I. SUMMARY

1. On January 26, 1998, Mr. Ernst Otto Stalinski (hereinafter "the petitioner") presented a petition to the Inter-American Commission on Human Rights (hereinafter "the Commission" or the "IACHR") against the Republic of Honduras (hereinafter "the Honduran State," "Honduras," or the "State") for violating his right to a fair trial (Article 8), to judicial protection (Article 25) and to equal protection (Article 24), provided for in the American Convention on Human Rights (hereinafter "the Convention" or the "American Convention." The alleged violations are chiefly related to an alleged attempt to kidnap and murder him, which occurred on April 28, 1990, and with alleged irregularities committed by the judicial branch of Honduras in the criminal proceedings against, the parties allegedly responsible, and specifically Messrs. Richard Anderson, Karl Koch and Eduardo Aragón.

2. With respect to the exhaustion of domestic remedies, [FN1] the petitioner claims that his petition is admissible given that the three dismissals of the charges against Messrs. Anderson, Koch and Aragón, the only defendants to which the petition refers, became res judicata on December 3, 1997, when the Supreme Court of Justice of Honduras denied the motion to vacate ["recurso de casación"] filed by him on the grounds of violation of the law or legal doctrine, denial which renders the dismissals ["sobreseimientos"] final judgments in the domestic jurisdiction. Regarding the requirement established by Article 46(1)(b) of the American Convention, he alleges that he filed his petition within the six-month time period that started on December 3, 1997 and that, therefore, he complied with the said provision.

[FN1] During its 30th regular session, the Commission issued Report 63/00 of October 3, 2000, in which it declared the petition admissible pursuant to Article 47 of the American Convention. The Commission resolved to postpone its decision regarding compliance with the requirements related to the exhaustion of domestic remedies and the six month time period established in Article 46 (1) (a) and (b), respectively, until such time as it issued its report on the merits.
---

3. The State, for its part, claims that the petitioner has not exhausted domestic remedies, since judicial proceedings (civil and criminal) available in domestic Honduran legislation are pending and a final judgment, either convicting or acquitting the nine defendants has not yet been handed down. It claims, moreover, that the petitioner should have exhausted his option of filing a petition for the protection of constitutional rights ["recurso de amparo"] and that his petition is untimely because it was not presented within the six months following the date on which the facts occurred. Therefore, it deems that the petition should be declared inadmissible. Regarding the merits, the State claims, inter alia, that the alleged attempt to kidnap and murder the petitioner was simply a failed attempt to carry out an arrest warrant issued by a competent judicial authority and that the petitioner was not able to prove that the felony of which he complains occurred.

4. In the instant report the Commission concludes that the petition is admissible based on the exception provided for by Article 46(2)(c) of the American Convention. Regarding the merits of the case, the Commission, after studying the arguments in fact and in law, as well as the evidence available to it, concludes that the Honduran State has not violated Articles 8, 25 and 24 of the American Convention in connection with Article 1(1) of same, to the prejudice of Mr. Otto Stalinski.

II. PROCESSING BEFORE THE COMMISSION

5. On January 26, 1998, the Commission received the petitioner's complaint against the Honduran State and on the following 17th of March the case was opened sub judice. On April 3, 1998, the pertinent portions of the petition were transmitted to the State, which was given ninety days to respond. At the request of the Honduran State, the Commission granted an extension of this time period. Honduras responded on October 13, 1998 and on October 15 of that same year the pertinent portions of the response were transmitted to the petitioner.

6. On December 11, 1998, the petitioner presented his observations on the State's response. The pertinent portions were sent to the State on February 18, 1999, to which the State, in turn, again responded with its comments on March 19, 1999. The relevant portions of the State's comments were transmitted to the petitioner on April 9, 1999. The petitioner presented his observations on March 26, 1999 and the pertinent portions of his writ were conveyed to the State on May 13, 1999. Within the extension granted by the Commission, the State returned its comments. On March 3 and 14, 2000, Mr. Stalinski offered additional information requested by the Commission. On March 15 of that year, the said information was transmitted to the State, which was granted 15 days to make its comments thereon.

7. On October 3, 2000, the Commission issued Report Nº 63/00, on admissibility, in which it determined that it was competent to analyze the merits of the case. In said report the Commission also decided to postpone for later examination, and inclusion in the report on merits, the question of admissibility of the petition in connection with the issue of the prior exhaustion of domestic remedies, given that there was a close relationship between this question and the merits of the case.

8. On February 14, 2002, through the Commission, the petitioner proposed terms to the State for a friendly settlement. This proposal was transmitted to the State on February 21, 2002 and it was granted 20 days to respond. Subsequently, on March 1, 2002, the State requested from the Commission a 15-day extension to comply. This extension was granted and the State was notified on March 5 of that year. Finally, the time period expired without the State's response.

9. On March 14, 2002, the petitioner presented his final observations for the Commission's consideration and the preparation of its report on merits, as provided for by Article 50 of the American Convention. The State was informed of said observations in a communication of April 15, 2002, in which it was granted 60 days to respond. The State presented its final observations on the merits on June 5, 2002. On November 13, 2002, additional information presented by the petitioner was conveyed to the State. On December 9, 2002, the State requested a 30-day extension. On January 7, 2003, the Commission granted a 20-day extension to respond to the said additional information. In a communication dated January 22, received by the Commission on January 24 of 2003, the State presented the requested information.

10. At the request of the petitioner, the Commission held a hearing on March 1, 2004 in which the State presented documents that were transmitted to the petitioner on April 12, 2004. The petitioner presented his observations on May 11, 2004, which were then transmitted to the State for its information, on May 17, 2004, but without a request for the State's comments, in view of the fact that the Commission had enough information on the case at its disposal. On January 10, 2005 the petitioner requested that the Commission issue its report on the merits of the case.

III. POSITIONS OF THE PARTIES

A. The petitioner

11. The petitioner alleges that on Saturday, April 28, 1990, at approximately 5:30 in the afternoon, Messrs. Leonel Medrano Irías, Juan José Osorio and Richard Anderson, employees of Chiquita International Trading Company and Tela Railroad Company, the first headquartered in Delaware, Illinois, United States of America and the second headquartered in the municipality of La Lima in the Department of Cortés, Honduras, attempted to abduct him in the Gran Hotel Sula in San Pedro Sula, Department of Cortés, Republic of Honduras. According to the petitioner, this criminal act was carried out with the aim of killing him to prevent him from continuing to compete with the aforementioned companies in the marketing of bananas, a sector in which they had maintained a total monopoly in Honduras for more than 90 years.

12. The petitioner alleges that on August 3, 1995, he lodged a criminal complaint in the Third Criminal Trial Court [Juzgado de Letras Tercero de lo Criminal] of the city of San Pedro Sula, in which he accused Messrs. Robert F. Kistinger, Charles Morgan, Manuel Rodríguez, Alejandro Bakocsy, Juan José Osorio, Mario Matías Galindo, Eduardo F. Aragón, Karl Koch and Richard Anderson, of committing against him, or abetting the felonies of attempted murder, attempted kidnapping, unlawful entry, attempted illegal detention, coercion, extortion, blackmail, economic crimes and attempted terrorism. Subsequent to the complaint, the petitioner formally pressed charges regarding the commission of the above-mentioned felonies before the same Court.

