Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 83/05; Petition 644/00
Session:	Hundred Twenty-Third Regular Session (11 – 28 October 2005)
Title/Style of Cause:	Carlos Alberto Lopez Urquia v. Honduras
Doc. Type:	Decision
Decided by:	President: Clare K. Roberts; First Vice-President: Susana Villaran; Second Vice-President: Paulo Sergio Pinheiro; Commissioners: Jose Zalaquett, Evelio Fernandez Arevalos, Freddy Gutierrez, Florentin Melendez.
Dated:	24 October 2005
Citation:	Lopez Urquia v. Honduras, Petition 644/00, Inter-Am. C.H.R., Report No. 83/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
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I. SUMMARY

1. On December 13, 2000 the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the IACHR") received a petition from Carlos Alberto López Urquía (hereinafter "the petitioner") in which he alleged that the Republic of Honduras (hereinafter "the State" or "the Honduran State") was internationally liable for violation to his detriment of the following rights protected by the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"): right to a fair trial (Article 8); to judicial protection (Article 25) and to property (Article 21), all in relation to Article 1(1), which establishes the general obligation of the State to respect the rights protected by the Convention. According to the petitioner, the State committed the alleged violations by handing down arbitrary and illegal decisions in a case submitted to the Court of Administrative Matters ["Jurisdicción de lo Contencioso Administrativo"].

2. The Honduran State alleges that the decisions were handed down in accordance with Honduran law and that furthermore the petition is inadmissible because it was filed after the required time frame by a commercial firm.

3. After studying the arguments in fact and law submitted by the parties, and the evidence submitted, the IACHR concludes in this report that the case is inadmissible for not meeting the criteria prescribed in Article 47(b) of the American Convention.

II. PROCESSING BY THE INTER-AMERICAN COMMISSION

4. The petition was received on December 14, 2000. After the staff completed the documentation requested and reviewed it, the petition was submitted to the State on February 10, 2000. The State replied with a note of April 2, 2002, received by the IACHR on the eleventh of the same month and year. Relevant parts of the State's reply were forwarded to the petitioner on April 25, 2002, and he presented his observations on May 21, 2002.

III. POSITIONS OF THE PARTIES

A. The petitioner

5. The petitioner states that Carlos López Urquía presents his petition as an individual, the sole proprietor of the firm "Oficina de Higienización, control de Insectos y Roedores" [Office of Sanitation, Insect and Rodent Control] (hereinafter the "OCHIR") and alleges that the State has violated to his detriment the rights to a fair trial (Article 8); to judicial protection (Article 25), and to property (Article 21) protected by the American Convention, all as regards Article 1(1), which establishes the general obligation of the State to respect the rights protected by the Convention, by handing down arbitrary and illegal decisions in a case submitted to the Court of Administrative Matters. The petitioner alleges, inter alia, the following:

1. The contracts

6. The petitioner alleges that in 1990 Carlos López Urquía won two contracts from the Honduran Social Security Institute (hereinafter the "IHSS"), an autonomous entity of the State of Honduras, one for providing food services to the Social Service hospitals, and the other for cleaning services and fumigation of the IHSS. The contracts for services were signed on July 28 (contract 59/90 for cleaning and fumigation) and on June 25, 1990 (contract 60/90 for food service). For both contracts addenda were signed to extend the duration and modify the terms of the contract and addenda.

7. The petitioner alleges that neither of the two contracts complied with the provisions of the competitive bidding won by Mr. López Urquía because the contract for cleaning services and fumigation included an illegal discount of 15% the one for food service for the Social Service hospitals had a 20% discount, which are not authorized in the State Contracting Law that governs bids to and contracts by the State.

8. He alleges that in competitive bidding it is illegal to modify the price tendered to benefit or harm any of the parties, especially in this case, because food and sanitation services are considered supply contracts adjusted by common agreement of the parties, as provided in Articles 25, paragraph 2, and 91 of the State Contracting Law (Decree No. 148-85)[FN1].

[FN1] State Contracting Law:
Article 25.- Contracts shall be signed within thirty days following notification of their award.
Supply contracts are exempt from this requirement; they shall be entered into upon acceptance of the proposal communicated in writing by the contractor.

Provisions of the previous paragraph shall not apply when funding agreements signed by the Government of the Republic stipulate another procedure for formalizing said contracts.
Article 91.- A supply contract is one entered into by the Government with an individual or corporation that in exchange for a price commits to supplying one or more goods, on a single occasion or in a continuous and periodic manner.
Supply contracts regulated by applicable provisions of this law shall be those entered into by the Government for the shipment of goods, for cleaning or sanitation of buildings or other public properties, for providing insurance or other services as defined in the regulations, or procurement by whatever means of computer hardware and software.
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2. Alleged pressure for signing the contracts

9. He alleges that Mr. López Urquía signed these contracts under duress and in fear that he would be bankrupted if he did not do so. In this connection he presents notarized statements from persons that refer, among other things, to manifest hostility in the IHSS against Carlos López Urquía, to pressure exerted by officials for him to accept the discounts, and to the appointment of a negotiating committee to negotiate said discounts with him.

3. Administrative Claim

10. The petitioner states that on July 19, 1995 Mr. López Urquía filed an administrative claim to recover the illegal discount (15% of contract 59/90 for fumigation and 20% of contract 60/90 for food service)[FN2] and a second claim for the refusal of the IHSS to apply the escalator clause for increase in the minimum wage, overhead costs, and capital investment, an increase to which his client was entitled under Articles 69, 70, and 71 of the State Contracting Law of 1985 (Decree No. 148-85)[FN3] and in accordance with the decision of February 1, 1993, by the Court of Administrative Matters[FN4] in the suit filed "for the interpretation of and ruling on the effects of the contract." The petitioner alleges entitlement to these sums as recognized in the Report of Internal Audit of the IHSS of November 9, 1994, but says the IHSS has recognized some of these sums and not others.

[FN2] See Discount Clauses in judicial file Nº 222-96, Volume I of the Court on Administrative Matters, pp. 72 and 103.
[FN3] State Contracting Law:
Article 69.- When stipulated in the contract, the Government will honor monthly increases in the prices used or directly consumed in the job and duly evidenced by presentation of the corresponding documents. The contractor shall not retain these documents for more than three months without submitting them to review by the Government; after that period, he or she will lose all right of recourse. The right to apply the escalator clause was specifically recognized in the contract interpretation handed down by the Court of Administrative Matters on February 1, 1993. See contract opinion issued by the Court of Administrative Matters on February 1, 1993 in Annex No. 12 of the petition presented to the IACHR.
[FN4] Court of Administrative Matters, decision of February 1, 1993, on the suit for interpretation of and ruling on the effects of the contract. It found that the escalation clause

applied to contracts 059-90 Public Bidding 03-90 and number 060-90 Public Bidding 04-90. Document on the admissibility of the petition lodged by Carlos López Urquía with the IACHR, pp. 29-39 of the Annex.

