

**ORDER OF THE
INTER-AMERICAN COURT OF HUMAN RIGHTS
OF SEPTEMBER 13, 1997**

**APPLICATION FOR JUDICIAL REVIEW OF THE
JUDGMENT OF JANUARY 29, 1997**

GENIE LACAYO CASE

In the Genie Lacayo Case,

The Inter-American Court of Human Rights (hereinafter "the Court" or "the Inter-American Court"), composed of the following judges:

Hernán Salgado-Pesantes, President;
Antônio A. Cançado Trindade, Vice President;
Héctor Fix-Zamudio, Judge;
Alejandro Montiel-Argüello, Judge
Máximo Pacheco-Gómez, Judge;
Oliver Jackman, Judge, and
Alirio Abreu-Burelli, Judge;

also present:

Manuel E. Ventura-Robles, Secretary, and
Víctor M. Rodríguez-Rescia, Interim Deputy Secretary

pursuant to Article 29(2) of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure") issues the following Order concerning the application for judicial review of the Judgment of January 29, 1997, in the Genie Lacayo case, submitted by the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") on April 30, 1997, in a brief in which it endorsed a com-

munication from Mr. Raymond Genie-Peñalba, the youth Jean Paul Genie-Lacayo's father, and the Permanent Human Rights Commission of Nicaragua (CPDH).

I

1. On January 29, 1997, the Court delivered a Judgment on the merits of the Genie Lacayo Case, in which it

unanimously

1. Dismiss[e]d the preliminary objection of non-exhaustion of domestic remedies lodged by the State of Nicaragua.

unanimously

2. Decide[d] that the State of Nicaragua has violated Article 8(1) of the Convention, in connection with Article 1(1), to the detriment of Mr. Raymond Genie-Peñalba.

unanimously

3. Decide[d] that the State of Nicaragua has not violated Articles 2, 25, 24 and 51(2) of the Convention.

by four votes to one

4. Set at US\$20,000.00 (twenty thousand dollars of the United States of America), or its equivalent in cordobas on the date of payment, the amount that the State of Nicaragua must pay, exempt from tax and within six months of the date of this Judgment, as fair compensation to Mr. Raymond Genie-Peñalba. The payment shall be effected in the form and on the terms set forth in paragraph 95 of this Judgment.

Judge Pacheco-Gómez dissenting.

2. On April 30, 1997, the Inter-American Commission submitted a brief in which it endorsed a communication from Mr. Raymond Genie-Peñalba, the youth Jean Paul Genie-Lacayo's father, and the Permanent Human Rights Commission (CPDH) of Nicaragua, containing an "*application [for] judicial review*" of the Judgment delivered in this case by the Inter-American Court on January 29, 1997. The request was filed on the ground that the judgment rendered by the Criminal Chamber of the Supreme Court of Justice of Nicaragua on February 12, 1997, "*produced a new juridical act that radically altered the powers that a Court of Justice should enjoy in a specific case, inasmuch as it transformed the Judiciary's possible ineffectiveness into the Judiciary's proven ineffectiveness.*"
3. In that brief it asked the Court to review its Judgment and to find that Articles 8(1) (Right to a Fair Trial), 25(1) (Right to Judicial Protection), 24 (Right to Equal Protection), and 2 (Domestic Legal Effects) of the American Convention on Human Rights (hereinafter "the American Convention") had been violated. It further requested the Court to call a public hearing to be attended by the parties in the case in order to determine the appropriate indemnity for the damages caused by the judgment issued by the Criminal Chamber of the Supreme Court of Justice of Nicaragua.
4. The Court summarizes the arguments adduced in the brief endorsed by the Commission as follows:
 - a. That the Judgment issued by the Inter-American Court on January 29, 1997, in this case declared that the defects in the military proceeding regarding the violations of the Genie-Lacayo family's human rights were of a domestic nature and should be remedied by the Supreme Court of Justice of Nicaragua. It further invokes the remedy whereby, in the light of that judgment, the Inter-American Court may examine the Judiciary's possible ineffectiveness to rule on the investigation and punishment of those responsible for the death of Mr. Jean Paul Genie-Lacayo (paras. 47, 94 and 96).
 - b. That on February 12, 1997, the Supreme Court of Justice of Nicaragua rendered a judgment in which it dismissed the extraordi-

nary appeal (Cassation) filed against the "*decision*" that acquitted the defendants in the Genie Lacayo case, on the ground that the application to appear did not specify any injuries as it is required to do by Nicaragua's Law of Military Procedure, but, instead, the Supreme Court of Justice of Nicaragua was asked to grant a period for those injuries to be specified, pursuant to the Law of Cassation in Criminal Matters.