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

14. The petitioner states that he requested that the decision of the Supreme Court of December 27, 1995 be reviewed on the grounds that the order to which the decision referred was not applicable to the specific case, since the criminal proceeding instituted arose from acts that were purely criminal, which had given rise to two proceedings, one criminal for the punishment of the offenders and the other civil for reparation and compensation for damages and prejudicial consequences.

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

16. The petitioner states that the accused Karl Koch, Eduardo Federico Aragón and Richard Anderson Mena voluntarily appeared before the judge of the Third Criminal Court of San Pedro Sula to answer the charges and denied the accusations. The first two were immediately released while Mr. Anderson remained in detention, for the period allowed by the law for an investigation to be conducted (six days), and then was granted pre-trial release. The petitioner adds that on

November 5, 1996, the abovementioned judge issued a ruling in which she dismissed the proceedings against the three accused persons and acquitted them of criminal responsibility on the grounds that throughout the investigations no evidence had been brought to bear to prove their participation in the crimes of which they were accused.

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

18. On August 27, 1997, the Supreme Court of Justice ruled that the Petitioner's motion against the judgment of the Court of Appeals of San Pedro Sula was unfounded, because it violated procedural rules. In this respect, the Court held that "a motion to vacate can only be filed against final judgments and not against court orders." The Supreme Court also stated that the petitioner could still file a motion to vacate based on violation of law or legal doctrine. After the motion had been filed, the Court declared the motion inadmissible in its two Rulings issued on December 3, 1997.

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

20. Among the irregularities alleged to have been committed, the petitioner mentions that documents were tampered with during the proceedings, and that pages were even inserted in the file of the case. This led him to file a complaint before the Inspectorate of Courts and Tribunals against the Judge of the Third Criminal Court of San Pedro Sula, Judge Linda Patricia Reyes, who heard the case. Copies of this complaint are included in the file being considered by the

IACHR. According to the petitioner, the aforementioned Judge attempted to backdate her ruling to prevent his attorney from filing the ordinary appeals on time. In this connection, the petitioner states that on October 28, 1996 he lodged a complaint about irregular acts and falsification of documents with the Coordinator of Prosecutors of the Office of the Attorney General. In that complaint, he requested that preliminary proceedings for judicial misconduct be initiated against the aforementioned Judge for, inter alia, having allegedly ordered a dismissal of proceedings, (that the petitioner found had been added between pages 914 and 915 of the case file) in which Mr. Karl Koch was acquitted and exonerated of all charges. According to the complaint, the Judicial Inspector took a statement from clerk No. III who had custody of the file and who declared that, on October 24, 1996, the Judge and the Secretary of the Court had ordered her to type the said dismissal and to backdate it to September 20, 1996. The petitioner states that the authorities have done nothing to investigate the irregularities that he has complained of.

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

that he has thoroughly searched the files of this Delegation, and there is no record of a warrant for the arrest or detention of Mr. Ernst Otto Stalinski, issued by the District Trial Court [Juzgado de Letras Seccional] of this port city, in the month of April of 1990.

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

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

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

24. Regarding the State's written response, that a lawsuit was still pending in its domestic jurisdiction in which Mr. Stalinski was claiming damages and prejudicial consequences suffered from the same kidnapping attempt and other acts allegedly committed against him by various executives of the companies Chiquita International Trading Company and Tela Railroad Company. regard, the petitioner states that the criminal action instituted by him arose from acts that were purely criminal in nature, which gave rise to two sets of legal proceedings: criminal proceedings to punish the offenders and civil proceedings for reparation and compensation for damages. The petitioner further alleges that, in any case, no progress has been made in the civil case for the past four years because the companies sued have not responded to the complaint, which itself constitutes a violation of his human rights.

25. On March 11, 2000, the petitioner, at the request of the Commission, sent a copy of the decision of the Third Criminal Court of San Pedro Sula, of January 14, 1999, dismissing ["sobreseyendo"] the case against Messrs. Manuel Rodríguez Escalera, Alejandro Bakocsy, Juan José Osorio and Robert Francis Kistinger. He also sent a "judgment" of the Court of Appeals of San Pedro Sula, of August 11, 1999, in which the appeal filed by the petitioner against the dismissal of January 14, 1999 was declared to be inadmissible, since "in the preliminary stage of Court proceedings, it was not established with certainty that the accused were the perpetrators or abettors of the offense in question." That decision confirmed the dismissal ["sobreseimiento definitivo"] that was the subject of the appeal and provided that "the parties be notified of this judgment" and that the matter be returned to the court whence it originated for such legal action as may be required. (Emphasis added).

26. On March 29, 2000, also responding to a request from the Commission, the petitioner sent a statement from the Third Criminal Trial Court [Juzgado Tercero de Letras de lo Criminal], of March 28, of the same year, which described the current state of the criminal proceedings against Messrs. Charles Morgan and Mario Matías Galindo, the two remaining persons charged. In this regard, the Court declared that the aforementioned accused "had not voluntarily appeared before this court, and are therefore fugitives from justice and that no dismissal of the proceedings had been decided in their favor."

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

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

B. Position of the State

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

30. The State declared that, in the court proceedings, it was proven that the District Court of Puerto Cortés had issued a warrant on April 27, 1990 for the arrest of Mr. Stalinksi, who was accused of the crime of disobedience of authority. Moreover, the warrant was processed through the appropriate police authority, and that on the day of the events, an effort had been made to execute the warrant.

31. On the question of admissibility, the State of Honduras contended, in the initial stages of the proceeding, that Mr. Stalinski had not exhausted all domestic remedies, since the civil and criminal judicial proceedings instituted by him against the accused were still pending. With regard to the criminal proceedings, the State declared, inter alia, that of the nine persons who were accused in the same case, three of them were acquitted and the proceedings against them were dismissed because the court had found that "they were not involved in the acts of which they were accused". Mr. Stalinski appealed these dismissals. The Court of Appeals of the District of San Pedro Sula [Corte de Apelaciones de la Sección Judicial de San Pedro Sula] ruled, modifying the reason for the dismissals, "ruling the dismissal of the charges on the grounds that the felonies which set the proceedings in motion did not take place, including the crime of terrorism, which was one of those object of the complaints and charges" (emphasis added).

The State declared that on March 3, the petitioner filed a motion to vacate ["recurso de casación"] before the Supreme Court of Justice on the grounds of procedural violations and that on September 26, 1997 he filed before the said court another motion to vacate the final judgment of the Court of Appeals on the grounds of violations of law. Both motions were denied.