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11. The petitioner states that to settle these claims the IHSS issued Resolution Nº 0171-96-TEG of the Executive Office, in the legal form of a Resolution declaring nullity of the actions in the administrative case without ruling on the substance of the matter and without any decision by the Office of the Attorney General of the Republic, as required by Article 119[FN5] de la Administrative Proceedings Act.

[FN5] Administrative Proceedings Act:
Article 119.- The acts listed in Article 34 shall be declared null and void by the organ that issued the act or the higher organ upon decision to that effect by the Office of the Attorney General of the Republic.

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12. The petitioner says he appealed this decision to the Board of Directors of the IHSS, which issued Resolution 019-JD-96, which instead of granting the appeal changed the nature of the administrative act, calling it a "ruling" [providencia] and not subject to appeal. The petitioner alleges that this resolution violates the provisions of Articles 126 and 127 of the Administrative Proceedings Act, which provides that the Government cannot correct a null act, or transform it into another act if the petitioner has presented an appeal or does not agree to it.[FN6] According to the petitioner, this was a way of not declaring the nullity of the administrative act and not recognizing the obligation of the IHSS to pay the sum owed, as requested by the petitioner. Then the petitioner presented a request for reconsideration, which was denied by Resolution 037-JD-96 of the Board of Directors of the IHSS.[FN7] He alleges that the abovementioned resolutions did not conclude the administrative proceeding as provided in Article 83[FN8] of the Administrative Proceedings Act and that they violate Articles 119, 126, and 127 of that law[FN9] and Article 120 of the General Law on Public Administration, which establishes the proper form for resolutions.

[FN6] See infra note Nº 9 the text of Articles 126 and 127 of the Administrative Proceedings Act.
[FN7] See court file Nº 222-96 of the Court of Administrative Matters, Preliminary Objections section: a) Resolution
Nº 0171-96-TEG, pp. 157 to 161; b) Resolution Nº 019-JD-96, pp. 171 to 173; and c) Resolution Nº 037-JD-96, pp. 177 to 178.
[FN8] Administrative Proceedings Act: Article 83.- The resolution shall conclude the proceeding and in its operative portion resolve all questions posed by the parties and any others that may arise from the case, whether they were raised by the parties or not.
[FN9] Administrative Proceedings Act:
Article 119.- See supra note 5.

Article 126.- The Government shall perfect annullable acts, correcting their defects, unless legal action has been filed against them.
The corrective act will take effect immediately.
If the defect was a lack of jurisdiction, the correction shall be made by the competent organ when it is a higher-ranking organ than the one that took the act.
Acts that are defective for lack of some authorization can be remedied by granting of authorization by the competent organ.
Provisions of the preceding paragraph shall not apply in cases of omission in reports, decisions, or required proposals.
Article 127.- Notwithstanding, if the null act fulfills all the requisite qualifications for another act, it shall be converted to that act and produce its effects if the interested party so agrees.
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4. Legal remedies

13. The petitioner alleges that on September 16, 1996 he filed an action for nullity of the IHSS administrative resolutions with the Court of Administrative Matters. The IHSS reiterated its preliminary objections, arguing that the administrative acts subject of the suit could not be challenged in the administrative court because they were "rulings" and not resolutions. On December 3, 1996, the respective court rendered an interlocutory decision[FN10] throwing out the preliminary objections and stating that the administrative acts at issue were indeed subject to challenge in that jurisdiction, because Resolutions 0171-96-TEG of the Executive Office and 019-JD-96 and 037-JD-96 of the Board of Directors of the IHSS were formal resolutions.

[FN10] See interlocutory decision of December 3, 1996 court file Nº 222-96, separate section on Preliminary Objections, of the Court of Administrative Matters, pp. 205-207.
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14. The petitioner states that three years later, on April 23, 1999, the same Court of Administrative Matters, in a final ruling, rejected the challenge to the resolutions because they were "rulings" rather than "resolutions", thus contradicting the decision of the same court in the interlocutory decision three years earlier with regard to the preliminary objections, which had been sustained by other legal bodies (Court of Administrative Appeals and Supreme Court).

15. The petitioner filed an appeal against the decision of April 23, 1999. The Court of Administrative Appeals upheld the ruling in a decision on August 30, 1999. The petitioner filed a motion to vacate this decision in an action that was decided by the Supreme Court in a decision on June 6, 2000, which rejected the motion on each of its seven grounds. The petitioner filed action for reconsideration, which was denied by the Supreme Court in a decision of August 1, 2000, of which he was notified on August 7, 2000, thereby, according to the petitioner, exhausting all the domestic remedies available to him under the laws of Honduras.

5. Alleged bias of the courts

16. The petitioner alleges that the judicial officials involved tried to help the State to avoid having to pay the sums claimed, and were influenced by extra-judicial interests that caused them to issue arbitrary and biased decisions. In this regard, he states that in Act No. 1757-93 of the meeting of the Board of Directors of the IHSS on Thursday, December 2, 1993, Raúl Barahona, Executive Deputy Director of the IHSS, said that he had met several times with the Comptroller of the Republic, who asked him to speak directly to the Chief Justice of the Supreme Court to ask him to tell the judges of the Court of Administrative Matters that if they got another similar case they should rule in favor of the IHSS".[FN11] He said this act was reported to the Prosecutor General's Office [Fiscalía General de la República], which failed to investigate it.[FN12] The petitioner further alleges that Edmundo Orellana told the Honduran media that as Prosecutor General of the Republic he received a request from officials of the executive branch to influence judges of the Court of Administrative Matters in favor of the IHSS[FN13].

[FN11] See Act No. 1757-93 of the meeting of the Executive Board of the IHSS on Thursday, December 2, 1993, court file Nº 222-96, Volume I of the Court of Administrative Matters pp. 689, 710, and 711.
[FN12] See complaint against the Prosecutor General of the Republic in Annex Nº 14 of the petition to the IACHR.
[FN13] See "Sí me insinuaron que torciera la justicia: Orellana," ["Yes, they asked me to distort justice: Orellana"] La Tribuna newspaper,Honduras, Wednesday August 21, 1996, p. 10 and "Sí existieron presiones para favorecer al Estado" ["Yes, there was pressure to favor the State"] El Periódico newspaper of Thursday, August 22, 1996, p. 11 (Annex Nº 17 of the petition to the IACHR).