c. That in the appeal filed in the Supreme Court of Justice of Nicaragua the rules of ordinary procedure were applied as "*a conscious strategy*" to determine whether it would apply those ordinary rules to the appeal or whether it would employ rules of military procedure. However, the Supreme Court followed the military procedure for disposing of the appeal, arguing that "*since there was not manifestation of injuries that contradict [the] grounds [of the judgment appealed, it] simply calls for confirmation.*" As stated in the brief submitted to the Inter-American Court, this action "*breache[s] the requirement of effective recourse provided in the Convention.*"

d. That while Decree 591 makes provision for the remedy of Cassation, its scope is limited by Article 247(3) which states that the Supreme Court of Justice "*may not alter the situation of the person who has been acquitted of a crime.*" Consequently, according to the Inter-American Commission, Cassation remedy in the military proceedings is only "*useful when the defendant has been convicted.*"

The application for judicial review submitted to this Court further states that

no Court, national or international, dares to render a judgment on the substance of the matter: the crime. The State of Nicaragua, with the Supreme Court's judgment of February 12, 1997, coming after the Judgment of the Inter-American Court, violates the following articles of the Convention: 25 (Right to Judicial Protection), 25(1) and 25(2); 24 (Right to Equal Protection) and 2 (Domestic Legal Effects... "*to give*

effect to such rights"). The judicial procedure adopted by the Supreme Court constitutes a denial of justice.

It further states that the judgment constituted a new juridical act, one that is decisive and was unknown to the Inter-American Court at the time it delivered its Judgment of January 29, 1997.

e. That although Nicaragua claims that it has brought its legislation into line with the American Convention when it amended Article 18 of Decree 591 with the promulgation of Law 181 of August 29, 1994, the military legislation applied by the Supreme Court of Justice of Nicaragua in the Genie Lacayo case remained in force, it having been excluded from the application of the new provisions; Articles 2 and 24 of the American Convention were therefore violated.

f. That the application for judicial review is established in the Statute of the International Court of Justice and has been applied by the arbitration tribunals and permanent courts. Further, that remedy exists in the proceedings before the Inter-American Court but that the provisions established in the Statute of the International Court of Justice would fully apply in the instant case under general international law.

g. That the judgment of the Criminal Chamber of the Supreme Court of Justice of Nicaragua constitutes a new act,

a new juridical act that deprives the victim of the possibility of prompt, simple and effective recourse for protection against the violation of his rights (Art. 25 of the Convention), against the acquittal by the military tribunals ... [which] denied the Genie family the opportunity to enjoy EFFECTIVE RECOURSE against the military judgment. It constitutes a new element in the Proceeding, which justifies the REVIEW of the Judgment delivered by the Inter-American Court of Human Rights.

II

5. The Court as currently composed is competent to hear the instant matter, by analogy with Article 16 of its Rules of Procedure which establishes that

[a]ll matters relating to reparations and indemnities, as well as supervision of the implementation of the judgments of this Court, shall be heard by the judges comprising it at that stage of the proceedings, unless a public hearing has already been held. In that event, they shall be heard by the judges who had attended that hearing.

III

6. There is no provision for the application for judicial review in the American Convention or in the Statute or the Rules of Procedure of the Inter-American Court. However, this Court deems it opportune to hear the aforementioned application for revision filed by the Inter-American Commission inasmuch as it was submitted within a reasonable time and because "[t]he transparency of this Tribunal's proceedings is enhanced by clarification, when it so deems appropriate, of the content and scope of its judgments, thereby dispelling any doubts about them, and that they may not be challenged on the basis of merely formal considerations" (*El Amparo Case*, [Application for Judicial Review of the Judgment of September 14, 1996], Order of the Court of April 16, 1997. Series C No. 46, Considerandum 1.)