32. The State contended that after the motion to vacate on the grounds of infraction of the law or legal doctrine had been declared inadmissible, the case had returned to the Third Criminal Court [Juzgado de Letras Tercero de lo Criminal] of San Pedro Sula, where the proceedings were taking their normal course. Thus, on July 30, 1998, the same court granted pre-trial release to the other three persons charged, namely, Messrs. Juan José Osorio Acuña, Alejandro Andrés Bakocsy and Manuel Rodríguez Escalera. At the same time, it stated that a final judgment had not yet been handed down to convict or acquit the nine accused and that the petitioner could file the corresponding motions of appeal and to vacate said final judgment when it was handed down.

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

33. With regard to the civil action, the State alleged that an ordinary lawsuit for damages, loss of earnings, consequential damages, and pain and suffering was still pending, This was filed on October 7, 1994 by Mr. Stalinski against the companies Tela Railroad Company and Chiquita International Trading Company in the Second Civil Court of San Pedro Sula [Juzgado Segundo de lo Civil de San Pedro Sula], seeking a joint and several judgment against the companies and the payment of five million, six hundred and thirty thousand dollars, or its equivalent in national currency at the applicable rate of exchange at the time the judgment is executed. In the aforementioned civil case, the plaintiff, Mr. Stalinski, claims compensation for damages and prejudicial consequences suffered in the kidnap attempt and other acts allegedly committed against him by various executives of the aforementioned companies.

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

35. The State of Honduras also contends that evidence has not been brought against the judges and magistrates who were alleged to have violated the human rights of the petitioner. It further contends that there is no evidence in the files of the Inspectorate of Courts of Honduras that the petitioner has made use of the remedy of petition for the protection of constitutional rights [“recurso de amparo”] to complain against these violations.

IV. ANALYSIS ON ADMISSIBILITY

A. Exhaustion of Domestic Remedies

36. In its report on admissibility of the case sub judice, the Commission decided to defer the consideration of the State’s defense that domestic remedies have not been exhausted for consideration along with the merits since, in this case, the matter is closely related to the substance of the controversy.

37. Thus, in the instant report on merits, the Commission shall first rule regarding the exhaustion of domestic remedies.

38. Article 46(1) of the American Convention establishes, as a requirement for admissibility of petitions, the prior exhaustion of domestic remedies. However, its paragraph 2 provides that this requirement is not applicable when:

a. 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. the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
c. there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

39. The Inter-American Court and the IACHR have repeatedly noted that the general rule requiring prior exhaustion of domestic remedies acknowledges the right of the State to "resolve the problem under its internal law before being confronted with an international proceeding." [FN2] This general rule not only recognizes that the State has the aforementioned right, but places upon the State the obligation to provide individuals under its jurisdiction with adequate remedies to protect the legal situation that has been violated. These remedies should be e effective in producing the intended result and be expeditious. If the remedies provided by the State fail to meet these requirements, the exceptions contemplated in Article 46(2) of the Convention, which have been provided in order to guarantee international action where the remedies available under domestic law and the internal judicial system itself are not prompt and effective enough to guarantee respect for the human rights of the victims, must then be applied.

[FN2] I/A Court HR, Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, para. 91.
---

40. In its response to the petition, the Honduran State put forward the defense of the lack of exhaustion of domestic remedies, and claimed that the petition was inadmissible pursuant to Article 46(1) of the Convention. It stated that judicial proceedings – civil and criminal – are ongoing within its domestic jurisdiction and that the dismissals ["sobreseimientos"] ruled against Messrs. Anderson, Koch and Aragón are interlocutory orders and not final judgments. In this vein, the State noted that the criminal trial is a single one, that is, the same case against nine defendants and that, consequently, it must be resolved with a single final judgment which, in the instant case, is still pending.. In addition, the State argued that, should the petitioner be dissatisfied with the judgment rendered at the proceedings end, he could challenge it through the remedies of appeal and motion to vacate available in the domestic jurisdiction of Honduras. Finally, regarding the alleged violations of due process committed by the judges and magistrates that have heard this case, the State claimed that the petitioner should have lodged a petition for the protection of constitutional rights ["recurso de amparo"] to report them, which he did not.

41. The petitioner, in turn, stated that he had exhausted domestic judicial remedies regarding the only judicial proceedings he has challenged before the Commission, i.e., the criminal proceedings set in motion by him against Messrs. Anderson, Koch and Aragón. After the motion to vacate on the grounds of violation of the law was denied, said proceedings were finalized with the Supreme Court of Justice's decision of December 13, 1997 to deny the motion to vacate on the grounds of violation of the law or legal doctrine which had been lodged by the petitioner. In addition, the petitioner stated that said decision definitively confirmed the dismissal of charges ["sobreseimientos"] against the defendants, arguing that said ruling has the force of a final judgment of acquittal and has the effect of res judicata. The petitioner also asserted that there

have been processing delays in these judicial proceedings and that the judicial remedies available to him have not been effective.

42. The Commission notes that as a result of the events of April 28, 1990, the petitioner lodged complaints both in the civil and the criminal jurisdictions, which resulted in the instituting of the appropriate proceedings, respectively.

43. Regarding the civil proceedings, the Commission deems it necessary to clarify certain matters. In this respect, it is appropriate to define the object of the instant controversy, noting that according to the petitioner's claims, the domestic criminal proceedings have been ineffective and lacking in judicial guarantees to judge and punish those allegedly responsible for the attempt to kidnap Mr. Stalinski. Thus, regarding the object of the controversy in the instant case, it is the Commission's opinion that the civil proceedings for compensation for damages and prejudicial consequences that arose from the alleged criminal action do not constitute a suitable venue for the protection of the rights claimed to have been violated, contravening the American Convention, namely the right to due process of law and judicial protection by way of prosecuting those responsible. Therefore it is unnecessary, in the instant case, to exhaust the remedies offered by civil jurisdiction.

44. Regarding the domestic criminal proceedings initiated by Mr. Stalinski on August 3, 1995 for the attempted crimes of murder, kidnapping, unlawful entry, illegal detention, coercion, extortion, economic crimes, blackmail and terrorism, the Commission notes that 10 years have elapsed and that a final judgment of the nine defendants has not yet been handed down. Such a judgment, according to the State, would be required to satisfy the condition of exhaustion of domestic legal remedies.

45. In the light of the aforementioned, the Commission deems that in the instant case, the exception provided for in sub-paragraph (c) of Article 46(2) of the Convention is applicable, because there has been an unwarranted delay in rendering the final judgment within the domestic jurisdiction [FN3].

[FN3] The Commission does not consider it necessary in this case to analyze the effect of the dismissals without prejudice on the exhaustion of domestic remedies, but this does not preclude it from doing so in the future when the situation so requires.

---

46. Indeed, the defense put forward by the State, that this petition is inadmissible due to the lack of exhaustion of domestic legal remedies, should not stop or indefinitely delay the Inter-American system of protection from determining whether, in the instant case, the human rights of the alleged victim have been violated. It is this situation, precisely, that the [inter American system] has tried to avoid by establishing the exceptions to the general rule of exhaustion of domestic remedies, provided for by Article 46(2) of the Convention. The effect of this provision is excuse compliance with this rule.

