army a comprehensive investigation of the case and the punishment of those responsible and to dispatch an official letter to the Attorney General of the Nation and to the Ministry of the Interior to the same end. He alleges that, despite that decision, the State has not fulfilled its obligation to conduct a timely and effective investigation. He further alleges that he had made various approaches to the Human Rights Commission of the Democratic Constituent Congress, to the Office of the Attorney General of the Nation and to the Ministry of Defense, all without result.

25. As regards respecting the deadline for presentation of the petition, which had been challenged by the State, the petitioner attached a copy of a formal complaint that had been sent to APRODEH on January 13, 1995 and of a communication that had been sent by fax to the Inter-American Commission on March 15, 1995, which referred to the complaint.

B. The State

26. The State for its part argued that the petitioner had been detained in order to establish his criminal responsibility for the crime of terrorism, since a person subject to the regime of

repentance had pointed him out as a member of an organization with links to Sendero Luminoso. The State indicated that a statement of this type constitutes sufficient reason to justify a preliminary investigation and provisional detention, particularly in the context of a state of emergency. [FN5]

[FN5] Observations of the State of December 26, 1996.

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27. The State added that the detention of the petitioner was governed by the norms laid down in Act No. 24150 as modified by Decree Law No. 749, which govern police action in zones declared to be in a state of emergency, as well as the provisions contained in the legislation on national pacification. The State alleges that, according to a report of March 25, 1996, the petitioner had made a statement at the offices of DECOTE on October 15, 1994, when he requested recourse to the provisions of Decree Law No. 25499 by preparing a statement to that effect.[FN6] The State further alleges that the decision of November 4, 1994, the decision of the Criminal Provincial Prosecutor of Huánuco exempting him from punishment and the decision of the competent judge of November 9, 1994, who decided to close the file on the case, all demonstrate the lawfulness of the proceeding.[FN7]

[FN6] Note by the State of August 6, 2002 to which a copy of the statement is attached.
[FN7] Note by the State of October 15, 2001.

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28. The State also referred to the letter No. 1453-95-IN-010600000000 of July 10, 1995 addressed to the President of the Supreme Court of Peru, according to which the investigation of the complaint of the petitioner showed that the official of the National Police of Peru, Head of the JECOTE-Huánuco, was not liable since he had acted in accordance with the relevant laws and since all the police investigations had been carried out in the presence of the representative of the Office of the Attorney General. Consequently, the State argues that there was no functional responsibility of the members of the police force who participated in the acts under investigation.

29. With regard to the admissibility of the petition, the State alleged that the petitioner had not exhausted the remedies available under domestic law. [FN8] The State alleged that the petitioner did not file an application for a writ of habeas corpus, criminal proceedings against the military, police and political authorities allegedly implicated, a recourse or action for protection (amparo) against the decision of the Senior Prosecutor approving his recourse to the Law on Repentance, or civil proceedings for extra-contractual liability. It argued that the Peruvian legal system provided for such actions, that they were appropriate, and that the petitioner did not claim that he had been prevented from using or exhausting the remedies available under domestic law.[FN9]

[FN8] Reply of the State dated May 6, 1996.

[FN9] Idem and observations of the State of December 26, 1996.

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30. With regard to the effectiveness of the remedy of habeas corpus, the State alleged that, while the Inter-American Court of Human Rights has established that the remedies under domestic law may be presumed to be ineffective in certain circumstances, these circumstances were not present in late 1994 when the facts are alleged to have taken place, since a decline in the levels of political violence was recorded at the time compared with the period from 1980 to 1992. The State argued further that, in accordance with Article 200.6 of the Peruvian Constitution of 1993, the declaration of any emergency regime does not suspend the right of private individuals to file an application for constitutional protection in respect of those rights not directly affected by the suspension.

31. Concerning the effectiveness of the criminal actions, the State observed with respect to the petitioner's argument on the Amnesty Law that, since the complaint refers to alleged violations of the norms of due legal process that took place after a lawful detention, the applicability of Act No. 26479 did not in any way impair the right of the complainant to go before the organs of national jurisdiction. [FN10]

[FN10] Idem.