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6. Rights allegedly violated

17. The petitioner alleges that the State violated the right to a fair trial established in Article 8 of the Convention because the courts ignored the evidence presented; initially they declared the preliminary objections invalid, upholding his position, but then they declared the action inadmissible in a definitive decision; they did not investigate an allegation of judicial corruption and they issued a verdict to favor their interests. He further alleges that the right to judicial protection under Article 25 of the Convention was violated because the State failed to protect him against illegal actions by public officials on behalf of the State itself. He alleges that Mr. López Urquía's right to property, established in Article 21 of the Convention, was violated because he was deprived of assets belonging to him.

7. Petition

18. The petitioner requests a declaration that Honduras has violated rights guaranteed in the Convention in Articles 8 (Right to a Fair Trial); 21 (Right to Property) and 25 (Right to Judicial Protection), all three in regard to Article 1.1 (Obligation to guarantee and respect). He further requests that a recommendation to the State of Honduras to punish as provided by law those officials responsible for the violation of the rights and guarantees established in the American Convention on Human Rights.

B. Position of the State

19. The State specifically alleges that the Commission lacks competence to consider the petition because the American Convention protects all persons against acts that violate human rights (Article 1(1) of the Convention) and not a corporation or business such as the OHCIR, which is registered in the Business Register of Francisco Morazán Department. The State further alleges that the petitioner did not file the petition in a timely fashion, because more than six months elapsed between the date domestic remedies were exhausted (August 10, 2000) and the date the petition was submitted to the IACHR (January 30, 2002), so the petitioner failed to comply with the requirement for admissibility set in Article 46(b) of the Convention. As regards the petitioner's allegations, the State offered the following information, inter alia:

1. The Contracts

20. The State alleges that on June 28, 1990 the IHSS and the petitioner, as general manager and owner of OHCIR, a contract for cleaning and fumigation Nº 59-90, valid for one year from July 1, 1990 to June 1, 1991. At Mr. López Urquía's request, by written addendum of July 27, 1991, the contract was extended for two years, from June 2, 1991 to July 1, 1993. In addition, an extension of the contract was signed on July 5, 1993, which prolonged its validity from July 2 to December 31, 1993. The State says that food service contract Nº 60-90 was signed on June 25, 1990 for a one-year period from July 1, 1990 to June 1, 1991 and that at Mr. López Urquía's request the contract was extended for two years, from July 2, 1991 to July 1, 1993. A further extension of the contract was signed for the period from July 2 to December 31, 1993[FN14].

[FN14] See Annex to the State's Response of April 11, 2002.

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21. The State alleges that the 15% and 20% discounts in the abovementioned contracts are not illegal because they are within the terms of the contracting conditions and were therefore included in the contracts. That these contracts therefore meet the basic requirements for any contract: consent, purpose, and motive. That the petitioner in the appeal for application of the escalator clause for increase in minimum wage, overhead costs, and capital investment alleged that the State did not apply these adjustments and did not comply with the decision of February 1, 1993 of the Court of Administrative Matters, which ordered payment of the salary increases to the OHCIR.

22. In this regard Honduras alleges that Memorandum No. 014-CB, of February 12, 1993, addressed to the Administrative and Financial Director of the IHSS by the Committee that prepared the "OHCIR Salary Adjustment Report" proves compliance with said decision; that this report was even signed by the petitioner, thereby belying what he said in the petition.[FN15] Similarly, the Internal Audit Report of the IHSS "Payments Made to the OHCIR", of November 9, 1994, which contains calculations of the adjustments to minimum wages and overhead costs as stipulated in said decision, establishes that the IHSS made additional payments to the OHCIR in

the amount of two million two hundred fifty thousand six hundred fifty-six lempiras and 19 cents (L.2,250,656.19).

[FN15] See Memorandum Nº 014-CB, of February 12, 1993, addressed to the Administrative and Financial Director of the IHSS by the Committee that prepared the "OHCIR Salary Adjustment Report". Annex to the written response of the State of April 2, 2002, received by the IACHR on the 11th of the same month and year. (IACHR T.1)

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2. There was no pressure to sign the contracts

23. The State asserts that the OCHIR, through its owner, general manager, and legal representative Carlos López Urquía, voluntarily signed the original one-year contracts and after their expiration requested extensions under the same agreed-upon terms, which were granted in both contracts to December 1993. That if the alleged damage had occurred, it did so only between July 1, 1990, and June 1, 1991, the term of the original contracts since he himself negotiated the subsequent extension of the same financial provisions agreed upon in the original contracts. According to Honduras this demonstrates Mr. López Urquía's concurrence with those terms. Furthermore, if he considered that his consent was given under duress when he signed the original contracts, he should have requested their nullification under Article 753 of the Business Code.

24. As regards the various notarized statements presented by the petitioner to the Commission as evidence of the alleged pressure, the State asserts that they are specious evidence gathered in a biased and unilateral manner that has no legal evidentiary value and are not binding to the State of Honduras because notarized statements do not comply with the formal requirements for depositions, in statements or criteria perfectly consonant with the positions adopted by the OHCIR.

3. Administrative Claim

25. Honduras states that the petitioner filed an administrative claim with the Executive Office of the IHSS for payment of certain sums for repayment of the illegal discount in invoices to the IHSS and for application of the escalator clause for increase in the minimum wage, overhead costs, supplies, and capital investment. This was done on July 19, 1995, nearly two years after December 1993, when the last contract extension expired. The Executive Office decided the matter in Resolution 0171-96, which declared the nullity of certain actions[FN16] for not having been reported or requested by the petitioner in the administrative claim.

[FN16] The State asserts that the nullity of actions was declared as of the note of October 9, 1995, which requested the naming of an expert, to the procedural correction of November 3, 1995, letting stand subsequent actions because they were unrelated to those annulled.

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26. The petitioner appealed this decision to the Board of Directors of the IHSS, which, in resolution Nº 019-JD-96 of March 26, 1996, decided to change the decision of the Executive Board in order to treat the resolution as a simple bureaucratic ruling to correct irregularities in the case. This resolution nullified the actions from the note of October 9, 1995 to the action of November 3, 1995, which proposed and posited expert evidence that was not provided in a timely and proper manner by the petitioner, and let the other actions stand.[FN17] On April 30, 1996 the petitioner lodged a request for reconsideration, which was denied in Resolution No. 37-JD-96, of August 7, 1996.