47. In view of the aforementioned, the Commission concludes that the complaint sub judice is admissible on the grounds of the exception provided for in Article 46(2)(c) of the American Convention. Therefore, the petitioners are exempted from exhausting domestic legal remedies.

B. Time period for presentation.

48. Given that the instant petition is admissible pursuant to Article 46(2) sub-paragraph (c) of the Convention, the IACHR concludes that the requirement provided for by Article 46(1)(b) of same, regarding the time period for the lodging of the petition, is inapplicable.

IV. EXAMINATION OF THE MERITS

A. Background

49. At the time of the events of the instant case, there was a so-called "banana war,"[FN4] as it was known, between Honduran producers and exporters and the FYFES company, an Irish firm represented by Mr. Stalinski, on one side, and Tela Railroad Co. (Chiquita Brand Co.) and Standard Fruit Company, both U.S. firms, on the other side. [FN5] This situation gave rise to legal action started by the latter two companies to obtain an embargo on the fruit that FYFES wished to export to Europe, and for which Mr. Amílcar Orellana was named the court-appointed trustee. [FN6]

[FN4] According to what Honduras expressed during the hearing held before the Commission on March 1o., 2004, the transnational corporation that Mr. Stalinski represented at the time of the events object of the complaint is FYFES, an Irish firm and its subsidiaries. These started the cultivation of bananas in Honduras in the last decade, cultivation that at that time was the monopoly of two U.S. transnational corporations, Tela Railroad Company (Chiquita Brand Co.) and Standard Fruit Company. These corporations, to avoid frequent confrontations with their employees regarding collective bargaining agreements, facilitated and encouraged its former employees to become "independent banana growers," establishing their own plantation companies, but with a contract to sell their product exclusively to the transnational corporations. When FYFES burst into the Honduran banana market, offering better prices to independent producers, a gigantic competitive struggle began with the existing transnationals and thus began the so called "Banana War."

[FN5] Cfr. "Avizoran Acuerdo extra-judicial-Economía mediará en 'guerra del banano'"[Out-of-Court Settlement on the Horizon – Ministry of the Economy Hill Mediate in the "Banana War"]. La Tribuna, May 31, 1990. (page 891 of the case file); En guerra del banano- La Tela informa su disposición de dialogar con grupo inglés. [In the Banana War – the Tela Company Announces That It Is Ready to Engage in a Dialogue with the British Group] (La Prensa, May 31, 1990), Guerra del banano preocupa a CE (Comunidad Europea) [The Banana War Worries the EC (European Community)] (La Prensa, May 31, 1990) (page 890 of the case file); Conflicto Tela-CAGSSA perjudica promoción de Inversiones extranjeras. [Tela-CAGSSA Conflict Hurts the Promotion of Foreign Direct Investment] (La Tribuna May 16, 1990) (page 890 of the case file); Guerra del Banano: Un rival de Chiquita plantea un desafío en Honduras. (Wall Street Journal, June 7, 1990, page 302 of the case file); Cfr. Banana War, Honduras Farm's Sales to a Rival of

Chiquita Spark Bitter Struggle/Officials go to Docks to Halt Fruit Shipments Claimed by an Iris/British Firm (The Wall Sreet Journal, June 7,1990, page 304 of the case file).
Also see Decision No. 440-92 signed by the President of the Republic of Honduras, Rafael Leonardo Callejas Romero, which acknowledges the existence of "the contractual conflict that has arisen between Chiquita Internacional Trading Company, represented by the Tela Railroad Co. and the Compañía Agrícola y Ganadera de Sula, S.A. (CAGSSA) [Agricultural and Cattle Corporation of Sula]." According to the text of the decision, this conflict "could have caused serious damage to banana production and consequently to the country's economy." In same it is decided to grant CAGSSA a subsidy of 2,527.132.00 lempiras in acknowledgement of the losses suffered by CAGSSA when the fruit and packing material were damaged in the banana conflict. (See page 878 of the case file) (CIDH T.7/7)
[FN6] Mr. Amílcar Orellana brought a criminal complaint against Mr. Ernst Otto Stalinski in the Court of Puerto Cortés for the alleged crimes of fraud, contempt of public authority, abetting, to him as a court-appointed trustee. This, according to the State, is what prompted the Court of Puerto Cortés to issue a warrant for the arrest of Mr. Stalinski on April 27, 1990. (See the record of the public hearing of March 1, 2004, State's Presentation) (CIDH T 7/7).
---

50. With this as background, the Commission now proceeds to analyze whether in the instant case the rights to due process and to judicial protection, provided for in Articles 8, 24 and 25 of the American Convention, in connection with Article 1(1), have been violated.

B. Argument that the State has violated the right to a fair trial (Article 8(1) and the right to judicial protection (Article 25) in connection with Article 1(1)

Article 8(1) of the American Convention provides that:

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

Article 25 of the Convention, for its part, provides that:

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

The States Parties undertake:

a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
b. to develop the possibilities of judicial remedy; and
c. to ensure that the competent authorities shall enforce such remedies when granted.

51. These norms, which contain the principle of effectiveness of procedural instruments or mechanisms, establish the obligation of the State to ensure access to justice guaranteeing legality, independence and impartiality within a reasonable time period as well as the general obligation to provide effective legal recourse against the violation of fundamental human rights. As the Inter-American Court of Human Rights has stated,

States Parties have an obligation to provide effective judicial remedies to victims of human rights violations -Art. 25- remedies that must be substantiated in accordance with the rules of due process of law -Art. 8.1- all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdictions. [FN7]

[FN7] The European Commission of Human Rights has also made decisions along similar lines. See: Stavros, Stephanos. The Guarantees for Accused Persons under Article 6 of the European Convention on Human Rights. Martinus Nijhoff Publishers, ibid., p. 225 and Applications 8876/80 and 7450/76 against Belgium.

---

52. In the instant case the petitioner alleges that there was an attempt to kidnap and murder him, and he denies that there was an arrest warrant issued by a competent authority. The State asserts that the said arrest warrant was issued on April 27, 1990 and provided legal authorization for the police operation of April 28, 1990, which was intended to arrest Mr. Otto Salinski in the Gran Hotel Sula of San Pedro Sula, Department of Cortés, and place him under custody. This is an issue whose clarification is essential in order to decide the instant case. Indeed, should it be determined that the failed police operation of April 28, 1990 resulted from a legal arrest warrant, there would be no crime. In that event, the first three dismissals of charges ["sobreseimientos definitivos"] which have been challenged by Mr. Stalinski, as well as the four later dismissals, [FN8] would be justified, in view of the fact that it would not have been proven that the crimes reported existed.

