

EL AMPARO CASE

ORDER OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS

APRIL 16, 1997

HAVING SEEN:

1. The Judgment on reparations of September 14, 1996, of the Inter-American Court of Human Rights (hereinafter "the Court") in the El Amparo Case.
2. The brief of February 11, 1997, addressed to the Court by the Inter-American Commission on Human Rights (hereinafter "the Commission"), endorsing the request of the representatives of the victims' relatives, and transmitted to the Court by the Secretariat of the Commission on December 12, 1996, seeking the Court's "*interpretation*" or clarification in accordance with Article 67 of the American Convention on Human Rights (hereinafter "the Convention" or "*the American Convention*") of "*the reparation order handed down by the Honourable Court on September 14, 1996.*"
3. The final part of that brief, quoted by the Commission, referring to the content of paragraphs 57 and 58, of the Judgment on Reparations which stated that Article 54 of the Military Code of Justice had not been applied in that case.
4. The briefs submitted by the Commission in the El Amparo case showing that, by and large, Article 54 of the Code of Military Justice had been applied by the President of the Republic of Venezuela, Carlos Andrés Pérez.

CONSIDERING:

1. That the transparency of this Tribunal's proceedings is enhanced by clarification, when it so deems appropriate, of the content and scope of its Judgments, thereby dissipating any doubts about them, and that they may not be challenged by merely formal considerations.

2. That in its application before the Court, the Commission stated that the President of the Republic of Venezuela, Carlos Andrés Pérez, had decreed that no pre-trial investigation should be initiated against Army Major Ricardo Pérez Gutiérrez, who had served as judge of the first instance in the El Amparo case in 1989, inasmuch as no copy of the order of the President of the Republic of Venezuela, alluded to, had been submitted to the Court. However, it should be noted that the proceedings state that, following Major Ricardo Pérez Gutiérrez's dismissal and the nullification of his rulings, the case continued in the normal way.

3. That the petitioners quote a number of sentences contained in the briefs presented by the Government of Venezuela, or delivered at the public hearing by its agents, and infer from them that the Government's recognition of the application of Article 54 of the Code of Military Justice in the El Amparo Case. The Court considers that these incidental sentences do not have the effect attributed to them by the petitioners since the Court repeatedly claimed that it is not the mere existence of Article 54 of the Code of Military Justice that should be taken into account, but rather its application in exceptional circumstances. Moreover, from the beginning of the case before the Commission, the Government of Venezuela stated in writing on August 8, 1990, that "*the Chief of State has not intervened directly or indirectly in the Case in question [El Amparo], although he was empowered to do so by the Code of Military Justice. On the contrary, the President of the Republic has expressed his desire for the investigations to proceed without hindrance with a view to ascertaining the facts and punishing those responsible.*" Hence, far from admitting the fact of agreement or recognition with regard to the application of Article 54 of the Code of Military Justice, the Government expressly denied it.

4. That no reference was made to Judge Pérez Gutiérrez nor President Carlos Andrés Pérez in the briefs submitted by the Commission, the Government or the victims' representatives during the reparations phase. Instead, it was requested that the Code of Military Justice be reformed as one of the reparation measures on behalf of the victims. Only at the public hearing of January 27, 1996, did one of the victims' representatives state that President Carlos Andrés Pérez had "*ordered cessation of the judgment against Ricardo Pérez Gutiérrez, the judge who had fabricated evidence to protect the officials involved*", without submitting any evidence or explaining how this fact had influenced the El Amparo proceedings.

5. That, in view of the foregoing, the Court must conclude that the alleged application of the Code of Military Justice by the President of the Republic of Venezuela, Carlos Andrés Pérez, occurred, according to the original petitioners, "[in] *the actions by Judge Ricardo Pérez Gutiérrez*", in other words, in a Case other than the El Amparo Case, neither joined to it nor submitted to the Court, so that given the lack of submissions and evidence to the contrary, the aforementioned Judgment of September 14, 1996, duly stated that the power granted to the President of the Republic of Venezuela in Article 54 of the Code of Military Justice, "*had not been applied in the instant case*" and that "[the] *military authorities initiated and continued proceedings against those responsible in the El Amparo Case and that the President of the Republic had never ordered the cessation or dismissal of the proceedings.*"

NOW, THEREFORE:

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

in exercise of the powers conferred to it by Article 29 of its Rules of Procedure,

DECIDES:

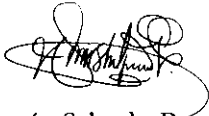
By five votes to one,

To declare that the Judgment on Reparations in the El Amparo Case of September 14, 1996, is strictly based on the events of the proceedings, it having been established that Article 54 of the Code of Military Justice has not been applied in these proceedings.

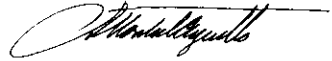
Judge Cañado Trindade informed the Court of his Dissenting Opinion, and Judge Montiel-Argüello of his Concurring Opinion.



Héctor Fix-Zamudio
President



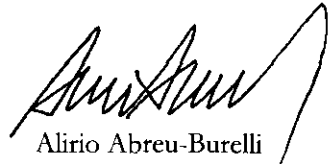
Hernán Salgado-Pesantes



Alejandro Montiel-Argüello



Máximo Pacheco-Gómez



Alirio Abreu-Burelli



Antônio A. Cañado Trindade



Manuel E. Ventura-Robles
Secretary