[FN17] This resolution conforms to the provisions of Article 122 of the Administrative Proceedings Act, because it corrects the procedural defect in order to continue with the proceeding until issuance of a definitive ruling on the claim so when the resolution was firm the case was returned to the Executive Office to continue with the legal proceeding until ruling definitively on the claim.

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27. The State asserts that the resolution of the Board of Directors was a purely procedural step to correct irregularities in the case and nullify actions taken without observing administrative procedure so that a definitive decision on the substance could be made (Article 122 of the Administrative Proceedings Act). Therefore, in this case, when the procedural resolution was finished the case was returned to the Executive Office to continue with the legal proceeding until it reached a final decision. The Executive Office thus issued Resolution 1910-96 TEG, on September 6, 1996, in which it denied the substance of the administrative claim.

28. As for the claim for application of the escalator clause for increase in the minimum wage, overhead costs, supplies, and capital investment, the State asserts that the Director's Office denied it in Resolution No. 1910-96-TEG because the OHCIR failed to comply with the terms established in the February 1, 1993 decision of the Court of Administrative Matters. That said decision ordered the payment of salary increases to the OHCIR but also required the claimant to provide supporting documents to justify the increases in the prices, materials, and services used as part of the contract, as established in Article 69 of the State Contracting Law,[FN18] which the OCHIR failed to do.

[FN18] The escalator clause mentioned in the State Contracting Law that applied at the time (contained in Decree Nº148-85 of August 29, 1985), stipulates that in an action to claim recognition for increases in prices of materials and services used or consumed, the contractor shall not retain supporting documents for more than three months without submitting them to review by the Administration (IHSS), and after that period loses all right to claim reimbursement.

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29. According to Honduras the petitioner's administrative rights were not violated because the petitioner "forgot in his suit to challenge and contest Resolution No. 1910-96-TEG of the Executive Office of the IHSS"[FN19], which decided the substance of the case by rejecting the

administrative claim. Therefore, on October 14, 1996 the Executive Office declared "definitively lapsed and over the period of fifteen days given to the legal representative of the OHCIR firm to file a claim," which was duly published in the Official Notices of the Executive Office, a resolution that was a definitive act pursuant to Article 31 paragraph a) of the Court of Administrative Procedures Law.

[FN19] The State's note of April 2, 2002, received by the IACHR on the 11th of the same month and year, p. 20
(IACHR T.1)

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30. The State affirms that instead of filing suit against Resolution No. 1910-96-TEG of September 16, 1996, the petitioner initiated an action in the Court of Administrative Matters against two merely procedural resolutions, No. 019-JD-96 and No. 037-JD-96, in other words, against resolutions that did not directly decide the substance of the matter as provided in Article 28 of the Court of Administrative Matters Law.

a. Precedents

31. The State alleges that in the action filed in the Court of Administrative Matters against the purely procedural resolutions of the IHSS, Nº 0171-JD-96 and Nº 037-JD-96, the petitioner sought nullification of the administrative act taken by the Institute. The IHSS replied to the suit and cited peremptory challenges of res judicata and statute of limitations, which were denied in the Court's ruling of December 3, 1996. The IHSS sought redress for this ruling in the Administrative Appeals Court, which denied it in a ruling on April 15, 1997. The IHSS then filed an appeal for reconsideration with the Supreme Court, which upheld the decision in a ruling on January 12, 1998. As regards the foregoing, the State asserts that exceptions or incidents of preliminary objections do not decide the substance of the case, so one has no basis for claiming that because previous defenses prevailed one has won or should win the substance of the disputed matter.

b. Definitive decisions

32. The State says that the peremptory challenges of res judicata and statute of limitations were definitively resolved by the decision of the Court of Administrative Matters on April 23, 1999. The same ruling refused to admit Mr. López Urquía's claim against the IHSS resolutions because the claim was directed against purely procedural resolutions that could not be challenged in that court. The plaintiff's attorney appealed the primary court decision to the Administrative Appeals Court, which upheld the decision of April 23, 1999 in a definitive ruling on August 30, 1999. The petitioner appealed this decision to the Supreme Court, which in a ruling of June 6, 2000, in agreement with the opinion of the Special Prosecutor[FN20], declared that "The appeal is inadmissible on any of its seven grounds."

[FN20] In his opinion of October 26, 1999, the Special Prosecutor concluded: "that the violation of (lack of application), improper application, and erroneous interpretation must be legal figures that are considered substantive and applicable to the current case, so the principles invoked are merely adjectival (sic), the grounds are insufficient for purposes of reversal, in the light of repeated precedents in decisions of this high court. OPINION: that for the foregoing reasons, the present appeal is inadmissible on any of its six grounds". Note of the State's reply of April 2, 2002, received by the IACHR on the 11th of the same month and year. (IACHR T.1)
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33. The State adds that the petitioner presented an appeal for reconsideration of this decision, which was rejected in the Supreme Court ruling of August 1, 2000 of which he was notified on August 7, 2000. According to the State, this meant the petitioner had exhausted the domestic legal remedies of Honduras.

c. Mr. López Urquía's human rights were not violated

34. Honduras states that the abovementioned decisions were made in conformance with Honduran legislation. That the petitioner has failed to prove violation of Article 21 (Right to Property) because the petition does not even explain how Mr. López Urquía has experienced loss of assets of his private property; that furthermore the petitioner has failed to prove that during the course of the administrative claim or in the legal proceedings before the courts and tribunals of the Republic he has lacked the right to a fair trial and to judicial protection as guaranteed in Articles 8 and 25 of the Convention, respectively.

IV. ANALYSIS

A. The Commission's competence ratione loci, ratione personae, ratione temporis and ratione materiae

35. The Commission has competence ratione materiae to consider the present petition because it alleges violations of rights protected by the American Convention, to which the State of Honduras is a party, having ratified it on September 8, 1977.

1. Competence ratione loci

36. The Commission has competence ratione loci to consider this petition because it alleges violations of rights guaranteed by the American Convention that would have occurred in the territory of a State Party.

2. Competence ratione personae

37. The Commission has competence ratione personae by virtue of the standing of the State, because the petition is filed against a State Party, as provided in a general manner in the Convention in its Article 44.

38. The Commission has competence ratione personae by virtue of the standing of the petitioner in the present case, pursuant to Article 1(2) of the Convention, which establishes that "For the purposes of this Convention, "person" means every human being."