[FN8] There were no dismissals [sobreseimientos] ruled regarding Charles Morgan and Mario Matías Galindo because, according to a March 28, 2000 certification issued by the Third Criminal Trial Court [Juzgado Tercero de Letras de lo Criminal] “they have not appeared voluntarily before this Court, and are hence fugitives from justice, and there has been no dismissal in their favor.” By a January 24, 1996 writ, the court in charge of the preliminary investigations ordered the joinder of the charges pressed by Mr. Stalinski against Robert F. Kistinger, Charles Morgan, Manuel Rodríguez, Alejandro Bakocsy, Karl Koch, Eduardo F Aragón, Juan José Osorio, Richard Anderson, and Mario Matías Galindo, “so that they may be part of the same trial and conclude with a single judgment” (page 328 front and back of the criminal case file).

---

53. If, as the petitioner affirms, there was, inter alia, an attempt to detain him without an arrest warrant issued by a competent authority, as well as an attempt to kidnap and kill him, the

Commission would need to determine the legal consequences of the State's conduct. It would also have to determine if the Honduran State failed to comply with its obligation to investigate the facts of the case, prosecute the persons charged, and punish those found guilty according to the provisions of Articles 8 and 25 of the American Convention, in connection with Article 1(1) of same.

54. Assuming the foregoing, the Commission would have to examine the totality of the domestic judicial proceedings related to the facts described in the complaint, in order to fully assess the proceedings, and establish whether or not they contravened standards applicable to the obligation to investigate and the rights to be heard and to have access to effective recourse, which are derived from Articles 1(1), 8, and 25 of the Convention.

55. In this connection it is important to note that all criminal proceedings have the end of clarifying the truth of the facts investigated. Consequently, it behooves the State, through its judicial organs, to carry out a serious, impartial and effective investigation with the purposes of, first, determining whether the facts do indeed constitute a felony and, second, to identify the authors of the felony, in order to later prosecute and punish them.

56. In this regard, the Inter-American Court has clearly stated that the duty to investigate must be undertaken:

in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. [FN9]

[FN9] See I/A Court H.R., Case of the "Street Children" v. Guatemala. (Villagrán-Morales et al.) Judgment of November 19, 1999, para. 233.

---

57. Comparing the facts of this case with the foregoing the Commission confirms that, as a result of the investigation carried out within the domestic jurisdiction, it was determined that there was no crime perpetrated, consisting of attempted kidnapping and murder, which was the subject of the petitioner's complaint. The existence of a warrant for the arrest of Mr. Stalinski, issued by the Juez de Letras Seccional [District Trial Judge] of Puerto Cortés, on April 27, 1990, was proven.

58. In this regard, the Commission has been able to confirm that indeed, on April 20, 1990, Mr. Amílcar Orellana lodged a criminal complaint before the District Trial Court [Juzgado de Letras Seccional] of Puerto Cortés against Mr. Otto Stalinski et al., [FN10] accusing them of fraud, disobedience of authority and abetting. As a result, the District Trial Judge of Puerto Cortés [Juez de Letras Seccional de Puerto Cortés] Lic. [J.D.] Mario Matías Galindo M., issued Communication No. 2224 to the Delegate of the Public Security Forces of San Pedro Sula, instructing him to order the immediate arrest of Messrs. Timothy Stickney and Otto Stalinski, [FN11] under the suspicion of the crime of disobedience of authority. This judicial order

displays, in its lower right corner, the approval[FN12] of Infantry Colonel Paris Amisis Rivera Rápalo, Commander of Regional Command [CORE] No. 2 of the Public Security Forces (P.S.F.), [FN13] and who was commissioned with carrying out the order.

[FN10] See, in the IACHR case file, the copy of the complaint brought by Mr. Amílcar Orellana on April 20, 2005. Also see Notarial Certificate of December 27, 1995, which "ATTESTS: that the foregoing is a true photocopy, based on the original, of a: Certification issued by the Clerk of the Trial Court [Juzgado de Letras Seccional] of Puerto Cortés, attesting that on April 20, 1990 Mr. Amílcar Orellana lodged a complaint against Mr. Otto Stalinski et al. for the crimes of fraud, disobedience and abetting, issued on August 28, 1995." Also see: Notarial Certificate issued on June 2, 1990 by José Amílcar Orellana, court-appointed trustee of the fruit or boxes of bananas harvested by Compañía Agrícola Bananera de Sula, Sociedad Anónima (CAGSSA), [Agricultural and Cattle Corporation of Sula] in the ordinary suit for replevin brought by Tela Railroad Co. against CAGSSA before the Third Civil Trial Court [Juzgado de Letras Tercero de lo Civil] of San Pedro Sula. In it the trustee states, inter alia, that on April 27, 1990 he received offers of money and threats from the representatives of CAGGSSA, FYFFES AND PROMEXH and that, since he did not respond, he was called again on May 7, 1990 and that attorney Rodolfo Discua Rodríguez complained, saying that they were still waiting for his reply and that if money was the problem they were willing to double any other offer, because they wished to make a shipment of eighty thousand boxes of bananas in the next few days and they needed him to resign (pages 384-386 of the court case file. This notary's document was presented by the State at the hearing before the IACHR on March 1, 2004 and transmitted to the petitioner in a timely manner (IACHR, T.7-7). On November 26, 1991, Mr. Amílcar Orellana signed an affidavit before a notary public in the Guatemala City in which, inter alia, he accuses "Chiquita" of having pressured him to complain about the possible perpetration of crimes related with the shipment of Chiquita merchandise and of having forged the signature on the complaint he brought against Stalinski and Stickney on April 27, 1990. With respect to the international responsibility of the State, it is the opinion of the Commission that this evidence is irrelevant, since the State received said complaint and proceeded according to the law, processing it. This statement of Mr. Orellana, moreover, was given in Guatemala before a notary public and not before a competent judge in Honduras.

[FN11] See arrest warrant, Communication No. 2224 of Lic. [J.D.] Mario Matías Galindo, District Trial Judge [Juez de Letras Seccional] (p. 364 T. 7/7). Cfr. Notarial Certification registered in the Bar Association of Honduras under No. 01115, issued on December 27, 1995, which certifies that "the foregoing photocopy, corresponding to the warrant for the arrest of Timothy Stickney and Otto Stalinski, issued by the Trial Judge of Puerto Cortés on April 27, 1990, is a true copy, having been obtained from the original, which is to be found in the records of the First Station of the Public Security Forces in this city. IN WITNESS WHEREOF. San Pedro Sula, December 27, 1995." (Page 365 of the case file) (IACHR p. 838 T. 4/7)