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32. In its note of December 26, 1996, the Peruvian State alleged that the petitioner had filed his complaint after the period provided for in the Convention. The State argued that, since the petitioner had not exhausted the remedies available under domestic law, the period should be counted from the time that he was detained, that is, from October 16, 1994. Since the complaint was dated January 3, 1996, it requests that the Commission declare the petition inadmissible.

III. Consideration by the Commission

A. Competence ratione personae, ratione temporis, ratione loci and rationae materiae of the Inter-American Commission

33. The Commission notes that Peru has been a party to the American Convention since July 28, 1978, the date on which it deposited the appropriate instrument of ratification.

34. The petitioner is entitled under Article 44 of the American Convention to file complaints to the Commission. The petition identifies as the alleged victim an individual in respect of whom Peru undertook to respect and guarantee the rights enshrined in the American Convention. The Commission is therefore competent ratione personae to hear the petition.

35. The Commission is competent ratione loci to hear the petition inasmuch as the latter alleges violations of rights protected in the American Convention that took place within the territory of a State party to the Convention. The Commission is also competent ratione temporis insofar as the obligation to respect and guarantee the rights protected in the American

Convention was already in force for the State at the date on which the acts alleged in the petition are supposed to have occurred. Lastly, the Commission is competent ratione materiae, insofar as the petition denounces violations of human rights that are protected by the American Convention.

B. Other requirements for admissibility of the petition

1. Exhaustion of domestic remedies

36. Article 46(1)(a) of the American Convention provides that the admissibility of a petition presented to the Commission is subject to the requirement "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law" Article 46(2) of the Convention provides for three situations in which the rule requiring the exhaustion of domestic remedies shall not apply:

where the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (b) where the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; and (c) where there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

37. As seen above, the parties to the present case are in dispute over the question of the exhaustion of domestic remedies in Peru and it is therefore for the Inter-American Commission to rule on the matter. On the one hand, the State argues that the stipulated requirement has not been fulfilled and that none of the abovementioned exceptions should therefore apply; on the other hand, the petitioner alleges that due process of law did not exist in Peru for the protection of rights alleged to have been violated.

38. When a State contends that the remedies under domestic law have not been exhausted, it has a responsibility to indicate which remedies should be exhausted and to demonstrate their effectiveness.[FN11] In such case, the burden of responsibility then shifts to the petitioners who must demonstrate that the remedies in question were exhausted or that one or other of the exceptions provided for in Article 46(2) of the American Convention is applicable.

[FN11] Inter-American Court of Human Rights, Case of Velásquez Rodríguez. Preliminary Exceptions. Judgment of June 26, 1987. Series C No. 1, para. 88; Case of Fairén Garbi and Solís Corrales. Preliminary Exceptions. Judgment of June 26, 1987. Series C, No. 2, para. 8; Case of Godínez Cruz. Preliminary Exceptions. Judgment of June 26, 1987. Series C. No. 3, para. 90; Case of Gangaram Panday. Preliminary Exceptions. Judgment of December 4, 1991. Series C, No. 12, para. 38; Case of Neira Alegría et al. Preliminary Exceptions. Judgment of December 11, 1991. Series C No. 13, para. 30; Case of Castillo Páez. Preliminary Exceptions. Judgment of January 30, 1996. Series C, No. 24, para. 40; Case of Loayza Tamayo. Preliminary Exceptions. Judgment of January 31, 1996. Series C, No. 25, para. 40; Exceptions to the exhaustion of remedies under domestic law (Articles 46.1, 46.2.a and 46.2.b of the American Convention on Human Rights). Advisory Opinion – OC-11/90 of August 10, 1990. Series A, No. 11, para. 41;

Case of Castillo Petruzzi et al. Preliminary Exceptions. Judgment of September 4, 1998. Series C, No. 41, para. 63.