39. When the petitioner opened his business in Honduras he registered as a sole proprietor, as required by Honduran law[FN21], declaring himself "the exclusive owner of a business trading as the OHCIR," "a business operated solely and exclusively by himself." By do doing, he did not create a corporation with a legal status different from that of its owner, nor did he issue stock, so Mr. López Urquía's acts and contracts with the IHSS were done as an individual and human being in the sense established in the Convention.

[FN21] See Certificate of Sole Proprietor of a Business issued by the Business Registrar, pp. 46-48 of the Individual Business Register, in Annex No. 2 of the petition to the IACHR.

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40. In this regard, the Commission believes there is a basic difference between the present case and those that were considered and rejected because they were presented by individuals in claims concerning the corporations to which they were party. For example, in the Banco del Perú,[FN22] Tabacalera Boquerón,[FN23] and Mevopal, S.A.[FN24] cases, the Commission said it lacked competence ratione personae to consider a petition presented to the Commission by a corporation, because these were excluded from the subjects protected by the Convention.

[FN22] IACHR, Report Nº 10/91, Case 10.169, ("Banco del Perú"), Peru, Annual Report 1990-1991, p. 452. In this case the Commission recognized its competence to protect the rights of an individual whose property is expropriated, but not to protect "the rights of corporations," such as companies or... banking institutions." Ibidem para. 2.
[FN23] IACHR, Report Nº 47/97 of October 16, 1997, Paraguay, Annual Report 1997, p. 229.
[FN24] IACHR, Report Nº 39/96, Case 11.673 Santiago Marzioni (Argentina), of March 11, 1999, para. 20.

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41. In another case, that of Zacarías E. Bendeck,[FN25] he filed a petition against acts involving contracts between the Compañía Hondureña de Inversiones, S.A. [Honduran Investment Company, Inc.] (COHDINSA), a corporation in which he was the majority stockholder, and the Corporación Hondureña de Desarrollo Forestal [Honduran Forestry Development Corporation] (COHDEFOR). In that case the domestic legal remedies of Honduras were presented and exhausted by COHDINSA, which had a different legal status than its stockholders, and not by Mr. Bendeck, a private citizen. Mr. Bendeck was a different taxpayer than COHDINSA[FN26] and was only responsible for his social security. Furthermore, the contract with COHDEFOR was entered into by the COHDINSA corporation and not by Mr. Bendeck, an individual. In this case the Commission found, based on the precedents, that it lacked competence ratione personae because Mr. Bendeck was not a legitimate party.[FN27]

[FN25] IACHR, Report on Inadmissibility Nº 106/99, Bendeck-Cohdinsa, Honduras, September 27, 1999, published in Annual Report of the IACHR 1999.
[FN26] See National Tax Register: Annexes to the Petition to the IACHR Nº 4 (Code QEE9P-G of COHDINSA) y Nº 5 (Code DTBDK3-A of Zacarías Elías Bendeck).
[FN27] Report on Inadmissibility Nº 106/99, Bendeck-Codhinsa, supra note 25.
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42. In the current case, the Commission believes that the petitioner, Carlos López Urquía, has standing because:

a. Carlos López Urquía signed the contracts as an individual, owner of the OHCIR. The administrative and judicial claims were filed by his attorney as the legal representative of Carlos López Urquía, owner of the OHCIR business. Notices of collection and receipt of social security taxes were issued to Carlos Alberto López Urquía and not to the OHCIR.
b. Carlos López Urquía is registered as a sole proprietor in the Individual Business Register of Francisco Morazán Department.[FN28] His status as a sole proprietor does not give the firm, in this case the OHCIR, a different legal status from that of the person heading it, in this case Mr. López Urquía.[FN29]
c. Under Honduran law, a commercial enterprise is not a legal entity, but is classified as a business property.[FN30] Furthermore, the commercial enterprise (business property) is not the same as the corporate or individual business person, in this case Carlos López Urquía.[FN31]
d. As a sole proprietor the petitioner has no partner, and is responsible with his full assets for his debts, with unlimited liability.[FN32] The OHCIR has no stockholders.[FN33]
e. The Honduran State recognizes the individual nature of the petitioner, by receiving a single declaration and payment of taxes as an individual businessman, through a single taxpayer registration document.[FN34]

[FN28] See Certificate issued by the Business Property Registrar, site 29 on pp. 46 to 48, Volume 5 of that register.
[FN29] According to Article 2 of the Business Code of Honduras, businesses are 1) individuals who own a business, and 2) corporations organized as a business. In the petition under review Mr. López Urquía acted on his own behalf as sole proprietor of a business.
[FN30] Business Code: Article 646.- A commercial enterprise shall be classified as a business property. The transfer and taxation of its assets shall be governed by the standards of Common Law.
[FN31] Business Code: Article 2.- Businesses are: I.- Individuals who are sole proprietors of a commercial enterprise. II.- Corporations organized as a business. For legal purposes it shall be presumed that business is conducted or the corporation is organized as a business when one or the other acts is done with sufficient publicity to convince a prudent businessman of their existence, and when an establishment is opened to the public… Business Code: Article 4.- Business property includes: I.- Securities. II.- For-profit businesses or negotiations and their components, especially the name, logo, and patents. III.- Vessels.
[FN32] Civil Code: Article 2244.- The debtor is responsible for obligations with all his or her assets, present and future.

[FN33] In certain cases the human rights of individual stockholders are protected by the American Convention. In 1999 the Commission declared inadmissible the petition of MEVOPAL, S.A. because it lacked competence ratione personae to consider a petition from a corporate or fictitious body. However, it tacitly recognized that in some cases shareholders can have standing when it noted that Mevopal, S.A. had neither alleged nor proven that either its shareholders or any other physical person were victims of violations of human rights, and had not alleged that any physical or natural person exhausted the domestic remedies, came before the national authorities as an injured party or indicated any impediment to their doing so. IACHR Mevopal vs. Argentina, Report Nº 39/99, paragraph 19. In the same vein, in the Affaire de la Barcelona, the International Court of Justice in the Hague established that shareholder protection can pose problems of denial of justice, an issue that has been considered in the system of the European Convention of Human Rights. International Court of Justice, Affaire de la Barcelona-Traction Light and Power Company Limited, judgment of February 7, 1970, paras. 90 and 91.
[FN34] See National Tax Register ANNHR6-Z of CARLOS ALBERTO LÓPEZ URQUÍA in Annex Nº 3 of the petition to the IACHR.
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3. Competence ratione temporis

43. The Commission has competence ratione temporis, because the facts alleged in the petition took place when the obligation to respect and guarantee the rights established in the Convention was already in effect for the Honduran State, which ratified it on September 8, 1977.