[FN12] See Annex 8 of the petitioner's brief of August 29, 2002, consisting of Communication of June 19, 1996, signed by Police Colonel Wilfredo Urtecho Jeamborde, Commander EHO-0906 of the Public Security Forces, Regional Command No. 2, addressed to the Third Criminal Trial Judge Licda. [J.D.] Linda Patricia Reyes. In response to the judge's order, he transcribes the "Procedure to Carry Out an Arrest Warrant Issued by the Local Court," where paragraph A.2 reads: "The Regional Commander proceeds to analyze the nature of the arrest warrant, in order

to assign the necessary number of Police Officers to carry it out, and places on the right margin of the Communication his APPROVAL." (Capitalization added.)
[FN13] See the June 4, 1996 Note from the Commander of the Public Security Forces, Regional Command No. 2, addressed to the Third Criminal Trial Judge, [Juez de Letras Tercero de lo Criminal] Licenciada [J.D.] Linda Patricia Reyes de Matta. In this note he responds to Communication of May 28, 1996, informing that the April 27, 1990 arrest warrant (Communication No. 2224) issued by the District Trial Judge [Juez de Letras Seccional] of Puerto Cortés was received by the Infantry Colonel Paris Amisis Rivera Rápalo, D.E.M. [Staff College Graduate], who was then Regional Commander No. 2 of the Public Security Forces, headquartered in San Pedro Sula, Cortés. The warrant ordered the arrest of Messrs. Timothy Stickney and Ernest Otto Stalinski. It was carried out by police Major Carlos Humberto Coello Hernández, who was regional Inspector of that Command, and who deployed the necessary personnel to execute the order…" (See IACHR Case File.) Cfr. Deposition of Mr. Paris Amisis Rivera Rápalo, delivered on September 5, 1996, before the Second Criminal Trial Court [Juzgado de Letras Segundo de lo Criminal], Comayagüela (Annex 4 of the Complaint made before the Director of Prosecutors, filed by the petitioner.]

---

59. As stated above, the petitioner has alleged that there was an illegal attempt to detain him, without an arrest warrant; to this effect he has presented a statement signed by the Sectional Delegate of the Public Security Forces of Puerto Cortés, [Delegado Seccional de la Fuerza de Seguridad Pública de Puerto Cortés],José Orlando Nataren Leiva, in which he certifies the following:

…that he has thoroughly searched the files of this Delegation, and there is no record of a warrant for the arrest or detention of Mr. Ernst Otto Stalinski, issued by the District Trial Court [Juzgado de Letras Seccional] of this port city, in the month of April of 1990. [FN14]

[FN14] Annex 6 of the petitioner's brief of September 23, 2002.

---

60. It is important to clarify that with this document the petitioner has proved that the warrant for his arrest issued by the District Trial Court [Juzgado de Letras Seccional] of Puerto Cortés is not registered in the Sectional Delegation of Puerto Cortés, Regional Command No. 2 of the Public Security Forces headquartered in Puerto Cortés. It does not, however, prove that the arrest warrant issued by said court did not exist, that it was not sent to the Regional Command No. 2 of the Public Security Forces, headquartered in San Pedro Sula, Cortés (where Mr. Stalinski was to be found), that said command did not receive the warrant, that the events of April 28 of 1990 did not constitute an attempt to carry out said order by a patrol assigned for that purpose, [FN15] and that this operation failed because Mr. Stalinski escaped the Hotel before he was served with the warrant. Therefore, it is the opinion of the Commission that the petitioner did not prove that there was an attempt to illegally deprive Mr. Stalinski of his liberty.

[FN15] See note 13 supra.

---

61. In addition, the Commission deems it necessary to note that it has confirmed that, in a brief presented to the Juez Tercero de Letras de lo Criminal [Third Criminal Trial Judge] regarding the criminal complaint which is the subject of this case, Mr. Stalinski himself acknowledges the existence of the April 27, 1990 warrant for his arrest, and says that it was quashed on July 13, 1990 by court order No. 2432 issued by Judge Mario Matías Galindo. [FN16]

[FN16] November 23, 1995 statement of Mr. Otto Stalinski, filed on November 27, 1995 before the Third Criminal Trial Court [Juzgado Tercero de Letras de lo Criminal], regarding the criminal complaint filed against Robert F. Kistinger, Eduardo J. Aragón, Manuel Rodríguez, Alejandro Bakocsy, Juan José Osorio, Richard Anderson, Charles Morgan and Mario Matías Galindo (pages 188-194 of the case file – Also see Annex 1 of 5, Petition before the IACHR, p. 188). In his statement, the alleged victim observes that Communication No. 2432 of Judge Mario Matías Galindo says:
You are hereby ordered to authorize Mr. Otto Stalinski to leave the country, since the warrant for his arrest issued by this Court on April 27 of this year (1990) is null and void.
Cfr. Statement of the petitioner of August 29, 2002, received by the IACHR on September 23 of that year, p. 5, and statement of the petitioner of April 2, 2000 (IACHR, p. 689 T.3/7)
Mr. Stalinski goes on to say:
As you can see, Madam Judge, the document transcribed above is clear and admits no doubt: the examining magistrate at the time ruled quashing the warrant for my arrest, for the lack of any evidence of criminal responsibility. Cfr. Statement of the petitioner of August 29, 2002, received by the IACHR on September 23 of the same year, p. 5.
---

62. Consequently, the Commission concludes, that the April 27, 1990 warrant for the arrest of Mr. Stalinski did indeed exist, that it was issued by a competent judge who decided that it would be carried out by the Police of San Pedro Sula (where Mr. Stalinski was to be found) and that the police operation that was unsuccessfully carried out the following day had as its purpose the execution of said warrant and not the attempt to kidnap and murder Mr. Stalinski. It is also a proven fact that on November 19, 1996, the petitioner voluntarily appeared before the District Trial Court [Juzgado de Letras Seccional] of Puerto Cortés, where he was questioned and released for lack of evidence, [FN17] and that on November 19, 1996 the District Trial Court of Puerto Cortés, dropped the charges against him for lack of evidence[FN18] of any criminal liability.

[FN17] See statement by the petitioner of August 29, 2002, received by the IACHR on September 23 of that same year, p. 5.
[FN18] See Certification of the Clerk of the District Trial Court [Juzgado de Letras Seccional] of Puerto Cortés (Annex 7 of the December 11, 1998 brief with observations of the petitioner.)
---

63. The Commission has also established that, as the petitioner states, both the ruling by the court of the first instance, the Third Criminal Trial Court [Juzgado Tercero de Letras de lo Criminal] of the City of San Pedro Sula in which the dismissal of the charges against Messrs. Koch, Aragón and Anderson was made, and the ruling confirming said dismissal by the Appeals Court of the Judicial Section of San Pedro Sula (judgment of February 28, 1997), do not contain a list of facts proven nor the evidentiary basis for their decisions. However, the Appeals Court clearly stated that the dismissals of February 28, 1997 were ordered "because the crimes that initiated the proceedings did not take place."[FN19]

[FN19] The motion to vacate filed on the grounds of procedural violations, which argued the lack of determination of proven facts in the dismissal rulings, was denied by the Supreme Court, which stated that this motion can be admitted only against final judgments and not against court orders, "not even those ruling dismissal." The motion to vacate on the grounds of the inapplicability of the law was denied on December 3, 1997, because the Supreme Court's opinion was that the testimony offered by the petitioner in support of his motion did not constitute authentic documents or acts for the purposes of said kind of motion, since these documents, in addition to satisfying the appropriate formalities, must constitute, with respect to the merits, full and unassailable proof of the facts stated therein, thus deserving to be received as declarations of truth and not simple manifestations of what is desired.