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39. Since the petition refers to the failure to investigate and punish those responsible for the alleged illegal detention and psychological torture of the petitioner, the Inter-American Commission is of the view that the appropriate remedy is to institute and pursue a criminal proceeding to determine responsibility. The Inter-American Commission has indicated on other occasions that once a crime subject to automatic prosecution is committed, the State has an obligation to institute and pursue the criminal proceeding up to its ultimate consequences and that, in such cases, this is the ideal way to clarify the facts, bring to justice those responsible and mete out the appropriate criminal punishment, in addition to providing for other means of financial compensation.[FN12] Consequently, the victim or his relatives may not be required to exhaust remedies under domestic law by bringing such actions.[FN13]

[FN12] IACHR, Report Nº 83/01 Case 11.581, Zulema Tarazona Arriate, Norma Teresa Pérez Chávez and Luis Alberto Bejarano Laura v. Peru, October 10, 2001 para. 25.
[FN13] IACHR, Report Nº 52/97, Case 11.218, Arges Sequeira Mangas v. Nicaragua, February 18, 1998, para. 96.

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40. The obligation to investigate, prosecute and punish those responsible for violations of human rights is an inescapable duty of the State[FN14] and is therefore not subject to prior personal actions being brought by the victims against the agents implicated, independently of what the domestic law may provide in the matter.[FN15] One consequence of this is that a public official, unlike a private individual, has a legal obligation to denounce any crime by a public authority of which he becomes aware in the exercise of his functions. This requirement is confirmed in some procedural systems that deny the victim or his family the right to institute proceedings, with the State exercising a monopoly over criminal proceedings. And in those other cases in which this right is provided, its exercise is not compulsory but optional for the victim of the violation and is not a substitute for action by the State.[FN16]

[FN14] IACHR, Case of Velásquez Rodríguez. Judgment of July 29, 1988. Series C, Nº 4, para. 177.
[FN15] IACHR, Zulema Tarazona Arriate, Norma Teresa Pérez Chávez and Luis Alberto Bejarano Laura v. Peru, cit.
para. 27.
[FN16] IACHR, Arges Sequeira Mangas v. Nicaragua, cit, paras. 96-97; Report Nº 86/99, Case 11.589, Armando Alejandre Jr. Carlos Costa, Mario de La Peña and Pablo Morales v. Cuba, September 29, 1999, paras. 47-49.

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41. In situations such as that described in the petition under review, in which the illegal detention and psychological torture of a person is denounced and which are treated under the

domestic law as crimes that are automatically subject to prosecution, the domestic remedies that must be taken into account for the purposes of the admissibility of the petition are those related to the investigation and punishment of those responsible for such acts. In the instant case, the petitioner brought to the attention of the Attorney General of the Nation, in person, the illegal circumstances of his detention, as described in the document included with the file. In addition, once he regained his freedom, the petitioner filed a complaint with the Office of the Attorney General against the officials whom he considered responsible.[FN17] That Office, as the organ of the State responsible for instituting at its own initiative or at the request of the party the legal proceeding in defense of the legality of the rights of citizens and of the public interests protected by the law, did not bring the appropriate criminal action before the courts of justice. On the contrary, a decision of the Internal Oversight Office of the Attorney General, dated May 8, 1998, which was notified to the petitioner in 2001, provided for the complaint to be filed away in application of Article 4 of Amnesty Law No. 26479. That law granted amnesty to military, police and civilian personnel for crimes committed during or as a consequence of the fight against terrorism. Subsequently, Article 2 of Act. No. 26492 prohibited the review in a judicial forum of Act No. 26479. Article 3 of the law interpreting those provisions further provided that application of the amnesty law by Peruvian jurisdictional organs was mandatory.

[FN17] The file also contains a request dated January 16, 1995 in which the petitioner denounces the acts to the President of the Council of Prosecutors in the Office of the Attorney General and requests that the appropriate investigation be carried out.

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42. The Commission has already stated on other occasions that by virtue of those provisions the alleged victims were deprived of access to the domestic remedies and that these remedies proved in any case to be ineffective, thereby constituting the exceptions listed in Article 46(2)(b) and 46(2)(a) of the American Convention.[FN18] For the reasons indicated, the Commission rejects the exception claimed by the State.

[FN18] See for example IACHR, Report No. 42/99, Case 11.045, Hugo Muñoz Sánchez, Bertila Lozano Torres, Dora Oyague Fierro, Luis Enrique Ortiz Perea, Armando Richard Amaro Condor, Robert Edgar Teodoro Espinoza, Heráclides Pablo Meza, Felipe Flores Chipana, Marcelino Rosales Cárdenas and Juan Gabriel Mariños Figueroa (La Cantuta) v. Peru, March 11, 1999, paras. 42-43.