4. Competence ratione materiae

44. Finally, the Commission has competence ratione materiae because the petition presents facts that, if proved, would constitute a violation of Articles 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection) of the American Convention.

B. Other requirements for admissibility of the petition

1. Exhaustion of domestic remedies

45. Article 46(1) of the American Convention on Human Rights provides that for a petition or communication submitted in accordance with Articles 44 or 45 to be accepted by the Commission, “that the remedies under domestic law have been pursued and exhausted in accordance with generally accepted principles of international law.”

46. In this case the State has not protested a failure to exhaust domestic remedies because it considers they were exhausted with the Supreme Court’s decision of August 1, 2000, which ruled on the request for reconsideration presented by the petitioner. This decision was communicated to the claimant on August 7, 2000, a date that according to the State marked the end of the action he filed against the IHSS. The petitioner agrees that the decision of August 1, 2000 on his request for reconsideration (of which he was notified on August 7, 2000), represented complete exhaustion of the domestic remedies available under Honduran law.

47. It is important to note that the petitioner has not demonstrated to the IACHR that he filed any objection to Resolution No. 1910-96-TEG of the Executive Office of the IHSS, which according to the State resolved the substance of the case. Nor has he contradicted the State's assertion that on October 14, 1996 the Executive Office declared "definitively lapsed and over the period of fifteen days given to the legal representative of the OHCIR firm to file a claim," which was duly published in the Official Notices of the Executive Office, a resolution that was a definitive act pursuant to Article 31 paragraph a) of the Court of Administrative Procedures Law.

48. The Commission notes that on September 16, 1996 el petitioner filed an action in the Court of Administrative Matters against two other resolutions, 019-JD-96 and 037-JD-96. This proceeding culminated with the Supreme Court's ruling of August 1, 2000 (of which the petitioner was notified on August 7 of the same year) and this proceeding is the basis for the present petition.

49. The Commission therefore concludes that in this case there has been compliance with the general rule for exhaustion domestic remedies as stipulated in Article 46(1)(a) of the American Convention.

2. Timeliness of presentation

50. 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".

51. The State alleges that the petition was not presented in a timely manner because it was lodged more than six months after the date of notification of the final decision of the domestic jurisdiction.

52. The Commission notes that the petitioner was notified of the definitive decision of the Supreme Court on the request for reconsideration on August 7, 2000, so his petition, received by the Commission on December 14 of the same year, was presented within the six-month period established in Article 46(1)(b) of the American Convention.

3. Duplication of proceedings and res judicata

53. Article 46(1)(c) of the Convention sets as a requirement for admissibility "that the subject of the petition or communication is not pending in another international proceeding for settlement".

54. The Commission understands that the subject of the present petition is not pending in another international proceeding for settlement, and is not the same as a petition already examined by it or by another international organ. Therefore, it concludes that the requirement established in Article 46(1), paragraph (c) has been satisfied.

4. Characterization of the alleged facts

55. Article 47, paragraph (b) of the Convention provides that the Commission shall declare inadmissible any petition presented under Articles 44 or 45 when it "does not state facts that tend to establish a violation of the rights guaranteed by this Convention".

a. The contracts and the alleged pressure

56. Carlos Alberto López Urquía, as general manager and owner of the "Oficina de Higienización, Control de Insectos y Roedores" [Office of Sanitation, Insect and Rodent Control] (OHCIR), after winning competitive bidding, signed two contracts with the State. Contract No. 59-90, for cleaning services and fumigation in the IHSS, was signed on June 28, 1990 and was in force from July 1, 1990 to July 1, 1991. Contract No. 60-90, for the provision of food services in Social Service (IHSS) hospitals, was signed on June 25, 1990 and was in force from July 1, 1990 to July 1, 1991. According to the petitioner neither of these two contracts complied with the conditions of the competitive bidding he won because the first included an illegal discount of 15% and the second a discount of 20%. The petitioner alleges that Mr. López Urquía accepted these new terms because he felt pressured and was afraid of going into bankruptcy.

57. To prove this duress the petitioner has presented several notarized statements in which some witnesses suggest that some of the members of the Board of Directors of the IHSS would not agree to give the contracts to Mr. López Urquía unless he accepted said discounts, and named a committee to negotiate the contract terms with him.[FN35] He also presented several notarized declarations[FN36] with allegations that the Board of the IHSS had manifest hostility to Mr. López Urquía, which could have led to the inclusion of the discounts.

[FN35] Statement of Neptalí García Velásquez, notarized on February 21, 1997. See IACHR, file P- 0644/2000 Carlos López Urquía, Folder of Annexes.

[FN36] See the following notarized statements: Statement by Francia Graciela Nazar Handal, notarized on October 14, 2003; statement by Ada Luz Esperanza García, notarized on October 14, 2003; statement by Jesús Florentino Alvarez Alvarado, notarized on October 23, 2003; statement by Neptalí García Velásquez, notarized on October 14, 2003.

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58. The Commission notes that the petitioner accepted the administrative and financial terms of the contracts (a discount of 15% in one case and 20% in the other and failure to include escalator clauses) and therefore signed them. If he was willing to sign the contracts there was no problem with the contracting, because otherwise he would not normally have signed them. The statements in the notarized submissions are mere allegations that do not prove that Mr. López Urquía was pressured to sign the contracts and did not freely consent to their terms.

59. Mr. López Urquía also signed two addenda and two extensions that modified some terms of the contract. The addendum to Contract No. 59-90, which was signed on July 27, 1991, extended said contract for two years (June 2, 1991 to July 1, 1993); an extension signed on July 5, 1993 again extended the contract from July 2 to December 31, 1993. The addendum to Contract No. 60-90, which was signed on June 27, 1991, extended that contract for two years as well (July 2, 1991 to July 1, 1993) and an extension, signed on July 2, 1993, prolonged it again

from July 2 to December 31, 1993. The Commission understands that if he signed these new contracts called addenda, which provided that for the duration of the contract the contractual prices set in the original contract would be maintained, he also accepted their terms. The same occurred with the extension of Contract 59-90, which contained the same amounts established in the original contract and its addendum.[FN37]

[FN37] The contracts, addenda, and extensions are annexes to the note with the State's response of April 2, 2002, received by the IACHR on the 11th of the same month and year.