---

64. For its part, the August 11, 1999 judgment in favor of Juan José Osorio, Robert F. Kistinger, Manuel Rodríguez and Alejandro Bakocsy on January 14, 1999, handed down by the Court of Appeals of San Pedro Sula, Cortés [Corte de Apelaciones Seccional de San Pedro Sula, Cortés], regarding the appeal of the dismissal of charges ["sobreseimientos definitivos"] that had been ruled, finds as proven facts the following: the issuing of the warrant for the arrest of Otto Stalinski on April 27, 1990, the notification of the warrant to the commander of the Second Command of the Public Security Forces, Infantry Colonel Paris Amisis Rivera Rápalo, DEM, and the latter's dispatch of the warrant, with approval of its execution, to Major Carlos Coello, who carried out the orders. According to the Court, "this evidence refutes the alleged existence of the crimes of attempting to kidnap and attempting to illegally detain, as outlined in the complaint." [FN20]

[FN20] The August 11, 1999 judgement of the Court of Appeals of San Pedro Sula, Cortés, provides the following:
WHEREAS: It is also on record in the case file that by communication No. 2224 of the District Trial Court [Juzgado de Letras Seccional] of Puerto Cortés, Department of Cortés, of April 27, 1990, a warrant for the arrest of Timothy Stickney and Otto Stalinski was issued, as suspects of the crimes of disobedience of authority; that this order was sent to the commander of the Second Command of the Public Security Forces, Infantry Colonel Paris Amisis Rivera Rápalo, DEM [Staff College Graduate], for its execution, who then approved the order and assigned Major Carlos Coello to carry it out; and that Major Coello carried out the order. This evidence disproves the existence of the crimes of attempt to kidnap and attempt to illegally detain, which

have been the object of the complaint (Page 1044 ff. of the case file, Annex to the petitioner's brief of March 7, 2000 [IACHR p. 631]).

---

65. Regarding the petitioner's factual allegation that on April 28, 1990, attorney Leonel Medrano Irías burst into the Hotel Sula of San Pedro Sula in the company of Alejandro Bakocsy, Juan José Osorio and Richard Anderson, who were heavily armed, and that they insisted on seeing Mr. Stalinski because there was a warrant for his arrest, and that because of the pressure exerted on him, the manager of said hotel, Mr. Marcos Muñoz, agreed to accompany them to the room where Mr. Otto Stalinski was to be found, the Court stated that "although the Examining Court was informed of this, it is not certain that these events constitute a crime, since Mario Muñoz has not yet appeared before the judicial authority to give his testimony," [FN21] and "any statement outside of this context must be taken as mere speculation, because it cannot provide the grounds for the Judge to order the restriction of any person's personal liberty." [FN22]

[FN21] Article 88 of the Constitution of the Republic of Honduras provides that a sworn statement shall be admitted as evidence only if it is delivered before a competent judge.
[FN22] Mr. Mario Muñoz made a statement before a Miami notary public (Kimberly D. Rhodes), on December 20, 2004 (See Annexes 1-5 of the complaint, p. 14).

---

66. The court likewise established that Mr. Stalinski did not prove that the persons accused by him were the perpetrators and abettors of the alleged crime ." [FN23]

[FN23] The Court held that in criminal proceedings no fact can be considered true by Article of faith; to the contrary, "every statement must be proven or grounded and in the instant case, although it is true that Otto Stalinski has filed a complaint against several persons, accusing them of being perpetrators and abettors of several crimes to him, however, in the preliminary investigations it was not established with certainty that the accused are responsible for the stated delict. – Judgment of the Appeals Court [Corte de Apelaciones Seccional] of San Pedro Sula, Cortés, August 11, 1999.

---

67. The aforementioned August 11, 1999 judgment of the Court of Appeals of San Pedro Sula was not the object of a motion to vacate on the part of the alleged victim because, according to the petitioner, it was based on the same facts and irregularities committed in the proceedings instituted against Karl Koch, Richard Anderson and Eduardo Aragón, proceedings that have ended with the dismissal of the charges..." [FN24] It is the opinion of the Commission that, given that the events of April 28, 1990 are the same, the reasoning of the Court of Appeals of San Pedro Sula in its judgment of August 11, 1999 should be held as valid for all the dismissals issued in this case, since in all of them the decision was the same, i.e., to deny the appeal on the grounds that the occurrence of the crime was not proven.

[FN24] In this regard, the petitioner states that "no motion to vacate, grounded in violations of law or legal doctrine, was filed, against this judgment (judgment of the Court of Appeals of August 11, 1999) because we knew beforehand that it was going to be denied, since said motion was based on the same facts invoked in the finished trials against Karl Koch, Richard Anderson and Eduardo Aragón" … "The complaint lodged by Mr. Stalinski is grounded in the same irregularities committed in the proceedings instituted against Karl Koch, Richard Anderson and Eduardo Aragón, proceedings that are now closed since dismissals were ruled, which have the effect of a final judgment…" Petitioner's brief of March 7, 2000, received by the Commission on the same date (IACHR, p. 623).

---

68. It is important to note that the Inter-American Commission has stated on previous occasions that, in principle, it is not competent to decide on the manner in which judicial authorities have assessed and weighed the evidence provided in any given proceedings to reach a judgment, unless the possibility of a violation of the Convention is considered. [FN25] In principle, the assessment of the evidence provided by the parties in a set of judicial proceedings corresponds to the national authorities, regardless of the method for assessing and weighing the evidence adopted by the legal system of each country. However, arbitrariness should always be avoided and controlled. [FN26] In the instant case, the Commission does not find any manifest arbitrariness in the issuing of the different dismissals[FN27] in the case[FN28] that would injure judicial guarantees of due process, since, as has been established, the petitioner did not prove the existence of the crimes[FN29] that motivated the complaint against the persons exonerated. To the contrary, it has been sufficiently established that there did exist a legal warrant for the arrest of Mr. Stalinski, issued on April 27, 1990, for the crimes of fraud, disobedience of authority and concealment to trustee Amílcar Orellana. This refutes the allegation of the petitioner that the operation carried out on April 28, 1990 to execute said warrant constituted an attempt to kidnap and illegally detain him.

[FN25] Inter-American Commission on Human Rights, Annual Report 1981-1982, Resolutions Nos. 25/81 and 24/81, Cases 3102 and 3115, respectively (Jamaica), of June 25, 1981.

[FN26] The European Commission of Human Rights has also judged along these lines. See Stavros, Stephanos, The Guarantees for Accused Persons Under Article 6 of the European Convention on Human Rights, Martinus Nijhoff Publishers, Ibid., p. 225, and Applications Nos. 8876/80 and 7450/76, against Belgium.