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43. The State alleged further that the petitioner should have filed an application for a writ of protection (amparo) against the decision of the Senior Prosecutor approving his recourse to the Law on Repentance. However, the State has not proven that such remedy was effective for the case in question.[FN19] The Commission observes that the file does not state that the petitioner has been notified of the decision to approve his recourse to the Law on Repentance. On the contrary, it states in the records that the complainant had made two requests to the Prosecutor's Office for copies of the proceedings against him, and an allegation not contradicted by the State that these were not provided. The State further alleged that the petitioner should have brought an

action for extra-contractual liability against the alleged authors of the violations that are the subject of the complaint. However, since the criminal action is the ideal means of clarifying the facts, prosecuting those responsible and providing for the appropriate criminal punishment, in addition to providing for other means of monetary compensation, the doctrine of the Commission holds that the petitioner was not required to exhaust this remedy.[FN20] The Commission therefore rejects the State's argument about the failure to exhaust the remedies under domestic law.

[FN19] Inter-American Court of Human Rights, Case of Castillo Petruzzi et al. Preliminary Objections. Cit., paras. 62-63.

[FN20] IACHR, Zulema Tarazona Arriate, Norma Teresa Pérez Chávez and Luis Alberto Bejarano Laura v. Peru, cit., paras. 25-31.

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44. In light of all of the above and of all the statements contained in the file on this matter, the Inter-American Commission determines, for the purposes of admissibility, that the exceptions to the requirement of prior exhaustion of the remedies available under domestic law provided for in Article 46(2)(a) and (b) of the American Convention are applicable to the present case.

45. The Inter-American Court of Human Rights has established that the invocation of the exceptions to the rule requiring that remedies under domestic law should be exhausted provided for in Article 46(2) is closely linked to the determination of possible violations of certain rights enshrined in the American Convention, such as the right to a fair trial and the right to judicial protection enshrined in Articles 8 and 25.[FN21]

[FN21] Inter-American Court of Human Rights, Case of Velásquez Rodríguez. Preliminary Exceptions, cit., para. 91. See in this connection also Judicial Guarantees during States of Emergency (Articles 27.2, 25 and 8 of the American Convention on Human Rights). Advisory Opinion OC–9/87 of October 6, 1987. Series A. Nº 9, para 24.

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46. However, by its nature and purpose, the content of Article 46(2) stands autonomously in relation to the substantive norms of the American Convention. Consequently, the determination of the applicability of the exceptions to the rule requiring the exhaustion of domestic remedies to the present case should be made beforehand and separately from the consideration of the substance of the case, since it is subject to different criteria of evaluation from that used to determine whether Articles 8 and 25 of the abovementioned international instrument have been violated. The causes and effects that have prevented the exhaustion of the remedies under domestic law in Peru with respect to the present case will be examined in the report to be adopted by IACHR on the substance of the dispute, with a view to determining whether they indeed constituted violations of the American Convention.

2. Deadline for the presentation of petitions

47. In accordance with Article 46(2) of the American Convention, the absence from the domestic laws of due legal process for the protection of the rights alleged to have been violated results in the inapplicability of the requirements for the exhaustion of the remedies under domestic law and for the filing of the complaint within the period of six months from the date of notification of the final decision. Article 32(2) of the Rules of Procedure of the IACHR provides in this respect:

In those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

48. The petition that gave rise to the consideration of this case is dated January 3, 1996. However, the petitioner states that he forwarded via APRODEH a petition dated January 13, 1995, as well as a fax dated March 15, 1995 that referred to the petition. While the Commission has no record of the receipt of any of these documents on the dates indicated, the file does contain a number of communications sent by fax by the petitioner from April 27, 1995.[FN22]

[FN22] The petitioner sent similar faxes and letters on June 26, 1995, on July 7, 1995, on October 19, 1995, on September 1, 1995 and on December 21, 1995. On February 8, 1996, APRODEH transmitted a copy of a complaint dated January 13, 1995 that had been sent to the Commission in 1995 but which had apparently gone astray.