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60. The petitioner could have demanded rescission of the contracts under the provisions of Article 753 of the Business Code of Honduras[FN38] to escape from prejudicial terms that he says he accepted under pressure to avoid bankruptcy. However, he did not resort to the available legal mechanisms in the juridical structure to escape from those conditions during the validity of the contracts. On the contrary, he negotiated and obtained extensions with the same terms as the original contracts that he said were onerous.

[FN38] Article 753 of the Business Code of Honduras states: "Any person experiencing pressure because of great need who enters into a contract with prejudicial terms may rescind it upon demand. The judge who declares the rescission may establish fair compensation for the other contracting party."

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61. The Commission believes that if the alleged hostility on the part of some officials of the IHSS prevailed, the institution would not have approved successive extensions and prolongations of the original contracts nor extended their term for two and a half additional years. The Commission furthermore notes that Mr. López Urquía did not file his administrative claims for reimbursement of the discounts and inclusion of inflation adjustments until two years later (1995) than the date of expiration of the extension of both contracts (December 31, 2003) and after the IHSS had received the services and the OCHIR had been paid the agreed upon sums for the services. In other words, he first took advantage of the contractual terms and extensions that he accepted voluntarily and without any reservation. Two years later, on July 19, 1995, after the expiration of the contracts, extensions, and prolongations that the IHSS did not award to him again, Mr. López Urquía filed a claim against the Institute alleging disagreement with said terms.

62. The Commission considers that the facts described above do not represent a violation of human rights protected by the Convention to the detriment of Mr. López Urquía.

b. Alleged violation of Articles 8, 21, and 25 of the American Convention

63. The petitioner alleges that the courts were not impartial because judicial officials involved were influenced by extra-judicial interests. In an effort to prove this, he presented an extract of Act 1757-93 of the meeting of the Board of Directors of the IHSS on Thursday, December 2, 1993, which dealt with various matters and in which Mr. Raúl Barahona, Deputy

Executive Director of the IHSS, said that he had met several times with the Comptroller General of the Republic, whom he asked to speak directly with the Chief Justice of the Supreme Court to tell the judges of the Court of Administrative Affairs that if they received a similar case to this one they should rule in favor of the IHSS"[FN39]

[FN39] See Act 1757-93 of the meeting of the Board of Directors of the INSS on December 2, 1993, court file Nº 222-96, Volume I of the Court of Administrative Matters, pp. 689, 710, and 711.

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64. The Commission has noted that Act No. 1757-93, presented in extract form, does not make it possible to deduce the context of the discussion and the subjects and specific problems to which the participants were referring in the meeting of the Board of Directors. Although the petitioner says Mr. Barahona was referring to his case, the Commission notes that the meeting was held on December 2, 1993, before the date on which Mr. López Urquía presented the two administrative claims against IHSS referred to in this petition, so it cannot be concluded that said official was referring to these cases that began in 1995.

65. As evidence of lack of judicial impartiality, the petitioner also presented a newspaper article from August 21, 1996 in which the then Prosecutor General, Edmundo Orellana, stated that in a working meeting during1994 with the Minister of Labor (who by law chairs the Board of Directors of the IHSS) and the Executive Director of the IHSS, he was asked as an ex-judge of the Court of Administrative Matters to influence the judges on this subject so that their decisions would favor the State. The Commission notes that this statement was made in 1994, which was one year before Mr. López Urquía presented his administrative claims against the IHSS to request reimbursement for the discounts and payment of the escalator increases, so it can not be concluded that the reference was specifically to the administrative legal actions he instituted in 1995. This appears to be confirmed by a statement made to the press by Mr. Orellana himself; on August 24, 1995, referring to his press interview of August 21, 1994, said that "one thing certain is that it was not proposed to judges responsible for hearing specific cases."[FN40]

[FN40] Official reiterates that officials asked him to favor the State, el Nuevo Día newspaper, Saturday, August 24, 1996, p. 5 A. On that ocasión Mr. Orellana also said: "In the past I have seen heads of the judicial branch ask for an appointment in the office of the first lady to give her a certificate, but that does not happen any more because it is incompatible with the moral standing of the current Supreme Court justices..." ibidem.

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66. The Commission reiterates that the critical element to determine the existence of bias is not the subjective fear of the interested party with regard to the impartiality that must prevail in the court handling the case, but the fact that in the circumstances of the case it is clear that his or her fears are objectively justified.[FN41] Anyone alleging arbitrariness by the courts must prove the charge.[FN42]

[FN41] Alvaro Baragiola v. Switzerland, Petition Nº 17265/90, Yearbook of the European Convention on Human Rights 1993, pp. 105-106

[FN42] See European Court of Human Rights, Albert and Le Compte v. Belgium, February 10, 1983, Series A Nº 58, Application Nº 7299/75 & 7496/ 76, (1983) 5 ECHR 533, & 32, in which the European court said "in principle, the personal impartiality of the members of a 'tribunal' must be presumed until there is proof to the contrary." See also ECHR Case Ferratelli and Santangelo v. Italy of August 7, 1996. See Case Perote v. Spain, Judgment of July 25, 2002, paras. 44 and 45.

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67. Mr. López Urquía is unhappy with the definitive decision in the domestic jurisdiction and alleges that it was biased and arbitrary, and did not decide the substance of the case. However, the Commission notes that in none of Mr. López Urquía's notes has he impugned the State's assertion that the deadline passed for challenging Resolution Nº 1910-96 TEG, of September 6, 1996, which declared the substance of his administrative claim groundless, so the assertion can be presumed true. The petitioner, however, on September 16, 1996, filed action in the Court of Administrative Matters against two other resolutions of governing bodies of the IHSS, No. 019-JD-96 and No. 37-JD-96. The Court of Administrative Matters, in a decision of April 23, 1999 declared the action inadmissible because it was lodged against purely procedural acts that could not be challenged in that jurisdiction and denied peremptory challenges on the grounds of res judicata and statute of limitations as out of order.[FN43] This decision was confirmed on appeal on August 30, 2000.

[FN43] The defendant (the IHSS) argued previous defenses of res judicata and statute of limitations, alleging that the acts challenged in the Court of Administrative Matters were merely procedural and that court, in an interlocutory decision of December 3, 1996, had already ruled that said previous defenses were not valid. (See decision of the Court of Administrative Matters of April 23, 1999, Annex to the petition of Mr. Carlos López Urquía) – (IACHR T.2).