[FN27] On November 5, 1996, the Third Criminal Trial Judge of the City of San Pedro Sula handed down a judgment dismissing the charges against Messrs. Richard Anderson, Karl Koch and Eduardo Aragón, exonerating them from criminal responsibility on the grounds that, throughout the investigations, it was not proven that they participated in the crimes of which they were accused. The Court of Appeals of San Pedro Sula confirmed the decision on February 28, 1997, and on December 13, 1997, the Supreme Court of Justice denied the motion to vacate, filed by the petitioner on the grounds of violation of law or legal doctrine. On January 14, 1999, it ruled for dismissal in favor of Manuel Rodríguez, Alejandro Andrés Bakocsy and Juan José Osorio, acquitting them. On appeal, the Court of Appeals of the city of San Pedro Sula, Cortés, affirmed said dismissals based on the same grounds used for the dismissal of the charges against Richard Anderson, Karl Koch and Eduardo Aragón. The petitioner did not file a motion to vacate

because – he alleged – since it was to be about the same facts and law, it was known beforehand that the result was going to be the same as it had been for the other three accused.
[FN28] The Supreme Court of Justice of Honduras, on December 27, 1995, issued a decision in the instant case in which it made the following observation: "the judge who tries the case must strictly comply with the Supreme Court ruling, contained in Circular Letter No. 05, Item 3 of the Plenary Session of the Supreme Court held on March 20, 1991…" The abovementioned ruling provides: "no person may be detained, arrested or imprisoned by reason of any obligation that does not arise from a felony or misdemeanor: infractions that frequently occur when criminal proceedings are instituted and an order of arrest or detention is obtained against persons who have participated in acts or contracts of a purely civil, commercial or administrative nature, and from which obligations naturally arise. Failure to fulfill these obligations, however, does not constitute a criminal act or misdemeanor, as in the instant case."
[FN29] The "prior existence of a crime" is one of the requirements to rule a dismissal, according to Article 429, paragraph 1 of the Code of Criminal Procedure of Honduras (Decree 144-83).
---

69. Mr. Stalinski, moreover, freely appeared before the Honduran judges, making accusations against certain persons, as well as numerous briefs, petitions and appeals, including a motion to vacate. In this regard, it is important to note that there is no provision under the American Convention allowing the conviction of certain people just because the accuser considers them guilty, since all affirmations in this connection are required to be grounded and proven in a trial. Mr. Stalinski, furthermore, did not prove that there has not been a just trial and that the dismissals of charges were contrary to law.

70. In view of the aforementioned, the Commission concludes that the State has not failed to comply with Articles 8(1) and 25 of the American Convention of Human Rights, in connection with Article 1(1) of same, to the prejudice of Ernest Otto Stalinski. Moreover It did not, , violate Article 1(1) of the American Convention with regard to the duty to investigate, since it has proven that a legal arrest warrant did exist; this disproves the existence of the crimes alleged by Mr. Stalinski.

B. Argument that there has been a violation of the right to equal protection (Article 24 of the Convention)

71. Regarding the violation of the right to equal protection, the petitioner affirms that the judicial decisions adopted during the criminal proceedings are arbitrary and illegal and that they constitute a violation of his right to equal protection of the law. He literally states that there exists discrimination "when, as in his case, what the law requires to be applied to a person is not applied, because all persons have the right to a fair and impartial trial."

72. Article 24 of the American Convention provides that "all persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law." Although this provision does not define the term "discrimination," it is the opinion of the Commission that this expression signifies any distinction, exclusion, restriction or preference based on some motive whose purpose or result is to nullify or diminish the recognition,

enjoyment or exercise, under conditions of equality, of basic human rights and liberties in the political, economic, social, or cultural spheres, or in any other sphere of public life. [FN30]

[FN30] Similar definitions are provided for in the International Convention on the Elimination of All Forms of Racial Discrimination and in the Convention on the Elimination of All Forms of Discrimination against Women. Cf. Manual on Human Rights Reporting, International Covenant on Civil and Political Rights, Article 26.

---

73. The Inter-American Court on Human Rights has stated the grounds on which a complaint regarding discrimination can be based:

Precisely because equality and nondiscrimination are inherent in the idea of the oneness in dignity and worth of all human beings, it follows that not all differences in legal treatment are discriminatory as such, for not all differences in treatment are in themselves offensive to human dignity (…) There may well exist certain factual inequalities that might legitimately give rise to inequalities in legal treatment that do not violate principles of justice.

Accordingly, no discrimination exists if the difference in treatment has a legitimate purpose and if it does not lead to situations which are contrary to justice, to reason or to the nature of things. It follows that there would be no discrimination in differences in treatment of individuals by a state when the classifications selected are based on substantial factual differences and there exists a reasonable relationship of proportionality between these differences and the aims of the legal rule under review. [FN31]

[FN31] Advisory Opinion OC-4/84, "Proposed Amendments of the Naturalization Provisions of the Constitution of Costa Rica," January 19, 1984, para. 57. Also see Report No. 39/96, Case 11.673, Argentina, October 15, 1996. IACHR Annual Report 1996, p. 87, para. 41.

---

74. The European Court has handed down a similar opinion when it stated that "a difference of treatment in the exercise of a right laid down in the Convention must not only pursue a legitimate aim: Article 14 (Art. 14) is likewise violated when it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realized." [FN32]

[FN32] European Court of Human Rights, Case "relating to certain aspects of the laws on the use of languages in education in Belgium," Decision of July 23, 1968, Series A, No. 6, pp. 33 and 34, para. 9.

---

75. It is the Commission's opinion that in the instant case the petitioner has not provided precedents of other situations similar to his, in which Honduran judiciary has handed down

judgments using different criteria that contradict those employed on this occasion. The Commission notes, to the contrary, that he has been afforded ample access to the Honduran legal remedies and that the petitioner has not proved that the treatment he has received has been discriminatory or that it has led to situations contrary to justice.

76. Therefore, the Commission cannot conclude that the Honduran State, and the judicial authorities in particular, have ruled in a manner that violated Article 24 of the Convention.

V. CONCLUSIONS

77. Based on its aforementioned considerations in fact and in law, the Commission reiterates its conclusions that the Honduran State has not violated to the prejudice of Mr. Ernest Otto Stalinski, the following rights established by the American Convention: the right to a fair trial (Article 8), the right to judicial protection (Article 25) and the right to equal protection (Article 24), in concordance with the general duty to respect and guarantee rights, provided for by Article 1(1) of same.

Grounded in the foregoing analysis and conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare that the Honduran State has not violated, to the prejudice of Mr. Ernest Otto Stalinski, the following rights established by the American Convention: the right to a fair trial (Article 8), the right to judicial protection (Article 25) and the right to equal protection (Article 24), in concordance with the general duty to respect and guarantee rights, provided for by Article 1(1) of same.
2. To notify this decision to the parties, and
3. To publish this report and include it in its Annual report to the General Assembly of the Organization of American States.

Done and signed in the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 15th day of the month of October, 2005. (Signed) Claire K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Comissioners: Evelio Fernández Arévalos, Freddy Gutiérrez and Florentín Meléndez.