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49. Bearing in mind that the filing of the complaint brought by the petitioner before the Office of the Attorney-General was ordered by decision of May 8, 1998 and that, as stated in the note transmitted to the Inter-American Commission on September 15, 2002, that decision was notified to the petitioner in 2001, in the view of the Commission, based on the above considerations, the petition was presented within a reasonable period.

3. Duplication of international procedures and international res judicata

50. The file on the petition contains no information whatsoever that might lead to the conclusion that the instant case is pending in another forum for international settlement or that it had been previously decided by the Inter-American Commission. The Commission therefore concludes that the exceptions provided for in Article 46(1)(d) and in Article 47(d) of the American Convention are not applicable.

4. Characterization of the acts alleged

51. The allegations of the petitioner refer to his alleged illegal detention under Decree Law No. 25475 on terrorism, detention at a military base for 31 days, being held incommunicado, psychological torture, and the failure to investigate and punish those responsible for these acts.

For its part, the Peruvian State alleges that the acts do not constitute possible violations of the American Convention.

52. It is not necessary to establish at the present stage of the proceeding whether the American Convention has indeed been violated. For the purposes of admissibility, the Commission must determine whether the acts described constitute a violation, as provided for in Article 47(b) of the American Convention. The criteria for evaluation of these matters are different from the criteria that must be used to decide on the substance of a complaint. The Inter-American Commission must undertake a prima facie review to determine whether the complaint is based on the apparent or potential violation of a right guaranteed in the American Convention. This is a summary analysis that does not prejudice or advance an opinion on the substance of the dispute. The distinction between the study of the declaration of admissibility and the study required to determine whether a violation has taken place is set out in the Commission's Rules of Procedure, which establish in a clearly differentiated manner the phases of admissibility and substance.

53. The allegations of the petitioners relate to acts that, were they true, would constitute violations of various of the rights guaranteed by the American Convention. Despite the fact that the State alleges that there was no violation whatsoever, it has recognized that the petitioner was detained as a person allegedly linked to Sendero Luminoso, in application of Decree Law No. 25475 on terrorism, and has not denied that he had been detained at the Headquarters of the Yanac Anti-Subversive Batallion for a period of 31 days, that he was initially held incommunicado, that the petitioner complained of having been illegally detained and psychologically tortured and had on several occasions requested that the acts denounced should be investigated, but that the State had failed to investigate the complaints or punish those found to be responsible. The Commission is of the view that the acts described deserve a more precise and comprehensive review of the petition in the substantive stage.

54. The Commission considers that the acts, should they be proven, constitute violations of the rights guaranteed in Articles 5, 7, 9, 8 and 25 of the American Convention, in relation to Articles 1 and 2[FN23], with respect to Mr. Luis Antonio Galindo Cárdenas. The Commission therefore considers that the petitioners have met prima facie the conditions set out in Article 47(b) of the American Convention.

[FN23] While the norm laid down in Article 2 of the American Convention was not invoked by the petitioner, the Inter-American Commission deems it relevant in application of the principle iura novit curia.

V. conclusions

55. The Inter-American Commission concludes that it is competent to hear the substance of this case and that the petition is admissible, in conformity with Articles 46 and 47 of the American Convention. Based on the arguments of fact and of law put forward above, and without prejudice to the substance of the question,

The Inter-American Commission on Human Rights,

Decides:

1. To declare admissible the petition presented by Mr. Luis Antonio Galindo Cárdenas concerning alleged violations of Articles 5, 7, 9, 8 and 25 of the American Convention on Human Rights, in relation to Articles 1 and 2, by the Peruvian State.
2. To notify the parties of this decision.
3. To make available to the parties the documents and evidence contained in the file, which are at their disposal in the Secretariat of the Commission.
4. To continue with the analysis of the substance of the question.
5. To place itself at the disposal of the parties with a view to achieving a friendly settlement based on respect for the rights enshrined in the American Convention on Human Rights and to invite the parties to decide on this possibility.
6. To publish this decision and to include it in its annual report to the General Assembly of OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 27th day of February, in the year 2004. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President; Commissioners Evelio Fernández Arévalos, Paulo Sergio Pinheiro, Freddy Gutiérrez and Florentín Meléndez.