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68. On the motion to vacate, on June 6, 2000, the highest legal organ in Honduras declared, after an exhaustive study of the motion, in a reasoned and substantiated opinion, that Mr. López Urquía's motion to vacate was inadmissible on all seven of its grounds.[FN44] Later the petitioner filed an appeal for reconsideration that was rejected in a definitive ruling of August 1, 2000 by the Supreme Court, of which the petitioner was notified on August 7, 2000, with which both parties considered domestic remedies exhausted. This upheld the decision of April 23, 1999, which rejected the action because it was addressed to purely procedural acts that could not be challenged in the Court of Administrative Matters, in other words, challenging resolutions that did not directly address the substance of the case.

[FN44] Grounds for vacation: 1) Violation of Article 126 of the Administrative Proceedings Act for lack of application; 2) Violation of Article 127 of the same law for lack of application; 3) Improper application of Article 122 of the same law; 4) misinterpretation of Article 119 of the

same law; 5) improper application of Article 28, paragraph 2 of the same law; 6) violation of Article 28, paragraph one of the same law, for lack of application; and 7) Violation of Article 120 of the same law for lack of application. As regards each of these seven grounds, and each provision allegedly violated, the Supreme Court ruled that "it is a procedural rather than a substantive provision, not subject to vacation, so this ground is inadmissible." Decision of the Supreme Court of Honduras, Tegucigalpa, M.D.C, June 6, 2000.

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69. It is important to note that in all the legal proceedings the petitioner exercised his right of defense by planning his legal strategy and filing various actions, including appeal, vacation, and reconsideration. Furthermore, he was favored by some of the interlocutory legal decisions, although the definitive ones were contrary.

70. With regard to the definitive decision in the domestic jurisdiction, the petitioner is not complaining of an unjust decision but of the lack of a decision to decide the substance of the matter submitted to the courts. On this point it should be reiterated that the petitioner has not impugned or presented evidence that would challenge the State's contention that he did not appeal administrative resolution No. 1910-96 TEG of September 6, 1996, which ruled on the substance of the case. Nor has he shown that he tried to appeal to any of the competent organs to rule on the substance when he was notified of the definitive decision in the domestic jurisdiction, realizing that rejection of the objection of res judicata in the decision of April 23, 1999 (which was upheld) could have given rise to an attempt to another appeal in the domestic jurisdiction to press this matter. On the contrary, with the Supreme Court ruling of August 1, 2000 (of which he was notified on August 7, 2000), which dealt with the appeal for reconsideration, the petitioner considered domestic remedies exhausted and lodged his petition with the Commission.

71. The Commission notes that the right to file an action or appeal must be exercised as soon as the parties are properly informed of the administrative or legal actions against them or that could violate their rights or legitimate interests. In this case it has been shown that the petitioner was notified by publication of administrative resolution No. 1910-96 TEG of September 6, 1996 but he failed to appeal it. If he did not file a formal appeal the cause was his own lack of due diligence. As the European Court of Human Rights has said, the rules governing the formal steps to be taken and the time-limits to be complied with in lodging an appeal or an application for judicial review are aimed at ensuring a proper administration of justice and compliance, in particular, with the principle of legal certainty [FN45].

[FN45] Cañete de Goñi v. Spain Case, judgment of October 15, 2002, para. 40 ff.

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72. The Commission reiterates that mere disagreement of the petitioners with the interpretation domestic courts have made of pertinent legal provisions does not constitute violations of the Convention. Interpretation of the law, pertinent proceedings, and weighing of evidence is, inter alia, the exercise of the domestic jurisdiction function, which cannot be replaced by the IACHR[FN46].

[FN46] As the Commission has repeatedly noted, according to the preamble of the American Convention on Human Rights the international protection afforded by the organs of the regional system is complementary in nature. Therefore, the Commission cannot assume the role of a superior court to review alleged errors of fact or law that domestic courts may have committed within their sphere of competence, unless there is unequivocal evidence of violation of the due process guarantees of the American Convention. IACHR, Report Nº 122/01, Petition 0015/00, Wilma Rosa Posadas (Argentina), October 10, 2001, para. 10, See also Report Nº 39/96, Case 11.673 Santiago Marzioni (Argentina) para. 51.

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73. The petitioner asks the Commission to analyze errors of fact and law allegedly committed in the domestic jurisdiction (especially in the administrative area), and reiterates evidence presented to try to modify the final ruling of the Supreme Court, which went against him. The Commission has no authority to review that sentence, because were it to do so it would be acting as a superior court to consider a decision made by Honduran judicial authorities within their sphere of competence.

74. It is important to reiterate in this vein that the Commission cannot review decisions handed down by national courts acting within their sphere of competence and with proper judicial guarantees unless it considers that there may have been a violation of the Convention.[FN47] Contrariwise, the Commission is competent to admit a petition and rule on its substance when it concerns a domestic decision that was allegedly handed down without regard for due process or in violation of any other right guaranteed by the Convention,[FN48] which has not been demonstrated in this case.

[FN47] The first time the Commission applied this criteria, known as the "fourth instance" formula, was in 1988, when it said: "That it is not the function of the Inter-American Commission on Human Rights to act as a quasi-judicial fourth instance and to review the holdings of the domestic courts of the OAS member states." IACHR. Resolución 29/88, Case Nº 9260, Annual Report of the IACHR 1987-1988, para. 5. This criteria has been applied and developed in subsequent Commission jurisprudence.
[FN48] See Marzioni, supra note 24, para. 6.

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75. After studying the submissions of the parties and the evidence supplied, the Commission considers that there are not sufficient criteria to characterize the facts of the case as a violation of Article 21 (Right to Property) to the detriment of Mr. López Urquía nor that the domestic legal proceedings have had irregularities of such magnitude that would be a violation of Convention-protected rights to the detriment of the petitioner, specifically the rights to a fair trial and to judicial protection (Articles 8 and 25, respectively).

76. Therefore, the Commission concludes that this petition is inadmissible in accordance with Article 47(b) of the Convention.

V. CONCLUSIONS

77. The Inter-American Commission reiterates its conclusion that the petition is inadmissible in accordance with Article 47(b) of the American Convention. Based on the foregoing considerations of fact and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present petition inadmissible with regard to alleged violations of rights guaranteed by Articles 8, 21, and 25 of the American Convention.
2. To give notice of this decision to the parties.
3. To publish this decision and 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 the city of Washington, D.C., on the 24th day of October 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Commissioners José Zalaquett, Evelio Fernández Arévalos, Freddy Gutiérrez y Florentín Meléndez.