7. Article 61 of the Statute of the International Court of Justice establishes the application for judicial review and states that

[a]n application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

8. There is no provision for such a recourse in the European Convention for the Protection of Human Rights and Fundamental Freedoms,

but Rule 60 of Rules of Court B of the European Court of Human Rights (corresponding to Rule 57 of Rules of Court A) provides as follows:

[a] party or the Commission may, in the event of the discovery of a fact which might by its nature have a decisive influence and which, when the judgment was delivered, was unknown both to the Court and to that party or the Commission, request the Court, within a period of six months after that party or the Commission, as the case may be, acquired knowledge of such fact, to revise that judgment.

9. As stipulated in the Statute of the International Court of Justice and the Rules of the European Court, pursuant to the general principles of both domestic and international procedural law, and, in accordance with the criterion of generally accepted doctrine, the decisive or unappealable character of a judgment is not incompatible with the existence of the application for review in some special cases.

10. There are innumerable references in legal writings to the remedy of judicial review as an exceptional recourse for preventing a *res judicata* from maintaining a patently unjust situation resulting from the discovery of a fact which, had it been known at the time the judgment was delivered, would have altered its outcome, or which would demonstrate the existence of a substantive defect in the judgment.

11. The legal motives envisaged as reasons for the judicial review are restrictive in nature, inasmuch as the remedy is always directed against orders that have acquired the effect of *res judicata*, that is, against judgments of a decisive nature or interlocutory judgments that are passed and put an end to the proceeding.

12. The application for judicial review must be based on important facts or situations that were unknown at the time the judgment was delivered. The judgment may therefore be impugned for exceptional reasons, such as those involving documents the existence of which was unknown at the time the judgment was delivered; documentary or testimonial evidence or confessions in a judgment that has acquired the effect of a final

judgment and is later found to be false; when there has been prevarication, bribery, violence, or fraud, and facts subsequently proven to be false, such as a person having been declared missing and found to be alive.

IV

13. The Court now considers whether the application for judicial review lodged by the Commission is covered by any of the exceptional reasons that could justify amendment of the ruling of January 29, 1997.

14. In the instant Case the application for review is based on the fact that:

a. The judgment of February 12, 1997, delivered by the Supreme Court of Justice of Nicaragua which did not nullify the judgment of second instance because no reference had been made to injuries in the application to appear constitutes a new fact that deprived the victim of prompt, simple and effective recourse for protection of his rights against the acquittal by the military courts, with the violation of Articles 8(1), 25(1) and 24 of the Convention, and that

b. the Government of Nicaragua has not brought its domestic laws into line with the Convention, in breach of its Article 2.

15. It is evident from the foregoing that in the instant case the application for judicial review requested does not fall within the exceptional reasons mentioned above, inasmuch as no claim has been made that a fact that existed at the time of the judgment and that it had a decisive influence on the outcome of the proceeding but was unknown to the Court; the issue here concerns a new fact which can have no influence for the amendment of the judgment.

NOW, THEREFORE,

THE INTER-AMERICAN COURT OF HUMAN RIGHTS,

DECIDES:

by six votes to one,

To declare the application for judicial review lodged by the Inter-American Commission on Human Rights against the judgment of January 29, 1997, in the Genie Lacayo case to be out of order.

Judge Antônio A. Cançado Trindade dissenting.

Judge Antônio A. Cançado Trindade informed the Court of his Dissenting Opinion, which is appended to this Order.

Done in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on this thirteenth day of September 1997.



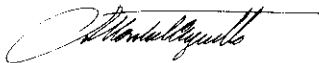
Hernán Salgado-Pesantes
President



Antônio A. Cançado Trindade



Héctor Fix-Zamudio

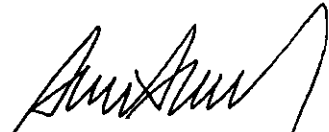



Alejandro Montiel-Argüello



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Secretary